
Constable Surinder Singh Vs Haryana State

R.S.A. No. 491 of 1997 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 13, 2014

Acts Referred:

Penal Code, 1860 (IPC) " Section 324, 34, 354, 506

Citation: (2014) 175 PLR 449

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: Naveen Daryal, Advocate for the Appellant; P.S. Poonia, Addl. A.G, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The plaintiff is in appeal aggrieved against the judgment and decree dated 03.06.1996 passed by learned District Judge,

Karnal, in an appeal directed against the judgment and decree dated 05.12.1995 passed by learned Sub Judge 1st Class, Karnal, whereby his suit

for declaration challenging the order of punishment of stoppage of two annual increments with future effect and that he shall not be paid more than

suspension allowance for the suspension period w.e.f. 13.05.1991 to 24.04.1993 was dismissed. The plaintiff-appellant has claimed the following

substantial questions of law:

i) Whether the concurrence of the District Magistrate as required under Haryana Police Rules 16.38(1) & (2) is mandatory before initiating

departmental action if a police officer has committed a criminal offence in connection with his official relations with the public?

ii) Whether the case of appellant is squarely covered by the law laid down by the Hon"ble Supreme Court in the case of Union of India (UOI) Vs.

Ram Kishan,

iii) Whether great injustice has been done with the appellant?

2. The aforesaid questions of law raised from the fact that an FIR No. 267 dated 12.05.1991 for the offences under Sections 354, 324 and 506

read with Section 34 of Indian Penal Code (for short "IPC") was registered at Police Station Tilak Marg, New Delhi against the plaintiff. The

plaintiff was charge sheeted on the allegations on which the FIR was lodged vide charge-sheet dated 19.08.1991 that while posted as Escort

Guard of the Director General of Police, Haryana and while on tour, the appellant was said to have caught hold of two girls, who were returning

back to their home with their friends, with intention to outrage their modesty and asked them to accompany him to the cinema hall. In pursuance to

the charge-sheet, an enquiry officer was appointed and the enquiry officer had given his report on 07.04.1992 holding the appellant guilty of

misconduct. A show cause notice was issued to the appellant proposing stoppage of six annual increments. The notice could not be served as he

was reported to be absent from duty. Another show cause notice was issued to him proposing punishment of dismissal from service. Thereafter,

another show cause notice was issued to the appellant on 27.04.1993 called upon to explain his conduct. After giving an opportunity of hearing to

the appellant, the order of punishment of stoppage of two annual increments with permanent effect was passed by the Senior Superintendent of

Police on 25.05.1993. It is the said order and the order passed in appeal, which were challenged by the plaintiff-appellant in a civil suit before the

Court.

3. In the present appeal, the argument raised is that in terms of Rule 16.38 of the Punjab Police Rules as applicable to the State of Haryana, the

concurrence of the District Magistrate was required before initiating departmental action if a police officer has committed a criminal offence in

connection with his official relations with the public. The relevant Rule 16.38 reads as under:--

16.38. Criminal offences by police officers and strictures by courts - Procedure regarding.--(1) Where a preliminary enquiry or investigation into a

complaint alleging the commission by an enrolled police officer of a criminal offence in connection with his official relations with the public,

establishes a prima facie case, a judicial prosecution shall normally follow. Where, however, the Superintendent of Police proposes to proceed in

the case departmentally, the concurrence of the District Magistrate shall be obtained,

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4. A perusal of the above shows that Rule 16.38 contemplates that if after a preliminary enquiry or investigation, if an enrolled police officer is

prima facie established to be involved in a criminal offence, a judicial prosecution was normally follow but wherever, the Superintendent of Police

proposes to proceed departmentally, the concurrence of the District Magistrate shall be obtained.

5. It means that the concurrence of District Magistrate is required if instead of prosecuting criminally, the departmental proceedings are sought to

be initiated but in a situation, where criminal prosecution has already been initiated, the concurrence of District Magistrate is not necessary before

initiating departmental proceedings. In the present case, the criminal prosecution was already initiated though resulting into acquittal, therefore,

concurrence of District Magistrate was not required to be obtained to initiate departmental proceedings against the plaintiff-appellant. Thus, the

concurrence of the District Magistrate is not mandatory, where criminal offence has been initiated against a police official while initiating

departmental proceedings.

6. The reliance of the appellant on the judgment of Ram Kishan's case (supra) is misconceived. In the aforesaid case, the departmental

proceedings were initiated though the complaint against the police officials disclosed criminal offence as well. No criminal proceedings were

initiated against the delinquent police officer. It was held that when investigation of a complaint establishes a prima facie criminal case, a judicial

prosecution shall normally follow. The matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be

recorded. Therefore, where the criminal prosecution has been launched in respect of conduct of a police official, the departmental proceedings

need not have the concurrence of the District Magistrate. The concurrence of the District Magistrate is necessary only if the criminal proceedings

are not launched against a police official. Thus, the judgment in Ram Kishan's case (supra) is not applicable to the facts of the present case.

7. In Parkash Nath Saidha, Naib Tehsildar v. The Financial Commissioner (Revenue) 1972 SLR 601, the other judgment referred to by learned

counsel for the appellant, does not advance the argument raised. The Division Bench in the said case held that no one shall be punished twice for

the same matter and such principle is applicable even to departmental enquiries. In the said case, in an earlier enquiry, the officer was exonerated,

but again a fresh enquiry was initiated. Such judgment has no applicability in the facts of the present case. In fact, the appellant has been let off

quite lightly by imposing punishment of stoppage of two increments with cumulative effect, as the allegations against him are of outraging the

modesty of a woman. In view of the above, I do not find that any substantial question of law arises for consideration in the present second appeal.

The same is, thus, dismissed.