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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.429 of 2018****Order reserved on 15.05.2019****Order passed on 17.06.2019**

Mohammad Azhar Hussain (M.A. Hussain) son of late M. T. Husain, aged about 65 years, Retired District Manager, M.P. Agro Industries Ambikapur, District Surguja, R/o. Flat No. B/1-19, Chouhan Town, Junwani, Bhilai, District Durg (Chhattisgarh)

---Petitioner**Versus**

State of Chhattisgarh, Through : The Police Station, Special Establishment, Bhopal, alt present Raipur (Chhattisgarh).

---Respondent

For Petitioner : Ms. Hamida Siddique, Advocate.

For Respondent/State : Mr. Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The petitioner herein stood trial for offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and after full-dressed trial he was acquitted of the said offences by the jurisdictional special court (under the Prevention of Corruption Act, 1988) by judgment and order dated 24.04.2018, but the said acquittal is based on extending



the benefit of doubt. Petitioner seeks to expunge remarks “benefit of doubt” from the judgment and order dated 24.04.2018 (paragraph-85), principally on the ground that same operated as a stigma for getting service benefit on retirement and also cast aspersion on his integrity.

2. The State of Chhattisgarh has filed its return opposing the writ petition stating inter alia that petitioner has been acquitted extending the benefit of doubt on the basis of evidence on record as the petitioner is not entitled for honourable/clean acquittal on the evidence brought-out by the prosecution as such acquittal of petitioner is based on benefit of doubt is supportable in law and writ petition deserves to be dismissed as petitioner’s remedy, if any, is to file appeal against the judgement and order dated 24.04.2018.
3. No rejoinder has been filed by the petitioner in opposition of the return filed by the respondent/State.
4. Ms. Hamida Siddique, learned counsel appearing for the petitioner, would submit that though the learned Special Judge (PC Act) has clearly recorded a finding that prosecution has failed to prove any of the ingredients of charged offences to the petitioner beyond reasonable doubt, yet instead of acquitting him honorably, extended and gave him the benefit of doubt, which operated as stigma for grant of service benefit to him as well as it affects his reputation socially, therefore it deserves to be expunged in exercise of jurisdiction vested in the court under Article 227 of





Constitution of India or under Section 482 of Code of Criminal Procedure.

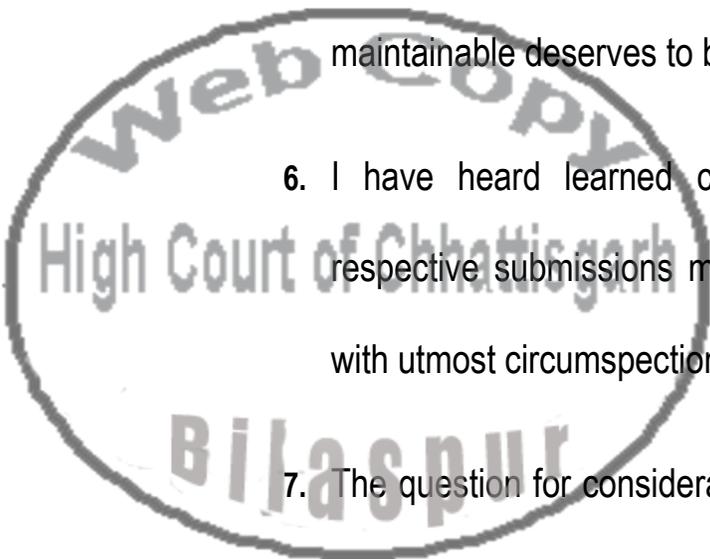
The phrase “benefit of doubt” as mentioned in the judgment and order dated 24.04.2018 (paragraph 85) deserves to be expunged in the ends of justice.

5. Mr. Chandresh Shrivastava learned Deputy Advocate General appearing for State of Chhattisgarh would support the observation made by learned Special Judge (P.C. Act) acquitting the petitioner by extending him the benefit of doubt and submit that writ petition as framed and filed being not maintainable deserves to be dismissed.

