Before M.M. Kumar & M.M.S. Bedi, JJ.

DINESH KUMAR,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

CIVIL WRIT PETITION NO. 18 OF 2006

1st August, 2006

Constitution of India, 1950—Art. 226—Criminal case under Sections 323 & 324 IPC registered against petitioner & his family members— Claim for appointment as Constable/Driver rejected on the ground that petitioner failed to disclose registration of criminal case— Petitioner never convicted by any Court for any offence nor he was taken into custody by arresting him personally—Acquittal of petitioner along with family members by Criminal Court—No intentional suppression of information by petitioner in application form—Petition allowed respondents directed to issue appointment letter to petitioner subject to fulfillment of other conditions.

Held, that in the year 2003, the petitioner has rightly filled up column No. 14 stating that he had never been convicted by any Court for any offence. Even column No. 13(A) has also been correctly answered because the petitioner has never been physically arrested. The offences for which FIR No. 168 was registered against the petitioner on 13th October, 1994 were not serious offences. The offence under Section 323 IPC as per the Ist schedule appended to the Code of Criminal Procedure, 1973 is a non-cognizable offence whereas the offence under Section 324 IPC is a cognizable offence. However, the petitioner was never taken into custody by arresting him personally.

(Para 3)

Further held, that if the bail bond and the bail order are construed in strict sence then it can be concluded that the custody of the accused is that of the police or the Court. However, a common man is likely to conclude that he has never been arrested although he may continue in the Court custody. It explains that the petitioner has rightly answered the column 13-A stating that he has never been arrested. Therefore, in the facts and circumstances of the case we are inclined

to accept the common place interpretation that he has not been arrested as understood by common man. Accordingly, no intentional suppression of that information could be imputed to the petitioner.

(Paras 4 & 7)

R.K. Maik, Advocate, *for the petitioner.*

Harish Rathee, Sr. D.A.G., Haryana, *for the respondents.*

JUDGEMENT

M.M. KUMAR, J. (ORAL)

(1) The petitioner challenges order dated 18th November, 2005 (Annexure P-2) rejecting his claim for appointment as Constable-Driver on the ground that the petitioner could not be appointed because during verification of the character and antecedents it was found that he was arrested in case FIR No. 168, dated 13th October, 1994 registered at P.S. Kalanaur under Sections 323/324/34 IPC. He was acquitted on 6th January, 1998 by the Judicial Magistrate Ist Class, Rohtak. On the allegations that the petitioner had concealed these from the selection committee and did not furnish information in column Nos. 13(a) and 14 of the application form submitted by him for the post, he has not been offered appointment. The Police Department had advertised the posts of Constable-Driver and fixed the last date for submission of application as 13th December, 2003. The petitioner had applied and his application was registered at serial No. 239/GC/ DVR. He was selected as a Constable-Driver. In the application form column Nos. 13(a) and 14 were required to be answered. The petitioner had filled up those columns by inserting the word "No". Both the columns read as under :—

> "Column No. 14 : Having you ever been convicted by the Court of any offence.
>
> Column No. 13(A) : Have you ever been arrested."

(2) The facts as revealed in the writ petition as well as in the written statement are that on 13th October, 1994 a criminal case was registered against all the family members of the petitioner under Section 323/324/34 IPC at P.S. Kalanaur,—*vide* FIR No. 168 dated 13th October, 1994, the petitioner was granted bail on 17th October, 1994 without having been actually arrested. A copy of the bail order

has been placed on record as Annexure P-4. Eventually the petitioner along with his family members was acquitted on 8th January, 1998 by the Judicial Magistrate Ist Class, Rohtak. After selection of the petitioner he was sent for medical examination. His antecedents were to be verified by the Superintendent of Police, Rohtak, who had reported the registration of a criminal case as mentioned above. On the basis of the allegations that the petitioner has failed to disclose the registration of a criminal case and his alleged arrest, the petitioner was not given appointment letter on the aforementioned excuse. The appeal filed by the petitioner was rejected by Director General of Police, Haryana,—*vide* impugned order dated 18th November, 2005.

(3) Having heard the learned counsel for the parties and perusing the record as produced by the learned State Counsel, we are of the view that this petition deserves to be allowed. In the year 2003, the petitioner has rightly filled up column No. 14 by stating that he had never been convicted by any court for any offence. Even column No. 13(A) has also been correctly answered because the petitioner has never been physically arrested. The offences for which FIR No. 168 was registered against the petitioner on 13th October, 1994 were not serious offences. The offence under Section 323 IPC as per the Ist schedule appended to the Code of Criminal Procedure, 1973 is a non-cognizable offence whereas the offence under Section 324 IPC is a cognizable offence. However, the petitioner was never taken into custody by arresting him personally. The question before us is whether the expression 'arrest' used in Form No. 45 (used in Sections 436, 437, 438 (3) and 441) is required to be construed in a hyper technical way or whether a common place meaning is to be attached to it. If we interpret the expression 'arrest' in a hyper technical manner, then by virtue of Form No. 45 to Schedule II of the Code, a person who is released on bail is deemed to have been arrested or detained. Form No. 45 as given in Scheduled II of the Code is reproduced hereunder :—

"Form No. 45

(*See* Sections 436, 437, 438(3) and 441)

I, (name), of (place), having been arrested or detained without warrant by the officer incharge of police station (or having been brought before the Court of), charged with the offence of, and required to give security for my attendance before

such officer or Court on condition that I shall attend such Officer or Court on every day on which any investigation or trial is held with regard to such charge and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees dated, this day of ,19 (Signature)."

