

**(2012) 11 P&H CK 0158**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 22524 of 2011 (O and M)

Sardara Ram and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

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**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

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### **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.