6. I have heard learned counsel for the parties and considered their respective submissions made hereinabove and went through the record with utmost circumspection.

7. The question for consideration would be whether the petitioner has made out a case for expunging the phrase “Benefit of Doubt” in paragraph 85 of the Judgment, by learned Special Judge (PC Act) while acquitting the petitioner ?

8. In order to adjudicate the plea so raised, it would be appropriate to notice here the provisions of the Code of Criminal Procedure, 1973 which takes cognizance and speak of “acquittal”. Sections 227, 235, 248, 255 and 330 of the Code speaks of acquittal. The word ‘discharge’ is employed under Sections 227, 239 and 245 of the Code. As a matter of fact, Section 227 of Cr.P.C. enjoins a court of Session to discharge an accused, if upon





consideration of record of the case, and documents submitted, it considers that there is no sufficient ground for proceeding against the accused. Section 232 of Code, enjoins a court of session to order for acquittal of an individual, if after taking the evidence for prosecution, examining the accused and hearing the prosecution and the defence on point, the judge considers that there is no evidence to show that the accused committed the offence. It is pertinent to mention under Section 232 of Code, order of acquittal can be passed after evidence of prosecution is recorded, but order of discharge can be passed prior to recording of evidence.

9. Thus, in the Code of Criminal Procedure, 1973, or any other enactment the word 'acquittal' has not been defined. As per Stroud's Dictionary (5th Edition) acquittal has been defined as under:-

ACQUITTAL. (1) 'To acquite him' : *acquite* is compounded of *ad*, and the old verbe *quietare*, and signifieth in law to discharge, or keepe in quiet, and to see that the tenant be safely kept from any entries, or other molestation for any manner of service issuing out of the land to any lord that is above the mesne. And hereof commeth Acquitall, and *quietus est*, (that is) that he is discharged; and he that is discharged of a felony, etc., by judgment, is said to be acquitted of the felony, *acquietatus de feloniam*; and if he be drawne in question againe, he may plead *outerfoits acquite*" (Co. Litt. 100a).

(2) "The word 'acquittal' is *verbum equivocum*, and may in ordinary language be used to express either the verdict of a jury, or the formal judgment of the Court, that the prisoner go thereof without day" (*per* Tindal C.J., *Burgess v. Boetefeur*, 13 L.J.M.C. 126; see Cowel, *Acquitall*). Cp. CONVICTED.

10. According to Black's Law Dictionary (6th Edition) 'acquittal' in criminal law has been defined as under:-



Acquittal. *Contracts.* A release, absolution, or discharge from an obligation, liability, or engagement.

Criminal law. The legal and formal certification of the innocence of a person who has been charged with crime; a deliverance or setting free a person from a charge of guilt; finding of not guilty. Also, one legally acquitted by a judgment rendered otherwise than in pursuance of a verdict, as where he is discharged by a magistrate because of the insufficiency of the evidence, or the indictment is dismissed by the court of a *nol. Pros.* Entered. Or, it may occur even though the question of guilt or innocence has never been submitted to a jury, as where a defendant, having been held under an indictment or information, is discharged because not brought to trial within the time provided by statute.

Acquittals in fact are those which take place when the jury, upon trial, finds a verdict of not guilty.

Acquittals in law are those which take place by mere operation of law; as where a man has been charged merely as an accessory, and the principal has been acquitted.

11. Thus, the acquittal means that a person is not guilty of a crime, with which he has been charged.

12. From the above-stated narration, it is *quite vivid* that the Code of Criminal Procedure, 1973 speaks and contemplates only of acquittal and not as acquittal based on benefit of doubt and there is no difference between clean acquittal and honourable acquittal under the Code of Criminal Procedure, 1973. These concepts have been evolved and developed by courts of law by time and coined by judicial pronouncements.

