IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3877 of 2019

C.Surendhar .. Appellant

Vs.

1. The Director General of Police
   Dr.Radhakrishnan Salai
   Chennai – 600 004.

2. The Member Secretary
   Tamilnadu Uniformed Services
   Recruitment Board
   Anna Salai, Chennai – 600 002.

3. The Superintendent of Police
   District Police Office
   Cuddalore District. .. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 27.4.2019 passed by the learned Single Judge in W.P.No.30804 of 2018.

For Appellant : Mr.G.Bala

For Respondents : Mr.R.Vijay Narayan
Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Government Pleader

Mr.B.Vijay
assisted the Court

JUDGMENT

(Delivered by *The Hon'ble Chief Justice*)

Heard the learned counsel for the appellant.

2. The appellant's claim for appointment to the post of Grade II Police Constable was rejected by the Superintendent of Police, Cuddalore, vide order dated 8.11.2018, on the ground that the appellant had been acquitted in a criminal case, as disclosed by him, on the strength of a finding giving the benefit of doubt, which was not an honourable acquittal and consequently, his engagement or recruitment as a Police Constable was unsustainable. For this reliance was placed on Explanation (1) of Rule 13(e) of the Special Rules for Tamilnadu Police Subordinate Service read with Explanations appended

thereto. The said Rule is gainfully extracted herein under for ready reference:

> *"Rule 13. Qualifications.-* ***No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority.***
>
> *(a) that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service;*
>
> *(b) that his character and antecedents are such as to qualify him for such service;*
>
> *(c) that such person does not have more than one wife living; or if such person is a woman, that she is not married to any person who has a wife living;*
>
> *(d) that he does not have knock knees or bow legs or flat feet; and*
>
> ***(e) that he has not involved in any criminal case before Police verification****:*
>
> ***Explanation (1) – A person who is acquitted or discharged on the benefit of doubt or due to the fact that the complainant turned hostile, shall be treated as a person involved in a criminal case.***

Explanation (2) – A person involved in a criminal case at the time of Police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in criminal case and he can claim right for appointment only by participating in the next recruitment."

(emphasis supplied)

3. Assailing the said order dated 8.11.2018, the appellant/writ petitioner filed W.P.No.30804 of 2018. That was clubbed along with two other writ petitions, the distinction in the other two cases being that there was a non-disclosure of fact of involvement in a criminal case. All the three writ petitions were decided by a common judgment dated 27.4.2019 and were dismissed.

4. It is questioning the correctness of the said judgment of the learned Single Judge that the appellant, who was the writ petitioner in W.P.No.30804 of 2018, has come up before this Court contending that the learned Single Judge has erred in answering the questions, which does not conform to the requirement of Rule 13(e) of the Rules, on

which reliance has been placed, inasmuch as the authority concerned while passing the order impugned nowhere records a finding that the recruitment of the appellant would be detrimental for the police force on account of his mere involvement in a criminal case, where he has been acquitted. To further supplement this submission, the learned counsel for the appellant has invited the attention of the Court to the judgment dated 18.12.2018 delivered in a petition filed under Section 482 of the Cr.P.C. by the appellant, where the learned Single Judge of this Court has entertained the said petition for a declaration that the acquittal of the appellant was honourable and the same should not be treated to be an acquittal on the strength of any benefit of doubt.

5. We had heard the matter yesterday and in view of the development, the benefit whereof is being claimed by the appellant, namely the judgment dated 18.12.2018 passed in the petition filed under Section 482 of the Cr.P.C., we found it necessary to invite the learned Advocate General to assist us as to whether such a declaration issued by the High Court by exercise of power under Section 482 of the Cr.P.C. is permissible in terms of the scheme of the Code of Criminal Procedure and as to whether the appellant could seek any

advantage of any such declaration while seeking employment in a Uniformed Police Service of the Tamil Nadu State.

6. Today, the learned Advocate General has assisted the Court with several judgments that have been cited at the Bar and we have also taken the assistance of Mr.B.Vijay, Advocate, who has drawn the attention of the Court to certain other judgments reflecting on the issue.

