

A THE DEPUTY INSPECTOR GENERAL OF POLICE & ANR.

v.

S. SAMUTHIRAM

(Civil Appeal No. 8513 of 2012)

B NOVEMBER 30, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Service Law:

C *Dismissal – Member of Armed Reserved – Prosecution of, for offences punishable u/s 4 of Tamil Nadu Prohibition of Eve-Teasing Act and s.509 IPC – In departmental inquiry allegations found proved and punishment of dismissal imposed – Subsequently, acquittal in criminal case – Held: Mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings – In the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement – In the instant case, in departmental proceedings the charges were proved – In the criminal case the complainants turned hostile and other key witnesses including the doctor were not examined by the prosecution – In the circumstances, the court held that there was no evidence to implicate the accused – That being the factual situation, the delinquent cannot be said to have been honourably acquitted by criminal court – Even otherwise, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so – High Court, in its limited jurisdiction under Art. 226 of the Constitution, was not justified in setting aside the punishment imposed in the departmental proceedings – Judgment of High Court is set aside – Tamil Nadu Prohibition of Eve-Teasing Act, 1998 – s.4 – Constitution of India, 1950 – Art. 226.*

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Sexual Harassment:

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Eve-teasing – Held: Eve-teasing is a euphemism, a conduct which attracts penal action – The consequence of eve-teasing may at times be disastrous – There is no uniform law to curb eve-teasing effectively – Only in the State of Tamil Nadu, a Statute has been enacted, and that too has no teeth – The necessity of a proper legislation to curb eve-teasing is of extreme importance – Until suitable legislation to curb eve-teasing takes place, directions are issued to take urgent measures so that the evil can be curtailed to some extent – Constitution of India, 1950 – Arts. 21, 14 and 15 – Legislation.

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WORDS AND PHRASES:

Expression, 'honourable acquittal' – Explained.

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The respondent, while posted with the Armed Reserve and deputed for duty at a Police out post, was by an order dated 18.7.1999 placed under suspension w.e.f. 10.7.1999. The allegations against him were that on 9.7.1999, at 11:00 pm he went to the bus stand in a drunken state and misbehaved with and eve-teased a married woman. He was also found absent from duties. A complaint against the respondent was registered at the Police Station for offences punishable u/s 4 of the Tamil Nadu Prohibition of Eve-Teasing Act, 1998 and s.509 IPC. The departmental proceedings culminated in dismissal of the respondent from service. During the pendency of the O.A. filed by the respondent before the Tamil Nadu Administrative Tribunal, he was acquitted in the criminal case. The Tribunal held that no reliance could be placed on the judgment of the criminal court, and dismissed the O.A. However, the High Court allowed the writ petition of the respondent.

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In the instant appeal filed by the Department, the question for consideration before the Court was: when

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A the departmental enquiry has been concluded resulting in the dismissal of the delinquent from service, will the subsequent finding recorded by the criminal court acquitting the respondent delinquent, have any effect on the departmental proceedings?

B Allowing the appeal, the Court

HELD: 1.1. Mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The charges in

C the departmental proceedings were inquired into by the Deputy Superintendent of Police. The Department examined ten witnesses; and fourteen documents were produced. On the side of the defence, D.W. 1 and D.W. 2 were examined. The Enquiry Officer found all the three

D charges proved beyond reasonable doubt. P.Ws. 4 and 5, the two Head Constables who had taken the respondent and the complainants to the Police Station, and PW 6, the Head Constable of the Police Station, clearly narrated the entire incident and the involvement

E of the respondent. The Enquiry Officer clearly concluded that the evidence tendered by the P.Ws. 4, 5 and 6 and the documentary evidence would clearly prove the various charges levelled against the delinquent. The Medical Officer of the Government Hospital had also

F certified that the delinquent had consumed liquor and did not cooperate for urine and blood tests. The Superintendent of Police, concurred with the findings of the Enquiry Officer and held that the charges were clearly proved beyond reasonable doubt. It was held that the