13. Lord Williams J, for the first time in the matter of **Rober Stuart Wauchope v. Emperor**¹ observed *qua* honourably acquitted as under:-

“The expression “honourably acquitted” is one which is unknown

¹ (1934) 61 ILR Cal. 168



to courts 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 judgement 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”.”

14. The above-quoted passage was quoted with approval by their Lordships of Supreme Court in the matter of State of Assam v. Raghava Rajgopalachari².

15. In R. P. Kapur v. Union of India³, it was held by their Lordships as under:-

“Even in case of acquittal, proceedings may follow where the acquittal is other than honourable.”

16. In the matter of Management of Reserve Bank of India v. Bhopal Singh Panchal⁴ their Lordships of the Supreme Court have recognized the distinction between honourable acquittal and acquittal based on benefit of doubt as under:-

“13.....When the High Court acquitted the respondent-employee by its order of November 21, 1977 giving the benefit of doubt, the Bank rightly refused to reinstate him in service on the ground that it was not an honourable acquittal as required by Regulation 46(4).

15.It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period.”

2 1972 S.L.R. 44

3 AIR 1964 SC 787

4 (1994) 1 SCC 541



17. In the matter of Deputy Inspector General of Police v. S. Samuthiram⁵

the Supreme Court noticed its earlier pronouncement in Bhopal Singh Panchal (supra) and pointed out distinction between honourable acquittal and technical acquittal as under:-

“24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . 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.

25. In *R.P. Kapur v. Union of India* [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam v. Raghava Rajgopalachari* [1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope v. Emperor* [ILR (1934) 61 Cal 168] which is as follows: (*Raghava case* [1972 SLR 44 (SC)] , SLR p. 47, para 8)

“8. ... ‘The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial 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.” (*Robert Stuart* case [ILR (1934) 61 Cal 168] , ILR pp. 188-89)

18. Thereafter, the Supreme Court in the matter of **Commissioner of Police, New Delhi v. Mehar Singh**⁶ considering its earlier judgments held that when accused is acquitted after full consideration of prosecution and prosecution miserably fails to prove the charges levelled against the accused, it can be said that accused was honourably acquitted.

Paragraph 25 of report states as under:-

“25. The expression “*honourable acquittal*” was considered by this Court in *S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]* . In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619]* , where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions “*honourable acquittal*”, “*acquitted of blame*” and “*fully exonerated*” are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression “*honourably acquitted*”. This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

6 (2013) 7 SCC 685



19. The Bombay High Court in the matter of **Hafizuddin Inayatullah Kazi v. J.**

C. Agarwal and others⁷ defining the meaning of honourable acquittal held

as under:-

“8. It is very difficult to define what is the meaning of the words” honorable acquittal” In my view it will depend on the fact and circumstances of each case as to whether a person can be said to have been discharged or acquitted honourably or not. The Judgment of Supreme Court in *State of Assam v. Raghvan*, (1972) S.L.R. 344, is relied on by both the sides on the meaning of honourable acquittal as well as to show whether in the facts and circumstances of the present case petitioner can be said to have been honourably acquitted. At page 347 paragraph 8 a reference is made to a note and administrative instructions appearing under the rule similar to one applicable in this case, which seem to show that the words” honorably ”meant, acquitted of or that the Government servant has been fully exonerated. According to the Supreme Court this meaning was supported by a judgment of Calcutta High Court in *Robert Stuart Wauchope v. Emperor*, I.L.R. 1934 Cal. 168.