7. Before we delve into the merits of the claim of the appellant, we find it expedient to proceed with this issue relating to the jurisdiction being exercised under Section 482 of the Cr.P.C. by a learned Single Judge of this Court to pronounce a declaration in respect of a judgment rendered by a Court of competent jurisdiction under the Criminal Procedure Code.

8. It is undisputed that the appellant was involved in a criminal case, which ultimately ended in his acquittal by extending him the benefit of doubt vide the judgment dated 9.2.2016. The appellant was also an applicant for the post of Police Constable, referred to above,

and he had disclosed the fact of his having been involved in the said criminal case, which ultimately ended in his acquittal on 9.2.2016. The question is as to whether the Appointing Authority had the discretion to discard the candidature of the appellant on the ground that he had not been honourably acquitted.

9. We presume that in order to avoid this hurdle the appellant had instituted the petition under Section 482 of the Cr.P.C. That was entertained and the learned Single Judge after having assessed the arguments on behalf of the appellant came to the conclusion that the acquittal of the appellant was an honourable acquittal and, accordingly, the said declaration was issued. Faced with this situation of the entertaining of such a petition and a declaration given, we, in this appeal, are called upon to assess as to whether any such aid can be taken by the appellant in support of his claim of employment on the strength of such a judgment.

10. As noted above, the learned Advocate General and Mr.B.Vijay, learned counsel, have handed down a series of judgments and the learned counsel for the appellant has also relied on a couple of

judgments that throw light on the issue. In our opinion, the matter does not remain *res integra* and stands now settled that such an exercise of jurisdiction under Section 482 of the Cr.P.C. to declare the judgment to be one of an honourable acquittal, in spite of the acquittal having been extended on the benefit of doubt, would not sustain in law. To this end, we find full support from the judgment in the case of *Commissioner of Police, New Delhi and another v. Mehar Singh, reported in (2013) 7 SCC 685*.

11. The judgment in the case of *Mehar Singh (supra)* was considered in detail on a reference being made before a Division Bench of this Court, where the question that was placed for consideration was as to whether the expression of "*honourable acquittal*" would give a different connotation and whether such a remedy by way of a revision in the exercise of powers under Section 397 of the Cr.P.C. could be availed of in spite of having been acquitted. There were a batch of petitions that were placed before the Division Bench in order to answer the said reference and while proceeding to consider the same, the Division Bench elaborately explained the connotations holding that the words "*honourable acquittal*" or "*acquitted of blame*" are not

connotations used in the Criminal Procedure Code. However, while concluding, the Division Bench elaborately considered the arguments in relation to a remedy being availed of before the High Court after a final judgment has been delivered by a Court of competent jurisdiction and went on to hold that such a remedy was a pure invention unknown to the Criminal Procedure Code and, therefore, no such remedy was available for seeking such a declaration. We may gainfully extract herein under paragraphs (56) to (59) of the report of the Division Bench judgment in the case of *M.Krishnan and others v. The State and others, reported in 2014 SCC Online Mad 8582,* for ready reference:

> *"56. It is on account of the fact that many times, persons, who are really guilty, escape from the clutches of law due to a variety of reasons other than the merits of their own case, that employers tend to scan the judgments of acquittal of criminal courts before they venture to select a person for appointment. The law does not provide a relief within the system of administration of criminal justice, to an acquitted person to seek before any forum, an enhancement of the quality of the order of acquittal passed by a criminal Court. Therefore, the recourse that clever*

lawyers have invented in the past six years, is not founded upon any of the provisions of the Criminal Procedure Code.

57. If we have a careful look at the history of this development, namely that of acquitted persons approaching this Court for an order of honourable acquittal, we would find that this invention by lawyers, has as its mother, an amendment introduced to Rule 14(b) of the Tamil Nadu Police Subordinate Rules. The validity of this Rule came to be challenged before this Court. By a decision rendered by the Full Bench, to which one of us was a party (VRSJ), in Manikandan v. Chairman, Tamil Nadu Uniformed Services Recruitment Board, 2008 (2) CTC 97, the Rule was upheld.