G respondent being a member of a disciplined force should not have behaved in a disorderly manner and that too in a drunken state, in a public place, and misbehaving with a married woman. The said conduct of the respondent would undermine the morale of the police force. Consequently, the Superintendent of Police awarded the

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punishment of dismissal from service on the respondent. His departmental appeal was rejected by the Inspector General of Police. [para 14 and 20] [187-D-H; 188-A-E; 191-G]

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1.2. In the criminal case before the Judicial Magistrate, PW 1 and PW 2, the husband and the wife (victim) turned hostile. Prosecution then did not take steps to examine the rest of the prosecution witnesses. The two Head Constables who took the respondent along with PWs 1 and 2 to the Police Station were crucial witnesses, but the prosecution, took no step to examine them, and so also the Doctor. It was under such circumstances that the criminal court took the view that there was no evidence to implicate the respondent-accused, consequently, he was found not guilty u/s 509 IPC read with s.4 of the Eve-Teasing Act and was, therefore, acquitted. That being the factual situation, the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined. [para 15 and 20] [188-G; 189-B-C; 192-C]

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Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another 1999 (2) SCR 257 = (1999) 3 SCC 679; Southern Railway Officers' Association v. Union of India 2009 (12) SCR 429 = (2009) 9 SCC 24 ; State Bank of Hyderabad v. P.Kata Rao 2008 (6) SCR 983 = (2008) 15 SCC 657; and Divisional Controller, Karnataka State Raod Transport Corporation v. M. G., Vittal Rao (2012) 1 SCC 442 – referred to

1.3. In *Bhopal Singh Panchal**, this Court held that the mere acquittal does not entitle an employee to reinstatement in service: the acquittal has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial

- A pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can
- B possibly be said that the accused was honourably acquitted. [para 21] [192-E-G]

**Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* (1994) 1 SCC 541; *R.P. Kapoor v. Union of India* 1964 SCR 431 = AIR 1964 SC 787; and *State of Assam and another v. Raghava Rajgopalachari* 1972 SLR 45 – referred to.

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(1934) 61 ILR Cal. 168 – referred to.

- D 1.4. In the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. The issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules. The High Court, in its limited jurisdiction under Art. 226 of the Constitution, was not justified in setting aside the punishment imposed upon the respondent in the departmental proceedings. The judgment of the High Court is set aside. [para 23-25 and 33] [193-E, F-G; 194-D-E; 198-C]
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2.1. Eve-teasing is a euphemism, a conduct which attracts penal action. Consequence of eve-teasing may, at times, are disastrous, but it is seen, only in the State of Tamil Nadu a statute has been enacted and that too has no teeth. It has been noticed that there is no uniform law to curb eve-teasing effectively. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Every citizen has right to live with dignity and honour which is a fundamental right guaranteed under Art. 21 of the Constitution. Sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Arts. 14 and 15 as well. [para 2, 26 and 30] [182-C; 194-G-H; 195-A-B; 196-B]

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2.3. It has been noticed that in the absence of effective legislation to contain eve-teasing, normally, complaints are registered u/s 294 or s.509 IPC, which has not been proved to be an effective mechanism, rather filing of complaint and to undergo a criminal trial itself is an agony for the complainant, over and above the extreme physical or mental agony already suffered. The necessity of a proper legislation to curb eve-teasing is of extreme importance. [para 26, 28 and 30] [195-B-E-F; 196-B]

Vishaka and Others v. State of Rajasthan; (1977) 6 SCC 241; Rupan Deol Bajaj and Another v. K.P.S. Gill; 1995 (4) Suppl. SCR 237 = (1995) 6 SCC 194 – referred to

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The Indian Journal of Criminology and Criminalistics (January-June 1995 Edn.) – referred to

2.4. Until suitable legislation to curb eve-teasing is enacted, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. Therefore, this Court gives the following directions:

(1) All the State Governments and Union Territories are directed to depute plain clothed female police

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- A officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.
- B (2) The State Government and Union Territories will install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.
- C (3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.
- D (4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.
- E (5) State Governments and Union Territories are directed to establish Women's Helpline in various cities and towns, so as to curb eve-teasing within three months.
- F (6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parks, beaches,
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public service vehicles, places of worship etc.