(4) The bail order in this case was passed on 17th October, 1994 by the Judicial Magistrate Ist Class, Rohtak, in case FIR No. 168/13/10/94 registered under Sections 323/324/34 IPC Police Station Kalanaur. A perusal of the order shows that the petitioner was not in the custody of the police when he was granted bail. It is obvious that in cases where the offences alleged to have been committed are of petty nature no formal arrest was made. In the present case, the allegation levelled against the petitioner, that too in the year 1994, were under Section 323 i.e. voluntary causing hurt which is punishable with a sentence of one year and is a non- compoundable offence. Similarly under Section 324 IPC, the punishment provides is for three years or fine or both. A perusal of their bail application also shows that the petitioner was never taken into custody by the police, as in para 6, it has been submitted by him that he along with other applicants were permanent residents of Village Balb and they would always be available to join investigation as and when required. The bail order granted by the Magistrate on 17th October, 1994 read as under :—

"Present :Shri M.S. Bishnoi, APP for the State.

Accused with counsel O.P. Chugh, Advocate.

File taken up today on bail application moved on behalf of accused. Heard. The accused are admitted to bail on their furnishing bail bonds in the sum of Rs. 4,000 each in the like amount. Bail bonds furnished, attested and accepted. To come up on 6th December, 2004 for awaiting of challan.

(Sd.) .

JMIC/17-10-94"

(5) If the bail bond and the bail order are construed in strict sense then it can be concluded that the custody of the accused is that of the police or the Court. However, a common man is likely to conclude

that he has never been arrested although he may continue in the Court custody. It explains that the petitioner has rightly answered the column 13-A stating that he has never been arrested.

(6) Even otherwise, there is etymological difference between the expression 'custody' and 'arrest'. The question has come up before a Full Bench of Madras High Court in the case of **Roshan Beevi and others** *versus* **Joint Secretary to Government of Tamil Nadu and others, (1).** After referring to a number of dictionaries as well as English case law, the Hon'ble Judges concluded in para 16 the meaning of expression 'arrest' and also debated the issue whether the expression 'arrest' and 'custody' are synonyms. It has been concluded in para 29 that these two expressions are not synonyms and reference has also been made to Section 46 Cr. P.C. Paras 16 and 29 are extracted below for facility of reference :—

> "16 From the various definitions which we have extracted above. it is clear that the word 'arrest', when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential element to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanind by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested. In this connection, a debatable question that arises for our consideration is whether the mere taking into custody of a person by an authority empowered to arrest would amount to 'arrest' of that person and whether the terms 'arrest' and 'custody' are synonymous.

(1) 1984 Crl. L.J. 134

29. For all the discussions made above, we hold that 'custody' and 'arrest' are not synonymous terms. It is true that in every arrest there is a custody, but not *vice versa*. A custody may amount to an arrest in certain cases but not in all cases. In our view, the interpretation that the two terms 'custody' and 'arrest' are synonymous is an ultra legalist interpretation, which if accepted and adopted, would lead to a startling anomaly resulting in serious consequences."

(7) It is pertinent to mention that para 16 of the judgment of the Full Bench has found ready acceptance and approval of the Hon'ble Supreme Court in the case of **Directorate of Enforcement** *versus* **Deepak Mahajan, (2).** The custody of the petitioner in terms of Form 45 to obey the directions of the Court would not *ipso facto,* especially in the understanding of a common man could be construed as arrest. The answer to column No. 13(A) that the petitioner has never been arrested would not result into the presumption that he intentionally withheld the information. Therefore, in the facts and circumstances of the case we are inclined to accept the common place interpretation that he has not been arrested as understood by common man. Accordingly, no intentional suppression of that information could be imputed to the petitioner.

(8) This Court has already taken the view that once a person is not convicted then non-disclosure of such an information does not amount to concealment of fact. In the case of **Subhash** *versus* **State of Haryana, (3)** this Court has observed as under :—

"Having heard the learned counsel for the parties and after going through the necessary record I find that the plea taken by the respondents is highly hyper technical and the writ petition deserves to be allowed. It is not a concealment of fact regarding his earlier conviction which can be taken into consideration against an employee and on the basis whereof his appointment can be set aside later on. In the present case, petitioner had only been prosecuted and was acquitted by a competent Criminal Court. It was not necessary for the petitioner to disclose this fact to the respondents at the time of his submitting application for

(2) (1994)3 SCC 440
(3) 1994 (4) S.L.R. 525

recruitment to the police service. In any case, the fact stands that there is nothing against the petitioner on the basis whereof his appointment could be set aside having already been made by order dated 4th September, 1989 Annexure P-1. Therefore, the non-disclosure of the information relating to his acquittal in the criminal case is no ground for withholding the appointment of the petitioner."

(9) In view of the above, we allow this writ petition and direct the respondents to take steps for issuance of appointment letter to the petitioner subject to fulfillment other conditions by him. It is made clear that the petitioner shall be deemed to have been appointed as Constable Driver with effect from the date persons lower in merit to him as per the merit determined by the Selection body is appointed. However, he shall not be entitled to any arrears of salary.

R.N.R.

Before M.M. Kumar & M.M.S. Bedi, JJ.

RAM SINGH,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. NO. 7572 OF 2006

8th August, 2006

Constitution of India, 1950—Art. 226—Petitioner availed car loan from his department with interest @ 10% p.a.—In case of misutilisation of loan amount, penal interest @ 4% p.a. over & above normal rate of interest stipulated in sanction order—Petitioner misutilizing loan amount—Respondents charging penal interest @ 10% p.a. on the basis of modified instructions—Once a stipulation of penal interest of 4% made in sanction order then a binding obligation between parties came into force which could not be varied—Petition allowed directing respondents to calculate interest @ 10% + 4% p.a.