58. It was only after the Rule was upheld that some lawyers and jurists, who could not reconcile themselves to the ratio of the Full Bench, invented this new remedy under Sections 397 and 401 of the Code. An attempt was also made to test the soundness of the ratio laid down by the Full Bench. But, a Larger Bench reiterated the decision in Manikandan, in J. Alex Ponseelan v. The Director General of Police, Tamil Nadu, 2014 (2) CTC 337. Therefore, the flash of creative genius that came as a spark in 2008, inventing

a remedy unavailable under the Criminal Procedure Code, cannot survive for long."

Thus, the law came to be declared succinctly and clearly by the Division Bench after relying on a Full Bench and a Larger Bench decision of this Court.

12. It appears that the said Division Bench judgment, which was delivered on 25.9.2014, was cited before a learned Single Judge of this Court, who, while deciding the case of E.Kalivarathan v. The State, reported in 2015 (1) CTC 87, on 23.12.2014, took a contrary view holding that the Division Bench judgment in the case of *M.Krishnan (supra)* had been rendered without taking notice of the impact of the provisions of Sections 232 and 235 of the Cr.P.C., so as to draw a distinction between an "*order of acquittal*" and a "*judgment of acquittal*". Relying on the language used in the aforesaid two sections, the learned Single Judge held that an order of acquittal or judgment will not fall within the definition of the expression "*any other order*" for the purpose of Section 386(d) of the Cr.P.C. and, therefore, an acquitted person could not file revision, but, at the same time, then

proceeded to hold that this does not prevent such an aggrieved person from invoking the inherent powers under Section 482 of the Cr.P.C. for such a declaration.

13. We may gainfully extract Section 482 of the Cr.P.C. for ready reference:

> *"Section 482. Saving of inherent powers of High Court.*
>
> *Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

14. The language of Section 482 of the Cr.P.C., and its heading combined, leave no room for doubt that it is an inherent power saved with the High Court with a non-obstante clause that nothing in the Criminal Procedure Code can preclude or limit or affect the inherent powers of the High Court to make such orders "*as may be necessary to give effect to any order under this Code*" or "*to prevent abuse of the process of any Court*" and then lastly "*or otherwise to secure the*

ends of justice".

15. Having given our thoughtful consideration, we find that for a judgment delivered by a Court of competent jurisdiction in terms of Section 353 of the Cr.P.C., finality is attached subject to appeal or revision, wherever is provided under the statute. A judgment delivered under Section 353 of the Cr.P.C. in no way is subject to the inherent powers exercisable by the High Court under Section 482 of the Cr.P.C. The limits of corrective jurisdiction to rectify an error in a final judgment are circumscribed by the boundaries set out in Section 362 of the Cr.P.C. itself. The phrase "*otherwise to secure the ends of justice*" has to be read *ejusdem generis* in terms of Section 482 of the Cr.P.C. and not to upturn, explain, dilute or in any way modify a final judgment delivered by a Court of competent jurisdiction – whether of conviction of acquittal. The same may be subject to correction, appeal or revision as per the Code, but the powers under Section 482 Cr.P.C. cannot be invoked in a way so as to read it in order to do substantial justice between the parties as is available to the Hon'ble Apex Court under Article 142 of the Constitution of India.

16. We are supported in our view by a set of decisions by the Apex Court, even though we find that a couple of judgments have been delivered by learned Single Judges, where the power of Section 482 of the Cr.P.C. has been invoked in certain circumstances.