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(7) Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.

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(8) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the authorities concerned including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing. [para 32] [196-G; 197-A-H; 198-A-B]

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Case Law Reference:

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1999 (2) SCR 257 referred to para 7

2009 (12) SCR 429 referred to para 17

2008 (6) SCR 983 referred to para 18

(2012) 1 SCC 442 referred to para 19

(1994) 1 SCC 541 referred to para 21

1964 SCR 431 referred to para 22

1972 SLR 45 referred to para 22

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(1934) 61 ILR Cal. 168 referred to para 22

(1977) 6 SCC 241 referred to para 31

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1995 (4) Suppl. SCR 237 referred to para 31

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8513 of 2012.

From the Judgment & Order dated 26.10.2007 of the High Court of Madras in WP No.13726 of 2004.

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A C. Paramasivam, B. Balaji for the Appellants.
V.N. Subramaniam, N. Vijakumar, V. Senthil Kumar, Balaji Srinivasan for the Respondent.

B The Judgment of the Court was delivered by
K.S. RADHAKRISHNAN, J. 1. Leave granted.

C 2. Eve-Teasing is a euphemism, a conduct which attracts penal action but it is seen, only in one State, a Statute has been enacted, that is State of Tamil Nadu to contain the same, the consequence of which may at times drastic. Eve-teasing led to the death of a woman in the year 1998 in the State of Tamil Nadu which led the Government bringing an ordinance, namely, the Tamil Nadu Prohibition of Eve-Teasing Ordinance, 1998, which later became an Act, namely, the Tamil Nadu Prohibition of Eve-Teasing Act, 1998 [for short 'the Eve-Teasing Act']. The Statement of Objects and Reasons of the Eve-Teasing Act reads as follows:

E "Eve-teasing in public places has been a perennial problem. Recently, incidents of eve-teasing leading to serious injuries to, and even death of a woman have come to the notice of the Government. The Government are of the view that eve-teasing is a menace to society as a whole and has to be eradicated. With this in view, the Government decided to prohibit eve-teasing in the State of Tamil Nadu.

F 2. Accordingly, the Tamil Nadu Prohibition of Eve-teasing Ordinance, 1998 (Tamil Nadu Ordinance No. 4 of 1998) was promulgated by the Governor and the same was published in the Tamil Nadu Government Gazette Extraordinary, dated the 30th July, 1998.

G 3. The Bill seeks to replace the said Ordinance."

H 3. We are in this case concerned with a situation where a member of the law enforcement agency, a police personnel,

himself was caught in the act of eve-teasing of a married woman leading to criminal and disciplinary proceeding, ending in his dismissal from service, the legality of which is the subject matter of this appeal.

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4. The respondent herein, while he was on duty at the Armed Reserve, Palayamkottai was deputed for Courtallam season Bandobust duty on 9.7.1999 and he reported for duty on that date at 8.30 PM at the Courtallam Season Police out post. At about 11.00 PM he visited the Tenkasi bus stand in a drunken state and misbehaved and eve-teased a married lady, who was waiting along with her husband, to board a bus. The respondent approached that lady with a dubious intention and threatened both husband and wife stating that he would book a case against the husband unless the lady accompanied him. Further, he had disclosed his identity as a police man. Both husband and wife got panic and complained to a police man, namely, Head Constable Adiyodi (No.1368) who was standing along with Head Constable Peter (No.1079) of Tenkasi Police Station on the opposite side of the bus-stand. They were on night duty at the bus stand. They rushed to the spot and took the respondent into custody and brought him to Tenkasi Police Station along with the husband and wife. Following that, a complaint No.625/1999 was registered on 10.7.1999 at that Police Station against the respondent under Section 509 of the Indian Penal Code and under Section 4 of the Eve-teasing Act. On 10.7.1999, at about 1.25 hrs., the respondent was taken to the Government Hospital Tenkasi for medical examination. There he was examined by Dr. N. Rajendran, who issued a Certificate of Drunkenness, which reads as follows:

"Symptoms at the time of examination:

Breath smell of alcohol, Eye congested, Retina expanded, sluggish reaction to light, speech and activities normal, pulse rate 96, Blood pressure 122/85. I am of opinion that the above person:

A (i) consumed alcohol but is not under its influence.

