PETITIONER:
PAWAN KUMAR

Vs.

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT: 07/05/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
PARIPOORNAN, K.S.(J)

CITATION:
1996 SCC (4) 17 JT 1996 (5) 155
1996 SCALE (4)480

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Punchhi. J.

Special leave granted.

This appeal is directed against the judgment and decree of the Punjab and Haryana High Court passed on October 31, 1994 in Regular Second Appeal No.3756 of 1987. It has arisen on these facts:

The appellant, Pawan Kumar on 19-4-78 was appointed in a class IV post as a Field Worker, on ad hoc basis, in the office of the Chief Medical Officer, General Hospital, Bhiwani, Haryana. In his terms of appointment it was made clear that the ad hoc appointment offered was till such time his character and antecedents were verified as satisfactory, when he would be considered for regular appointment. He was required to give a declaration in writing that he had not, on any previous occasion, been dismissed from service and had not been convicted by any court of law. This declaration, the appellant presumably furnished.

While in service, the appellant on 4-6-1980 came to be convicted in a summary trial for offence under section 294 IPC by the Court of Shri P.L. Khanduja, Chief Judicial Magistrate, Bhiwani on his entering upon a plea of guilt, for which he was ordered to pay a fine of Rs.20/-, which fine he paid there and then, whereafter it was deposited in the treasury by the Chief Judicial Magistrate the same day. The appellant's appointment however, in the meantime was kept renewed from time to time.

When steps were afoot to regularize his services, papers were moved to the office of the Superintendent of Police to verify about the character and antecedents of the appellant. The office of the Superintendent of Police reported back the factum of conviction of the appellant under section 294 IPC, but otherwise verified that the appellant was of good character. Thereafter the opinion of the District Attorney, Bhiwani was sought. He opined that

the offence punishable under section 294 IPC was not a serious offence which could involve moral turpitude and the sentence of fine of rs.20/- imposed on the appellant was not likely to embarrass him in the discharge of his duties and therefore there was no legal bar for his retention in service. A reference was also made to the Legal Remembrance to the Government of Haryana, soliciting his opinion. This officer opined that it would not be desirable to appoint the appellant in government service since he had been convicted under section 294 IPC, involving an offence of moral turpitude, as otherwise the very purpose of verification of character/antecedents would be frustrated. On the collection of such material, decision was taken and the services of the appellant were terminated vide order dated 30-9-1984, as no longer required.

Challenging this order the appellant went in suit for Declaration before the Civil Court, describing the order terminating his services as against law, equity, good conscience, and violative of principles of natural justice, claiming that he continued to be in service entitled to all benefits of service including salary etc. The State and the Chief Medical Officer resisted the suit. The only contentious issue which sprung up from the pleadings of the parties was:

> "Whether the order dated 30-9-1984 about the termination of service of the plaintiff is wrong, illegal and liable to be set aside as alleged?"

The trial court decided the said issue against the appellant. The lower appellate court on appeal affirmed the same. The High Court too in second appeal concurred with the decision of the courts below, basically on two grounds, namely, (i) that the conviction of the appellant under section 294 IPC revealed an act which per se constituted moral turpitude; and (ii) the order of termination of service, bare facedly, on its plain language was not stigmatic. All the same it was never disputed by the defendant-respondents that since the character and antecedent verification had revealed the conviction of the appellant under Section 294 IPC, that was the reason why the services of the appellant were dispensed with and mot regularized. Hence this appeal.

Section 294 of the Indian Penal Code reads as follows:

> "294. Obscene acts and songs
> Whoever, to the annoyance of others,
> (a) does any obscene act in any public place, or
> (b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,
> shall be punished with imprisonment of either description tor a term which may extent to three months, or with fine, or with both.

In order to secure a conviction the provision requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to

others, the offence is not committed. The measure of sentence of three months impossible thereunder suggests that such offence is tribal summarily under Section 260 of the Code of Criminal Procedure, it being not an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. When the accused does not plead guilty, Section 264 of the Code of Criminal Procedure enjoins upon the Magistrate that he shall (i) record the substance of the evidence; and (ii) a judgment containing a brief statement of the reasons for the finding. Conversely put, when the accused pleads guilty, the Magistrate may not be obliged to write a judgment containing a brief statement of the reasons, but the Magistrate is not absolved of the obligation to record the substance of the evidence. Otherwise, it would be difficult to conceive as to what could the accused have pleaded to. His plea of guilt is an admission to whatever factual data the prosecution lays before the court about the commission of the offence. Pleading guilty by the accused to the violation of a provision of law is no plea at all, as he would have to be confronted with the substance of the allegation, in order to enter upon a plea, one way or the other. When the substance of the allegations is not put to the accused , his entering any kind of plea is no plea legally, due to the non observance of such procedural requirement of utmost importance.

There is a sequator to it. Section 375 of the Code of Criminal Procedure provides that when the accused pleads guilty and has been convicted on such plea, there shall be no appeal, except to the extent or legality of the sentence. Section 376 of the Code of Criminal Procedure further goes to provide that where a case has been tried summarily by a Magistrate empowered to act under section 260 Cr.P.C. and passes a sentence of fine only not exceeding two hundred rupees, no appeal shall lie.

The totality of the situation thus is that since the appellant was tried summarily under Section 260 and has been sentenced to pay a fine of Rs.20 on his entering the plea of guilt, he could not have filed an appeal against the same. Procedural barbs thus coil the appellant, causing repercussions not only to his service career but in being-branded for ever as "unfit" for government service. This is the rancour and the sting which hurts the appellant most, not the payment of fine of the paltry sum of rupees twenty, but the consequences which have visited him, due to the act/s covered under section 294 IPC leading to the conviction per se being treated as involving moral turpitude.

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on February 2, 1973 (Annexure E in the Paper Book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 IPC As not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the government of Haryana on 17/26th March, 1975 explained the policy decision of February 2, 1973 and decided to modify the earlier decision by streamlining

determination of moral turpitude as follows:

> ".. ... The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not:
> (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.
> (2) whether the motive which led to the act was a base one.
> (3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.
> Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offence which are not included in it but which in certain situations and circumstances may involve moral turpitude."

Section 294 IPC still remains out of the list. Thus the conviction of the appellant under section 294 IPC on its own would not involve moral turpitude depriving him the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted.

We had required of the respondents to produce before us the copy of the Judgment whereby the appellant was convicted for the offence. As was expected only a copy of the institution/summary register maintained by the court of the Chief Judicial Magistrate, Bhiwani was placed before us showing that the appellant on 4-6-1980 was imposed a fine of Rs.20/-. A copy of the treasury challan supporting that the fine paid was deposited by the Chief Judicial Magistrate the same day has also been produced. The copy of summary register neither discloses the substance of the allegations put to the appellant, nor the words in which the plea of guilt was entered. It is of no significance that the appellant treats himself a convict as he had pleaded guilty. Ex facie it only shows that the entry concerns F.I.R. No.231/3-6-1980 under Section 294 IPC. Therefrom it is difficult to discern the steps taken in the summary trial proceedings and what had the appellant pleaded to as guilty, whether to the allegations in the FIR or to the provision of the IPC or any other particular? Mere payment of fine of Rs.20/- does not go to show that the conviction was validly and legally recorded. Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests

laid down in the policy decision of the government. We are rather unhappy to note that all the three courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction under section 294 IPC per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 IPC on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels.

Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost along them being traffic, municipal and other petty offences under the India; Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or in experienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever.

As a result of the above discussion, we allow this appeal, set aside the judgment and decree of the High Court as 31 SO that of the two courts below and decree the suit of the appellant as prayed for, with costs.