17.1. The judgment of a learned Single Judge in the case of *Subodh Kumar v. State of Bihar, reported in 2018 CriLJ 3726*, drew a distinction between recall and review and on the facts of the said case found that since the judgment had been delivered *ex parte*, therefore, in order to secure the ends of justice, it was necessary to recall the judgment delivered therein. To arrive at that conclusion, the learned Single Judge referred to the decision of the Apex Court in *Vishnu Agarwal v. State of Uttar Pradesh, (2011) 14 SCC 813*, wherein in paragraph (6), the following principle was quoted:

> *"6. In our opinion, Section 362 cannot be considered in a rigid and over technical manner to defeat the ends of justice. As Brahaspati has observed:*
>
> *"Kevalam Shastram Ashritya Na Kartavyo Vinirnayah Yuktiheeney Vichare tu Dharmahaani Prajayate" which means:*

"The Court should not give its decision based only on the letter of the law.

For if the decision is wholly unreasonable, injustice will follow."

17.2. The learned Single Judge relied on certain more decisions and realizing that a mistake committed by the Court should be rectified, opined that the judgment deserved to be recalled.

17.3. We have gone through the said judgment and we find the appellant therein had engaged a counsel for arguing the bail in the said appeal, but the appeal itself was dismissed. In paragraph (4) of the said judgment, the Bench noted the presence of the counsel and, therefore, in our opinion, the matter had not proceeded *ex parte*. Yet, the learned Single Judge, by exercising the powers under Section 482 of the Cr.P.C. proceeded to recall the judgment. The learned Single Judge also relied on a Foreign Law Report on the principle that "*no man should suffer because of the mistake of the Court*", which was referred to in paragraph (82) of the decision of the Apex Court in *A.R.Antulay v. R.S.Nayak, reported in (1988) 2 SCC 602*, which is

gainfully extracted herein under:

> *"82. Lord Cairns in Alexander Rodger v. The Comptoir D'escompte De Paris, (Law Reports Vol. (1869-71) LR 3 PC 465 at page 475) observed thus:*
>
> > *'Now, their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression 'the act of the Court' is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court.'"*

17.4. The learned Single Judge appears to have experienced an embarrassment by having proceeded to decide the appeal itself when the bail application was only argued by the learned counsel. This the

learned Single Judge has described to be a mistake of the Court, little realizing that there is a distinction between the exercise of a review jurisdiction in civil proceedings on the ground of mistake of Court, as was dealt with in the case of *Jamna Kuer v. Lal Bahadur, reported in AIR 1950 Federal Court 131*. Thus, it is not all mistakes of the Court that can be corrected. The realization of a mistake of having exceeded in proceeding to decide the entire appeal when the bail had only been argued was a matter to be corrected by a higher Court and, in our opinion, not under the exercise of any power contained in the Criminal Procedure Code. The procedure in criminal matters, according to us, is confined in matters of correction to the extent as defined under Section 362 of the Cr.P.C. and we may reiterate that it is not any or every mistake of the Court that can be rectified by itself upon invoking the inherent powers under Section 482 of the Cr.P.C. We, therefore, have our reservations about the ratio of the above mentioned decision of the Patna High Court in the case of *Subodh Kumar (supra)*.

18. A decision closer to this aspect was rendered by a learned Single Judge of the Allahabad High Court in the case of *Central Bureau of Investigation v. State of U.P. and others, reported in 2015 (11) ADJ*

739, in which case a revision filed by the Central Bureau of Investigation had been allowed without giving the accused persons any opportunity of hearing.

19.1. There is yet another judgment of this Court in *M/s.BMD Hotels and Resorts Pvt. Ltd. and others vs. P.Murali, reported in 2019 1 LW (Crl) 805*, where a recall petition was entertained and reliance was placed on the judgment of the Apex Court in the case of *State of Punjab v. Davindra Pal Singh Bhullar and others, reported in (2011) 14 SCC 770*. Paragraph (15) of the judgment is extracted herein under:

> *"15. Learned counsel for the petitioners/accused, to buttress his arguments relating to maintainability of the petition for recall, relied on the decision of the Hon'ble Supreme Court in State of Punjab Vs. Davindra Pal Singh Bhullar & Ors. (2011) 14 SCC 770, more particularly para-27 of the said decision, wherein the Hon'ble Supreme Court had emphasised that the inherent powers could be exercised to recall an order in case the judgment has been pronounced in violation of principles of natural justice. For reference, the said portion of the decision is extracted hereunder:-*
>
> > *'27. If a judgment has been pronounced without jurisdiction or in violation of principles*

of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Code of Criminal Procedure would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide: Chitawan and Ors. v. Mahboob Ilahi MANU/UP/0178/1968 : 1970 Cri.L.J. 378; Deepak Thanwardas Balwani v. State of Maharashtra and Anr. MANU/MH/0031/1984 : 1985 Cri.L.J. 23; Habu v. State of Rajasthan MANU/RH/0023/1987 : AIR 1987 Raj. 83 (F.B.); Swarth Mahto and Anr. v. Dharmdeo Narain Singh MANU/SC/0272/1972 : AIR 1972 SC 1300; Makkapati Nagaswara Sastri v. S.S. Satyanarayan MANU/SC/0156/1980 : AIR

1981 SC 1156; Asit Kumar Kar v. State of West Bengal and Ors. MANU/SC/0062/2009 : (2009) 2 SCC 703; and Vishnu Agarwal v. State of U.P. and Anr. MANU/SC/0147/2011 : AIR 2011 SC 1232).'"

19.2. In *M/s.BMD Hotels and Resorts Pvt. Ltd. (supra),* other decisions were also relied on and an argument was also advanced by the opposite side that the power under Section 482 of the Cr.P.C. cannot be exercised to do something expressly barred under the Criminal Procedure Code, referring to Section 362 of the Cr.P.C. The learned Single Judge, after traversing the facts of the case, came to the conclusion that there was no material on record to show that the accused had been served notice in the appeals and, therefore, proceeded to apply the *audi alteram partem* rule for recall of the judgment.

20. In order to explain the law on the issue, we have come across judgments that need to be mentioned to elaborately explain the proposition.

21. A Division Bench in the case of *Gunmanmal Godhumal v. Emperor, reported in AIR 1944 Sind 133* was examining the question as to whether certain passages commenting upon the conduct of a witness adversely could be expunged or not in exercise of inherent powers, after the case has been disposed of. The Division Bench held that a higher Court will not interfere to expunge passages from the judgment unless these passages are separable and irrelevant. The expunging of any part of a final judgment involving alteration was held to be impermissible to the extent that if by doing so the judgment gets mutilated or its fabric is touched, then the Court cannot exercise such inherent power. It, however, held that if the remarks are separable and irrelevant, that can be isolated and detached from the judgment and will not affect the conclusions drawn in the judgment on merits, then the expunging of remarks may be permissible. On the facts of that case, the remarks were not separable and, therefore, the Court refused to expunge the same, thereby upholding the proposition that after a final judgment has been delivered, any deletion or dilution is impermissible.

22. The next case at hand is another decision by a Division Bench in the case of *Emperor v. Juman Sajan Otho, reported in AIR 1947 Sind 66*, where certain observations in a judgment were sought to be expunged relying on an earlier judgment, referred to above. The Court refused to exercise the inherent power.

23. The Apex Court in the case of *State, rep. By DSP, SBCID, Chennai v. K.V.Rajendran and others, reported in (2008) 8 SCC 673*, applying the principles of Section 362 of the Cr.P.C., clearly held that the powers under Section 482 of the Cr.P.C. cannot be invoked to alter a judgment. It further went on to hold in paragraph (18) as follows:

> *"18. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statutes. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction."*

24. The Apex Court in yet another judgment in *Chilakamarthi Venkateswarlu and another v. State of Andhra Pradesh and another, reported in AIR 2019 SC 3913*, reiterated the law in connection with the quashing of a complaint.

25. This was followed by another judgment of the Apex Court in *State of Punjab v. Ranjit Kaur*, decided on 14.10.2019, holding that the provisions under Section 482 of the Cr.P.C. do not enable the High Court to alter, add, modify or vary any order, and in that particular case, already affirmed by the Apex Court.