Station: Tenkasi
Date: 10.07.1999

Name: N. Rajendran
(Sd/- dt.10.07.1999)

Civil Surgeon

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I am not willing to undergo blood and urine test.

Sd/- S. Samuthiram, PC 388"

C 5. The respondent was then placed under suspension from

10.7.1999 (FN) as per DO.1360/1999 in C.No.P1/34410/1999 vide order dated 18.7.1999 and departmental proceedings were initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 (in short 'Tamil Nadu Service Rules') for his highly reprehensible

D conduct in behaving in a disorderly manner to a married lady in a drunken state at Tenkasi bus stand on 9.7.1999. Further, it was also noticed that he was absent from duty from 07.00 hrs on 10.7.1999 to 03.45 hrs.

E 6. The Deputy Superintendent of Police, Armed Reserve, Tirunelveli, conducted a detailed domestic enquiry and after examining ten prosecution witnesses and perusing fourteen prosecution documents and after hearing the defence witnesses, submitted a report dated 22.11.1999 finding all the charges proved against the delinquent respondent. The Superintendent of Police, Tirunelveli after carefully perusing the enquiry report dismissed the respondent from service on 4.1.2000.

G 7. The respondent, aggrieved by the dismissal order, filed O.A. No.1144 of 2000 before the Tamil Nadu Administrative Tribunal, Chennai. While the O.A. was pending before the Tribunal, the Judicial Magistrate, Tenkasi rendered the judgment in S.T.C No.613 of 2000 on 20.11.2000 acquitting the respondent of all the charges. The judgment of the Criminal

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Court was brought to the notice of the Tribunal and it was submitted that, on the same set of facts, the delinquent be not proceeded within the departmental proceeding. The judgment of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another* (1999) 3 SCC 679 was also placed before the Tribunal in support of that contention.

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8. The Tribunal noticed that both, husband and wife, deposed before the Enquiry Officer that the respondent had committed the offence, which was supported by the other prosecution witnesses, including the two policemen who took the respondent in custody from the place of incident. Consequently, the Tribunal took the view that no reliance could be placed on the judgment of the criminal court. The O.A. was accordingly dismissed by the Tribunal vide order dated 23.3.2004. The order was challenged by the respondent in a Writ Petition No.13726 of 2004 before the High Court of Madras. The High Court took the view that if a criminal case and departmental proceedings against an official are based on the same set of facts and evidence and the criminal case ended in an honourable acquittal and not on technical grounds, imposing punishment of removal of the delinquent official from service, based on the findings of domestic enquiry would not be legally sustainable. The High Court also took the view that the version of the doctor who was examined as PW8 and Ext. P-4 certificate issued by him, could not be considered as sufficient material to hold the respondent guilty and that he had consumed alcohol, but was found normal and had no adverse influence of alcohol. The High Court, therefore, allowed the writ petition and set aside the impugned order dismissing him from service. It was further ordered that the respondent be reinstated with continuity of service forthwith, with back wages from the date of acquittal in the criminal case, till payment.

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9. The State, aggrieved by the said judgment has filed this appeal by special leave through the Deputy Inspector General of Police.

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- A 10. Shri C. Paramasivam, learned counsel appearing for the appellant, submitted that the High Court was not justified in interfering with disciplinary proceedings and setting aside the order of dismissal of the respondent. Learned counsel submitted that the High Court overlooked the fact that the
- B standard of proof in a domestic enquiry and criminal enquiry is different. The mere acquittal by the criminal Court does not entitle the delinquent for exonerating in the disciplinary proceedings. Learned counsel also submitted that the case in hand is not where punishment of dismissal was imposed on
- C the basis of conviction in a criminal trial and only, in such situation, acquittal by a Court in a criminal trial would have some relevance. Further, it was also pointed out that, in the instant case, the respondent was not honourably acquitted by the criminal Court, but was acquitted since complainant turned hostile.
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- E 11. Shri V. N. Subramaniam, learned counsel appearing for the respondent, supported the findings recorded by the High Court. Learned counsel submitted that the judgment of the criminal court acquitting the respondent has to be construed as an honourable acquittal and that the respondent cannot be proceeded with on the same set of facts on which he was acquitted by a criminal court. Learned counsel also placed reliance on the judgment of this Court in *Capt. M. Paul* case (supra).
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- G 12. We may first deal with the departmental proceedings initiated against the respondent.