9. In my view, therefore, though it is very difficult to define precisely what is meant by the words” honorably acquitted”, it is safe to say that if an accused is acquitted or discharged because of some technicality not having been complied with or on the ground that though there is some evidence against him, he must be acquitted by giving benefit of doubt, it may not amount to an honourable acquittal. However, if an accused is acquitted after full consideration of evidence because the prosecution had miserably failed to prove the charges it would amount to honourable acquittal. It is difficult to understand what more is required for honourable acquittal of the accused than acquittal of the accused on disbelieving the prosecution evidence in toto In the present case, though there are some observations made at the end of the judgment by the High Court acquitting the petitioner which may appear to be ambiguous, if the judgment is read as a whole, there can be little doubt that the accused was acquitted not by giving benefit of doubt, in spite of there being some evidence against him but because the prosecution failed to prove the case against him.”

⁷ 1980 (Vol.41) Indian Factories & Labour Reports-171



20. Recently their Lordships of the Supreme Court in the matter of State of M.P. v. Bunt⁸ relying upon its earlier decision rendered in Mehar Singh

(supra) held as under:-

“13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason. The employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench.”

21. On conspectus of the above-stated authorities, it is *quite vivid* that if an accused is acquitted of charged offence(s) after full-fledged appreciation and consideration of evidence brought out by the prosecution, holding that prosecution has failed to prove the charged offences(s) beyond reasonable doubt, it would amount to honourable/clean acquittal not being a technical acquittal or acquittal based on benefit of doubt.

22. Reverting to the facts of the present case, in light of principles of law laid down in above-stated judgments as analyzed in preceding paragraphs, it is *quite vivid* that the petitioner was charged for offences under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 charging that petitioner (public servant) while holding the post of District Manager, MP State Agro Industries Development Corporation, Ambikapur prior to 20.08.1989 purchased 1740 pieces of bicycles at the rate of ₹1345/- (total amount ₹ 23,75,100/-) by conspiring with co-accused/R. P. Gupta; whereas the said bicycles were available in the market at the rate of ₹



1250/- per piece and thereby caused a pecuniary loss of ₹ 2,28,800/- to government by misusing his official position. The learned Special Judge after appreciating the oral and documentary evidence on record observed as under:-

“66. उक्त के अलावा प्रकरण में अभियोजन की ओर से ऐसा कोई भी दस्तावेज अभिलेख पर नहीं लाया गया कि जो यह प्रमाणित करे कि सायकलों की दर रुपये 1365/- अभियुक्त एम0ए0 हुसैन द्वारा निर्धारित की गई थी। जिसे अनुसंधानकर्ता अधिकारी के0एस. नागर (अ.सा.क्र.14) ने अपने प्रतिपरीक्षण की कंडिका-10 में स्वीकार किया है। साथ ही अंतिम प्रतिवेदन के अनुसार भी अभियुक्त एम.ए. हुसैन द्वारा कमीशन अथवा मूल्यवान धन संबंधी फायदा अभिप्राप्त करने की कोई साक्ष्य अनुसंधानकर्ता अधिकारी द्वारा प्रकरण में नहीं पाई गई है जिसकी पुष्टि अनुसंधानकर्ता अधिकारी के0एस0नागर (अ.सा.क्र.14) ने अपने प्रतिपरीक्षण की कंडिका 17 में की है।

The learned Special Judge thereafter finally held that offence against the petitioner is not established at all by holding as under:-

“67. उपरोक्त से प्रकरण में संदेह से परे यह प्रमाणित नहीं होता है कि स्थानीय बाजार में रुपये 1250/- प्रति नग की दर से उपलब्ध एटलस गोल्ड लाईन सुपर सायकल 60 से.मी. ब्लेक कलर मय एसेसरीज की दर बिना किसी अधिकारिता के रुपये 1365/- अभियुक्त एम0ए0हुसैन द्वारा तय कर दी गई और अपने पद का दुरुपयोग कर अवैध लाभ अर्जन कर शासन को 2,28,800/-रुपये का नुकसान कारित किया है।”

Thereafter, learned Judge proceeded to acquit him by giving benefit of doubt by observing as under:-