26. The latest decision, which also involved a service matter, is in the case of *State of Madhya Pradesh v. Man Singh, MANU/SC/1505/2019*, where the Apex Court, in similar circumstances as involved presently, went on to hold that it was not open to the High Court to exercise jurisdiction under Section 482 of the Cr.P.C. for the purpose of extending benefit in employment by modifying the judgment of the Criminal Court invoking its inherent powers.

27. It is, therefore, clear from the ratio of the decisions referred to herein above that a judgment delivered by a court of competent jurisdiction, exercising criminal jurisdiction, cannot be altered or modified in view of the express bar under Section 362 of the Cr.P.C., except in cases of recall in the circumstances as discussed in the case of *Davindra Pal Singh Bhullar (supra)*.

28. In the present case, there was neither any *ex parte* order nor there was any violation of the *audi alteram partem* rule. The application under Section 482 of the Cr.P.C. was preferred against the judgment of the Court below for modifying of the mode of acquittal from the category of "*benefit of doubt*" to the category of "*honourable acquittal*". This, according to the ratio of the decisions indicated above, was impermissible under the garb of securing the ends of justice.

29. The learned Single Judge, therefore, in the case of *E.Kalivarathan (supra)* did travel excessively to read into the provisions of Section 482 of the Cr.P.C., an inherent power available so as to modify a judgment of acquittal or even conviction. Even if the

learned Single Judge was of the opinion that the Division Bench in the case of *M.Krishnan (supra)* had not taken into consideration any aspect which in his opinion was worth consideration for the purpose of such a declaration, the course open to the learned Single Judge was to make a request to the Chief Justice for a reference in the event the same required any further authoritative pronouncement or a re-visiting of the position of law. This has by now been well settled that merely because there can be another innovative argument or more plausible reasoning, a Bench of lesser strength cannot record its disagreement so as to lay down a law contrary to that which has already been laid down by a Larger Bench. This would be contrary to the judicial discipline in a Court of hierarchy by which all High Courts and the Apex Court are governed. We may refer to a Full Bench judgment of the Allahabad High Court in the case of *Rana Pratap Singh v. State of Uttar Pradesh, reported in 1995 ACJ 200,* where the said judgment took notice of the earlier authorities of the Apex Court as well as Jurisprudence by Salmond and held as under:

> *"16. On this aspect another relevant judicial pronouncement comes in Ambika Prasad v. State of U.P., (1980) 3 SCC 719. There, in the context of the*

*U.P. Imposition of Ceilings on Land Holdings Act, 1961, while dealing with the question as to when reconsideration of a judicial precedent is permissible, Krishna Iyer, J. so aptly put it '**Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent**'.*

*18. Further, '**It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority 'merely because it was badly argued, inadequately considered and fallaciously reasoned**' (Salmond Jurisprudence, page 215, 11th Edition)'.*

19. Implicit, thus, in the disregard by a single Judge or a Division Bench of a binding judicial precedent of a larger Bench or seeking to doubt its correctness for reasons and in circumstances other than those spelt out in Pritam Kaur v. Surjit Singh, AIR 1984 P&H 113, is what cannot but be treated as going counter to the discipline of law so essential to abide by, for any efficient system of law to function, if not it virtually smacking of judicial impropriety. In other words, it is only within the narrow compass of the rule as stated by the Full Bench in Pritam Kaur's case that

reconsideration of a judgment of a larger Bench can be sought and as has been so expressively put there, such judgments are not "to be blown away by every side wind".”

(emphasis supplied)

30. We may gainfully extract herein under the relevant portion of the judgment of the Hon'ble Apex Court in *Chandra Prakash and others v. State of U.P. and others, reported in AIR 2002 SC 1652,* for ready reference:

“19. The principles of the doctrine of binding precedent are no more in doubt. This is reflected in a large number of cases decided by this Court. For the purpose of deciding the issue before us, we intend referring to the following two judgments of this Court.