DEPARTMENTAL PROCEEDINGS:

- G 13. We may indicate that the following were the charges levelled against the respondent in the departmental proceedings and a charge memo dated 24.8.1999 was served on the respondent:
 - H (i) Reprehensible conduct in having behaved in a

disorderly manner in a drunkenness mood at A
Tenkasi Bus-stand on 9.7.1999 at 23.00 hrs.

(ii) Highly reprehensible conduct in eve-teasing
Pitchammal (44/1999) W/o. Vanamamalai of
Padmaneri in the presence of her husband and
having approached her with a dubious intention on
9.7.1999 at 23.00 hrs. and thereby getting involved
in a criminal case in Tenkasi P.S. Cr. No. 625/1999
under Section 509 IPC and Section 4 of the Tamil
Nadu Prohibition of Eve-Teasing Ordinance Act,
1998 and

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(iii) Highly reprehensible conduct in having absented
from duty from 10.7.1999 at 07.00 hrs onward till
03.45 hrs.

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14. The charges were inquired into by the Deputy
Superintendent of Police, Armed Reserve Tirunelveli. The
prosecution examined ten witnesses and fourteen documents
were produced. On the side of the defence, D.W. 1 and D.W.
2 were examined. After examining the witnesses on either side
and after giving an opportunity of hearing, the Enquiry Officer
found all the three charges proved beyond reasonable doubt.
P.Ws. 4 and 5, who were Head Constables 1368 Adiyodi of
Tenkasi Police Station and Head Constable 1079 Peter of
Tenkasi Police Station, clearly narrated the entire incident and
the involvement of the respondent, so also PW 6, the Head
Constable of Tenkasi Police Station. The Enquiry Officer clearly
concluded that the evidence tendered by the prosecution
witnesses P.Ws. 4, 5 and 6 and prosecution documents 3, 4
and 5 would clearly prove the various charges levelled against
him. The Medical Officer of the Government Hospital had also
certified that the delinquent had consumed liquor and he was
not cooperating for urine and blood tests. The Enquiry Officer
also found that the delinquent ought to have reported for duty
at the out-post station on 10.7.1999 at 07.00 hrs. as per the
instruction given to him on 9.7.1999 at 20.30 hrs., while he

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- A reported for courtallam season Bandobust duty at season out-post police station. But, it was found that the delinquent had failed to report for duty. Further, he had also indulged in the activity of eve-teasing a married woman. After finding the delinquent respondent guilty of all the charges, the Enquiry
- B Officer submitted its report dated 22.11.1999. The Superintendant of Police, Tirunelveli concurred with the findings of the Enquiry Officer and held that the charges were clearly proved beyond reasonable doubt. It was held that the respondent being a member of a disciplined force should not
- C have behaved in a disorderly manner and that too in a drunken state, in a public place, and misbehaving with a married woman. It was held that the said conduct of the respondent would undermine the morale of the police force, consequently, the Superintendant of Police awarded the punishment of dismissal
- D from service on the respondent, vide its proceeding dated 4.1.2000. The respondent then filed an appeal before the Inspector General of Police, which was rejected vide his proceeding dated 10.3.2000. Respondent then filed an application in O.A. No. 1144 of 2000 before the Tamil Nadu Administrative Tribunal. While O.A. was pending, the delinquent
- E was acquitted of the criminal charges.