“85. परिणामस्वरूप संदेह का लाभ देते हुए प्रकरण में अभियुक्त को धारा 13 (1) (डी), 13 (2) भ्रष्टाचार निवारण अधिनियम 1988 के तहत आरोप में दोषमुक्त किया जाता है।”

23. Thus, it is a case, where the prosecution has miserably failed to prove any of the ingredients of offence under Sections 13(1)(d) & 13(2) of Act of 1988 beyond reasonable doubt; as such it is a case of clean acquittal of the petitioner and learned Special Judge is totally unjustified in acquitting him



on the basis of benefit of doubt, it ought to have granted clean acquittal in view of specific finding recorded by him noticed hereinabove. The Criminal Courts are expected to be careful and be clear as to whether it is clean acquittal or acquittal based on benefit of doubt.

24. Now, the question for consideration would be, what would be the consideration for expunging those remarks.

25. Way back in the year 1964, in the matter of The State U.P. v.

Mohammad⁹ the Supreme Court (Constitution Bench) has held that the High Court can in exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice and observed as under:--

"9. ...We think that the High Court of Bombay is correct and the High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only...."

Their Lordships have also laid- down the test in considering the expunction of disparaging remarks made against persons or authorities whose conduct comes for consideration before the Court of law to be decided by them by summing up as under:--

"(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself.

9 A.I.R. 1964 SC 703



(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case as an integral part thereof, to animadvert on that conduct. It has also been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

26. Similarly, in the matter of Dr. Raghubir Saran v. State of Bihar and

another¹⁰ the Supreme Court has held that the High Court has inherent power to expunge objectionable remarks in judgment and order of the subordinate court against stranger, after it has become final and culled out

the principles as under:--

"7-8. From the aforesaid discussion the following principles emerge:

(1) A judgment of a criminal Court is final; it can be set aside or modified only in the manner prescribed by law.

(2) Every Judge, whatever may be his rank in the hierarchy, must have an unrestricted right to express his views in any matter before him without fear or favour.

(3) There is a correlative and self-imposed duty in a Judge not to make irrelevant remarks or observations without any foundation, especially in the case of witnesses or parties not before him, affecting their character or reputation.

(4) An appellate Court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it.

29. When the question arises before the High Court in any specific

10 A.I.R. 1964 SC 01



case whether to resort to such undefined power it is essential for it to exercise great caution and circumspection. Thus when it is moved by an aggrieved party to expunge any passage from the order or judgment of a subordinate Court it must be fully satisfied that the passage complained of is wholly irrelevant and unjustifiable, that its retention on the records will cause serious harm to the person to whom it refers and that its expunction will not affect the reasons for the judgment or order."

27. These principles of law laid down as noticed above have been followed and approved by the Supreme Court in the matter of **State of Gujarat Vs. Justice R.A. Mehta (Retired) & other¹¹, Omprakash Chautala Vs. Kanwar Bhan¹²** — and **Amar Pal Singh Vs. State of Uttar Pradesh & others¹³**

28. Thus, on the basis of above-stated legal analysis, I am of the considered opinion that the remark "benefit of doubt" by learned Special Judge (PC Act) in paragraph 85 of the judgment and order dated 24.04.2018 in special criminal case no. 7/2009 – State v. R. P. Gupta and others, while acquitting petitioner deserves to and is hereby expunged accordingly. It is made clear that this Court has not said anything about the other co-accused.

29. The petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

11 (2013) 3 SC 01
12 (2014) 5 SCC 417
13 (2015) 6 SCC 716



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.429 of 2018

Petitioner:- Mohammad Azhar Hussain

Versus

Respondent :- State of Chhattisgarh

Head Note

“Acquittal” based on benefit of doubt is not contemplated in the Code of Criminal Procedure. It is Judicially evolved concept.

संदेह के लाभ पर आधारित “दोषमुक्ति” की परिकल्पना दण्ड प्रक्रिया संहिता में नहीं है । यह न्यायिक रूप से विकसित अवधारणा है ।