20. In the case of Union of India v. Raghubir Singh, AIR 1989 SC 1933, a 5-Judge Bench of this Court speaking through Pathak, C.J., held that pronouncement of a law by a division bench of this Court is binding on another division bench of the same or smaller number of Judges. The judgment further states that in order that such decision be binding, it is not necessary that it should be a decision rendered by

the full Court or a constitution bench of the Court. To avoid a repetition of the discussion on this subject, we think it appropriate to reproduce the following paragraph of that judgment which reads as follows:

> *'What then should be the position in regard to the effect of the law pronounced by a division bench in relation to a case raising the same point subsequently before a division bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason, the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in divisions, each division being constituted of Judges whose number may be*

determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other consideration which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different division benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, ***that the statement of the law by a division bench is considered binding on a division bench of the same or lesser number of Judges****. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In John Martin v. State of West Bengal, 1975 (3) SCC 836, a division bench of three-Judges found it right to follow the law declared in Haradhan Saha v. State of West Bengal, 1975 (3) SCC 198, decided by a division bench of five-Judges, in preference to Bhut Nath Mete v. State of West Bengal, 1974 (1) SCC 645, decided by a division bench of two-Judges.*

Again in Indira Nehru Gandhi v. Raj Narain, 1975 Supp. SCC 1, Beg. J., held that the constitution bench of five Judges was bound by the constitution bench of thirteen-Judges in Kesavananda Bharati v. State of Kerala, 1973 (4) SCC 225. In Ganapati Sitaram Balvalkar v. Waman Shripad Mage, 1981 (4) SCC 143, this Court expressly stated that the view taken on a point of law by a division bench of four-Judges of this Court was binding on a division bench of three-Judges of the Court. And in Mattulal v. Radhe Lal, 1974 (2) SCC 365, this Court specifically observed that where the view expressed by two different division benches of this Court could not be reconciled, the pronouncement of a division bench of a larger number of Judges had to be preferred over the decision of a division bench of a smaller number of Judges. This Court also laid down in Acharya Maharajshri Narandraprasadji Anandprasadji Maharaj v. State of Gujarat, 1975 (1) SCC 11, that even where the strength of two differing division benches consisted of the same number of Judges, it was not open to one division bench to decide the correctness or otherwise of the views of

the other. The principle was reaffirmed in Union of India v. Godfrey Philips India Ltd., 1985 (4) SCC 369, which noted that a division bench of two Judges of this Court in Jit Ram Shiv Kumar v. State of Haryana, 1981 (1) SCC 11, had differed from the view taken by an earlier division bench of two Judges in Motilal Padampat Sugar Mills v. State of U.P., 1979 (2) SCC 409, on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable, reference was made to the well accepted and desirable practice of the later bench referring the case to a larger bench when the learned Judges found that the situation called for such reference.'

21. Almost similar is the view expressed by a recent judgment of 5-Judge Bench of this Court in Pradip Chandra Parija and Ors. v. Pramod Chandra Patnaik and Ors., 2002 (1) SCC 1. In that case, a bench of 2 learned Judges doubted the correctness of the decision of a bench of 3 learned Judges, hence, directly referred the matter to a bench of 5 learned Judges for reconsideration. ***In such a situation, the 5 Judge***

Bench held that judicial discipline and propriety demanded that a bench of 2 learned Judges should follow the decision of a bench of 3 learned Judges. On this basis, the 5-Judge Bench found fault with the reference made by the 2-Judge Bench based on the doctrine of binding precedent.

22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so, they embody a declaration of law operating as a binding principle in future cases.

The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for

consistency in the enunciation of legal principles in the decisions of this Court."

31. Consequently, we are of the opinion that once the Division Bench had ruled otherwise, it was not open to the learned Single Judge to have laid down a law separately without referring the matter to a Larger Bench, in the event it required a further consideration for an authoritative pronouncement.