CRIMINAL PROCEEDINGS:

- 15. We have indicated that a criminal case was also registered against the respondent by the Tenkasi Police Station being Crime No. 625/1999 under Section 509 IPC and Section 4 of the Eve-Teasing Act, 1998, which was registered as STC 613 of 2002 before the Judicial Magistrate, Tenkasi. Before the Criminal Court, PW 1 and PW 2, the husband and the wife (victim) turned hostile. Prosecution then did not take steps to examine the rest of the prosecution witnesses. Head Constable (No.1368) Adiyodi and Head Constable (No.1079) Peter of Tenkasi Police Station were crucial witnesses. Facts would clearly indicate that it was the above mentioned Head Constables who took the respondent to Tenkasi Police Station
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along with P.Ws. 1 and 2, though P.Ws. 1 and 2 had clearly A
deposed before the Enquiry Officer of the entire incident
including the fact that the above mentioned two Head
Constables had taken the respondent along with P.Ws.1 and
2 to the Tenkasi Police Station. The Criminal Court took the
view that since P.W. 1 and P.W. 2 turned hostile, the criminal
case got weakened. The prosecution, it may be noted also B
took no step to examine the Head Constables by name 1368
Adiyodi and 1079 Peter of Tenkasi Police Station, so also the
Doctor P.W.8 before the criminal Court. It was under such
circumstances that the criminal Court took the view that there
is no evidence to implicate the respondent-accused, C
consequently, he was found not guilty under Section 509 IPC
read with Section 4 of the Eve-Teasing Act and was, therefore,
acquitted.

16. We may indicate that before the order of acquittal was D
passed by the Criminal Court on 20.11.2000, the Departmental
Enquiry was completed and the respondent was dismissed
from service on 4.1.2000. The question is when the
departmental enquiry has been concluded resulting in the
dismissal of the delinquent from service, the subsequent
finding recorded by the Criminal Court acquitting the
respondent delinquent, will have any effect on the departmental
proceedings. The propositions which the respondent wanted
to canvass placing reliance on the judgment in *Capt. M. Paul*
Anthony case (supra) read as follows: F

“(i) Departmental proceedings and proceedings in G
a criminal case can proceed simultaneously as there is
no bar in their being conducted simultaneously, though
separately.

(ii) If the departmental proceedings and the criminal H
case are based on identical and similar set of facts and
the charge in the criminal case against the delinquent
employee is of a grave nature which involves complicated
questions of law and fact, it would be desirable to stay the

- A departmental proceedings till the conclusion of the criminal case.
 - (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
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- C (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- D (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date,
- E so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."
- F 17. This Court, in *Southern Railway Officers' Association v. Union of India* (2009) 9 SCC 24, held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The Court reiterated that order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge.
- G 18. In *State Bank of Hyderabad v. P.Kata Rao* (2008) 15 SCC 657, this Court held that there cannot be any doubt whatsoever that the jurisdiction of the superior Courts in interfering with the finding of fact arrived at by the Enquiring Officer is limited and that the High Court would also ordinarily
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not interfere with the quantum of punishment and there cannot be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith. In that judgment, this Court further held as follows:

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“The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another* [(1999) 3 SCC 679], however, remains unshaken although the applicability thereof had been found to be dependant on the fact situation obtaining in each case.”

19. In a later judgment of this Court in *Divisional Controller, Karnataka State Road Transport Corporation v. M.G., Vittal Rao* (2012) 1 SCC 442, this Court after a detailed survey of various judgments rendered by this Court on the issue with regard to the effect of criminal proceedings on the departmental enquiry, held that the Disciplinary Authority imposing the punishment of dismissal from service cannot be held to be disproportionate or non-commensurate to the delinquency.

20. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent, it may be noted, is a member of a disciplined force and non examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the Prosecution. Considering the facts and circumstances of the case, the possibility of winning order P.Ws. 1 and 2 in the criminal case cannot be ruled out. We fail to see, why the Prosecution had not examined

- A Head Constables 1368 Adiyodi and 1079 Peter of Tenkasi Police Station. It was these two Head Constables who took the respondent from the scene of occurrence along with P.Ws. 1 and 2, husband and wife, to the Tenkasi Police Station and it is in their presence that the complaint was registered. In fact,
- B the criminal court has also opined that the signature of PW 1 (husband – complainant) is found in Ex.P1 – Complaint. Further, the Doctor P.W.8 has also clearly stated before the Enquiry Officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests. That
- C being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.

