

Sardara Ram and Another Vs State of Haryana and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 19, 2012

Acts Referred: Constitution of India, 1950 " Article 311(2), 311(2)(b)

Citation: (2013) 169 PLR 326

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: R.K. Handa, for the Appellant; Harish Rathee, D.A.G., Haryana for the State, for the Respondent

Judgement

Augustine George Masih, J.

Petitioners have approached this Court impugning the order dated 23.11.2010 (Annexure P-1) passed by the

Superintendent of Police, Kurukshetra vide which both the petitioners have been dismissed from service-invoking-Article 311(2)(b) of the

Constitution of India dispensing with the holding of departmental-enquiry against the petitioners and subsequent orders passed by the appellate as

well as the revisional authorities rejecting the appeal/revision of the petitioners. It is the contention of the counsel for the petitioners that the only

reason assigned for invoking Article 311(2)(b) of the Constitution of India is that the petitioners would influence the witnesses and would threaten

and terrorize as also intimidate them as they are police officials is unsustainable. It has further been stated that there are no independent witnesses,

therefore, further enquiry is not practicable. This, the counsel for the petitioner contends, cannot be accepted in the light of the fact that respondent

No. 4 in his impugned order has specifically stated that during investigation of FIR No. 234 dated 16.11.2010, it has been found that the escort

guard officials have connived with accused Vishveshwar @ Rinku and have made his escape easy by adopting callous and careless attitude. This

indicates that there is evidence available: with the respondents against the petitioners and the reason therefore that there is no independent witness

or evidence against the petitioners to prove the guilt, is not sustainable.

2. His further contention is that both these petitioners were not involved in the escape of Vishveshwar @ Rinku. A team of four police officials was

constituted to escort two, accused namely Vishveshwar @ Rinku son of Raj Kumar and Sagar son of Surmukh Singh to the L.N.J.P. Hospital,

Kurukshetra for their medical check up. On reaching the said hospital both the petitioners took Sagar son of Surmukh Singh for his medical check

up, whereas Constable Karan Singh and EHC Harpal Singh took Vishveshwar @ Rinku for his medical check up. It is from the custody of EHC

Harpal Singh and Constable Karan Singh, that Vishveshwar @ Rinku made good the escape for which the petitioners cannot be held responsible

and their role in the escape of Vishveshwar @ Rinku cannot be equated with that of EHC Harpal Singh and Constable Karan Singh. In any case,

he contends that the impugned order does not fulfill the mandate of the law as laid down by Hon"ble Supreme Court in the case of Union of India

and Another Vs. Tulsiram Patel and Others, . Reliance has also been placed upon the judgment of this Court in Gurmit Singh v. State of Punjab

and others, 2011 (1) S.C.T. 41, where it has been held that while exercising powers under Article 311(2)(b) of the Constitution of India merely

saying that the witnesses-co-accused would not give evidence against the delinquent in the departmental enquiry, is not sufficient. Counsel has also

placed reliance upon the judgment of the Supreme Court in the case of Sudesh Kumar v. State of Haryana and others, 2005 (11) S.C.C. 525

supporting the said assertion. Accordingly, prayer has been made for quashing the impugned orders and allowing the present writ petition.

3. On the other hand, counsel for the respondents, submits that the team of escort guard for taking Vishveshwar @ Rinku and Sagar son of

Surmukh Singh was constituted under petitioner No. 1 Sardara Ram. Other three police officials were working under his supervision. Since one of

the accused Vishveshwar @ Rinku had escaped from the custody of the petitioners as they are jointly responsible they cannot shirk from their

responsibility. His further contention is that accused Vishveshwar @ Rinku was a dreaded criminal, who was involved in four FIRs registered

against him for kidnapping, attempt to murder and for possessing illegal arms. He contends that the competent authorities have exercised its power

under Article 311(2)(b) of the Constitution of India in coming to the conclusion that holding of departmental enquiry was not reasonably

practicable in the present case as no witness would come forward to depose against the petitioners as they are influential police officials and

ground is sufficient for exercising the powers under Article 311(2)(b) of the Constitution of India. He accordingly, prays that the impugned orders

are in accordance with law and deserve to be upheld.

4. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

5. As is apparent from the impugned order dated 23.10.2010 (Annexure P-1), both these petitioners were members of a team of four officials,

who have been given the responsibility to take accused Vishveshwar @ Rinku and Sagar for medical check up at L.N.J.P. Hospital, Kurukshetra.

One of the accused namely Vishveshwar @ Rinku made good the escape. The allegations against the petitioners, as per the impugned order which

has come forward on the basis of some evidence, is that during investigation in case FIR No. 234 dated 16.11.2010, which was registered by

petitioner No. 1, was that it has been found that the escort guard officials had connived with accused Vishveshwar @ Rinku and have made his

escape easy by adopting callous and careless attitude. This reflects clearly that there is some evidence against the petitioners that they had connived

with accused Vishveshwar @ Rinku. Merely because petitioners are police officials and there is a common experience, according to the punishing

authority, that the witnesses are terrorized and intimidated and they do not come forward in the departmental enquiry to depose against the

delinquent officials, cannot be a sole ground in the present case for coming to a conclusion that it was not reasonably practicable to hold a

departmental enquiry against them. In the impugned order itself it has been mentioned that no independent witness is available, which shows that

evidence of officials is available and is based upon official documents. The reasoning adopted by respondent No. 4 for coming to this conclusion

that it is not reasonably practicable to hold enquiry and therefore has invoked the powers under Article 311(2)(b) of the Constitution of India is

totally misplaced and rather is abuse of powers conferred upon him. The test which is required to be fulfilled by the competent authority while

exercising this extreme power has to be resorted in an extreme case. The basic test laid down by the Courts in various judgments having not been

cleared while passing the impugned order vis-a-vis to these petitioners, who admittedly after having reached the L.N.J.P. Hospital, Kurukshetra

had taken along with them Sagar for medical check up, whereas EHC Harpal Singh and C-Karan Singh were deputed to take Vishveshwar @

Rinku for getting his medical check up and to take medicines for the accused and it is not denied that the said accused Vishveshwar @ Rinku

made good the escape not in the presence of these two petitioners.

6. The judgment relied upon by the counsel for the petitioners in the case of Gurmit Singh's case (supra) also supports the claim of the petitioners,

where it has been held that merely by saying that the witnesses/co-accused would not give evidence against the delinquent in the departmental

enquiry, is not sufficient for exercising power under Article 311(2)(b) of the Constitution of India. Principle of natural justice is not to be violated

lightly. An extreme caution is required to be taken care while depriving a person of this valuable right. Extraordinary powers conferred under

Article 311(2)(b) of the Constitution of India with caution and care deserves to be exercised with due caution and care and that too only in

extreme situation, which is not present in the case in hand. An enquiry under Article 311(2) of the Constitution is a rule and dispensing with the

holding of regular enquiry is an exception. For exercising such powers reasons have to be assigned by the competent authority for doing so which

has to clear the test of judicial scrutiny with regard to its coming to a decision as to whether such power was exercised and the reasons assigned

therein would satisfy the Court that it was not reasonably practicable to hold an enquiry. These observations find support and has been so held by

the Hon"ble Supreme Court in the case of Sudesh Kumar's case (supra). In view of the above, the impugned orders dated 23.11.2010 (Annexure

P-1) and 15.2.2011 (Annexure P-2) cannot sustain and are hereby quashed. Consequential orders passed by the appellate authority as well as the

revisional authority orders dated 19.10.2011 (Annexure P-6) and 21.10.2011 (Annexure P-7) are also quashed. Liberty is, however, granted to

the respondents to proceed against the petitioners as required under the law, if such a decision is desired to be taken by them.