32. However, the march of law does not rest there. The issues raised came to be considered later on and as per the judgments that have been cited at the bar, we find that they have been settled to the effect that the acquittal in a criminal case is not conclusive of the suitability of a candidate for a particular post. The antecedents of a candidate have to be verified and more particularly, in a case where it is a matter of Uniformed Service of the State Police. The judgments that have been cited at the bar are as follows:

(i) Avtar Singh v. Union of India and others, reported in (2016) 8 SCC 471

(ii) Vithal Waman Shelke v. The High Court of

Bombay, reported in 2017 (4) BomCR 145;

(iii)Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another, reported in (2018) 1 SCC 797;

(iv) Ashutosh Pawar v. High Court of Madhya Pradesh, reported in 2018 (1) CTC 353;

(v) State of Madhya Pradesh and others v. Abhijit Singh Pawar, reported in (2018) 18 SCC 733; and

(vi) V.Jayavarthanan v. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board and others, reported in 2018 5 LW 150.

33. The question on merits in the present case, however, takes a different turn inasmuch as the order impugned that seeks to disqualify and make the appellant ineligible for engagement, rests on the finding that the appellant had not been honourably acquitted, and it was only a benefit of doubt on the basis whereof the acquittal judgment was delivered in favour of the appellant. The question is as to the interpretation of Rule 13(e) read with the Explanations and in our

opinion, the crucial word which has to be taken into consideration to be read with the Explanation is "*involvement*". The word "*involvement*", therefore, is the guiding factor inasmuch as the Rule clearly provides for a declaration by the candidate as to whether "*he was involved in a criminal case or not*".

34. The next question is whether such involvement would necessary lead to the conclusion for the Appointing Authority to hold as to whether he should be selected and appointed for the services or not. Involvement without knowledge is also a factor that can eclipse any disadvantage or prospective impediment in certain circumstances, as explained by the Apex Court in the case of *M.Manohar Reddy and another v. Union of India and others, reported in (2013) 3 SCC 99.* Whether the fact or information unknowingly withheld is at all a material fact, is a matter of assessment on the peculiarity of the material and it's impact to be judiciously and objectively assessed by the employer without any prejudice or preconceived notions to rule out any possibility of malice or pure subjectivity in the decision making process. It is here that a play in the joints has to be given to the employer and unless such a latitude is given, it will be injuncting the

authority from exercising its discretion to engage a person suitable for the post. We, therefore, find that an assessment has to be made by the Appointing Authority as to whether the involvement of a candidate in a criminal case would ultimately lead to the conclusion that his engagement would be detrimental for the nature of the employment for which he is being engaged. This may involve a bit of subjectivity, but the material on record has to receive an objective consideration. The question as to whether a person was involved in a case of violating a mere traffic rule or was involved in a heinous offence would obviously weigh with the employer to assess as to whether his engagement would otherwise be sustainable or be detrimental for recruitment in a Uniformed Police Force or not. We, therefore, leave that open to the authority concerned for an independent assessment. But, on the facts of the present case, we find that the authority has simply rested its decision on the finding that the appellant did not deserve to be engaged on account of not having been honourably acquitted. Whether the fact of his involvement was such that this inference could be justified does not appear to have been discussed in the impugned order. To this extent, we accept the argument of the learned counsel for the appellant.

35. We, accordingly, allow the appeal and set aside the impugned judgment dated 27.4.2019 as well as the impugned order dated 8.11.2018 with liberty to the Appointing Authority to assess the candidature of the appellant in the light of the observations made herein above and pass fresh order, as expeditiously as possible, but not later than three months from today.

36. The appeal stands allowed subject to the above observations. No costs.

(A.P.S., CJ.) (S.P., J.)
13.11.2019

Index : Yes
sasi

To:
1. The Director General of Police
   Dr.Radhakrishnan Salai
   Chennai – 600 004.
2. The Member Secretary
   Tamilnadu Uniformed Services
   Recruitment Board
   Anna Salai, Chennai – 600 002.
3. The Superintendent of Police
   District Police Office
   Cuddalore District.

THE HON'BLE CHIEF JUSTICE
AND
SUBRAMONIUM PRASAD,J.

(sasi)

W.A.No.3877 of 2019

13.11.2019