Honourable Acquittal

- D 21. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

- E 22. In *R.P. Kapoor v. Union of India*, AIR 1964 SC 787, it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than

honourable. In *State of Assam and another v. Raghava Rajgopalachari* reported in 1972 SLR 45, this Court quoted with approval the views expressed by Lord Williams, J. in (1934) 61 ILR Cal. 168 which is as follows:

"The expression "honourably acquitted" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'".

23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and

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- A his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not
- B provide so.

- 24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.

- 25. In view of the above mentioned circumstances, we are
- E of the view that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings as against the respondent, in its limited jurisdiction under Article 226 of the Constitution of India.

- 26. We may, in the facts and circumstances of this case, F wish to add some aspects which are also of considerable public importance. We notice that there is no uniform law in this country to curb eve-teasing effectively in or within the precinct of educational institutions, places of worship, bus stands, metro-stations, railway stations, cinema theatres, parks, beaches, G places of festival, public service vehicles or any other similar place. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Consequences of not curbing such a menace, needless to say, at times disastrous. There are many instances where girls of young age are being H harassed, which sometimes may lead to serious psychological

problems and even committing suicide. Every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual harassment like eve- teasing of women amounts to violation of rights guaranteed under Articles 14, 15 as well. We notice in the absence of effective legislation to contain eve-teasing, normally, complaints are registered under Section 294 or Section 509 IPC.

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27. Section 294 says that "Whoever, to the annoyance of others- (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song; ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both".

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28. It is for the prosecution to prove that the accused committed any obscene act or the accused sang, recited or uttered any obscene song; ballad or words and this was done in or near a public place, it was of obscene nature and that it had caused annoyance to others. Normally, it is very difficult to establish those facts and, seldom, complaints are being filed and criminal cases will take years and years and often people get away with no punishment and filing complaint and to undergo a criminal trial itself is an agony for the complainant, over and above, the extreme physical or mental agony already suffered.

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29. Section 509 IPC says, "Whoever intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending, that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both".

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30. The burden is on the prosecution to prove that the accused had uttered the words or made the sound or gesture

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- A and that such word, sound or gesture was intended by the accused to be heard or seen by some woman. Normally, it is difficult to establish this and, seldom, woman files complaints and often the wrong doers are left unpunished even if complaint is filed since there is no effective mechanism to monitor and
- B follow up such acts. The necessity of a proper legislation to curb eve-teasing is of extreme importance, even the Tamil Nadu Legislation has no teeth.

31. Eve teasing today has become pernicious, horrid and disgusting practice. The Indian Journal of Criminology and Criminalistics (January-June 1995 Edn.) has categorized eve teasing into five heads viz. (1) verbal eve teasing; (2) physical eve teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In *Vishaka and Others v. State of Rajasthan*; (1977) 6 SCC 241, this Court has laid down certain guidelines on sexual harassments. In *Rupan Deol Bajaj and Another v. K.P.S. Gill*; (1995) 6 SCC 194, this Court has explained the meaning of 'modesty' in relation to women. More and more girl students, women etc. go to educational institutions, work places etc. and their protection is of extreme importance to a civilized and cultured society. The experiences of women and girl children in over-crowded buses, metros, trains etc. are horrendous and a painful ordeal.

32. The Parliament is currently considering the Protection of Woman against Sexual Harassment at Workplace Bill, 2010, which is intended to protect female workers in most workplaces. Provisions of that Bill are not sufficient to curb eve-teasing. Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

- H (1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations,

metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing. A

(2) There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught. B

(3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre. C

(4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply. D

(5) State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months. E

(6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parks, beaches, public service vehicles, places of worship etc. F

(7) Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes. G

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A (8) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.

33. The Appeal is accordingly allowed with the above directions and the judgment of the High Court is set aside. However, there will be no order as to costs.

C R.P.

Appeal allowed.