

HARICHAND
v.
DIRECTOR OF SCHOOL EDUCATION

JANUARY 14, 1998

[S.P. BHARUCHA AND V. N. KHARE, JJ.]

Criminal Law :

Probation of Offenders Act, 1958 :

Section 12—Provided for removal of disqualification attaching to a conviction—Applicability of—Accused was convicted under S.408 IPC but was released on probation under S. 4(1)—By reason of the conviction accused was dismissed from Government service—Validity of—Held; S. 12 applicable only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment—Hence, S. 12 did not prohibit taking into account the conviction for the purposes of dismissal from Government service—Penal Code, 1860, S. 408—Service Law.

The appellant was convicted of an offence under Section 408 of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for a term of two years and to pay a fine of Rs. 1,000—In appeal, the Sessions Court upheld the conviction but set aside the sentence and directed that the appellant be released on probation under Section 4(1) of the Probation of Offenders Act, 1958.

By reason of the appellant's conviction, the respondent, in whose employ the appellant was, dismissed him from Government service. The dismissal was challenged by the appellant in a writ petition filed before the High Court, which was dismissed. Hence this appeal.

On behalf of the appellant it was contended that the conviction could not have been taken into account for the purposes of removing the appellant from Government service by reason of the provisions of section 12 of the Act.

Dismissing the appeal, this Court

HELD : 1. Section 12 of the Probation of Offenders Act, 1958 would

- A** apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from Government service.

[145-G-H; 146-A]

- C** *Aitha Chander Rao v. State of A.P.*, [1981] Supp. SSC 17, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1451 of 1987.

- D** From the Judgment and Order dated 25.3.85 of the High Court of Punjab and Haryana in CWP No. 1531/85.

Ujjagar Singh and J.D. Jain for the Appellants.

The Judgment of the Court was delivered by

- E** **S.P. BHARUCHA, J.** The respondent has been served but has not put in an appearance.

- F** The appellant was convicted of an offence under Section 408 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a term of two years and to pay a fine of Rs. 1,000. In appeal, the Sessions Court upheld the conviction but set aside the sentence and directed that the appellant be released on probation under Section 4(1) of the Probation of Offenders Act, 1958 on his entering a bond for good conduct in the sum of Rs. 5,000 and furnishing a surety for the like amount.

- G** By reason of the appellant's conviction, the respondent, in whose employ the appellant was, dismissed him from Government service. The dismissal was challenged by the appellant in a writ petition filed before the High Court of Punjab and Haryana. By the order dated 25th March, 1985, which is under appeal, the writ petition was summarily dismissed.

- H** Learned counsel for the appellant submitted that the conviction could

not have been taken into account for the purposes of removing the appellant from Government service by reason of the provisions of Section 12 of the Probation of Offenders Act, 1958, the operative portion of which reads: A

“Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law”. B

Learned counsel drew our attention to the order of this Court in the case of *Aitha Chander Rao v. State of Andhra Pradesh*, [1981] Supp. SCC 17. The said Rao had been convicted under Section 304A of the Indian Penal Code and sentenced to undergo two years rigorous imprisonment and pay a fine of Rs. 500. On appeal to this Court against the judgment of the High Court affirming the conviction, this Court found no reason to interfere on the merits of the appeal. The only question that it considered was whether it was an appropriate case in which the appellant before it could be released on probation. The Sessions Judge had found that there was some amount of contributory negligence on the part of the of the said Rao. Having regard “to the peculiar circumstances of this case” it was thought to be a fit case to release the said Rao on probation. This Court added, “As the appellant has been released on probation this may not affect his service career in view of Section 12 of the Probation of Offenders Act.” C D E

The order in the case of the said Rao was delivered on an appeal against conviction. The conviction was sustained but, having regard to the peculiar circumstances of the case, the said Rao was released on probation and it was added that “this may not affect his service career in view of Section 12 of the Probation of Offenders Act”. We do not find in the order in *Rao’s case* any discussion of the provision of Section 12 or of the meaning of words “disqualification, if any, attaching to a conviction of an offence under such law” such therein. The order cannot, therefore, be regarded as a binding precedent upon the point. F

In our view, Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words “disqualification, if any, attaching to a conviction of an offence under such law” therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence G H

A but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from Government service.

B The appeal is dismissed. No order as to costs.

V.S.S.

Appeal dismissed.