
(1961) 10 AHC CK 0020

Allahabad High Court

Case No: Criminal Ref. No. 77 of 1961

Asha Ram

APPELLANT

Vs

G.C. Saxena

RESPONDENT

Date of Decision: Oct. 3, 1961

Acts Referred:

- Constitution of India, 1950 - Article 13, 14, 348
- Police Act, 1861 - Section 12, 29, 46
- Uttar Pradesh Government Servants (Conduct) Rules, 1956 - Rule 25

Citation: AIR 1962 All 507 : (1962) 32 AWR 233 : (1962) 1 LLJ 700

Hon'ble Judges: W. Broome, J

Bench: Single Bench

Advocate: S.N. Mulla, for the Appellant; A.G.A. and K.L. Misra, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

W. Broome, J.

In this reference the Civil and Sessions Judge of Rampur recommends the quashing of proceedings pending against the applicant, Sub-Inspector Asa Ram, in the court of the City Magistrate of Rampur u/s 29 of the Police Act.

2. The allegations against the applicant are that while posted as Station Officer of Tanda Police Station he refused to record a report that a certain Rahim Bux wished to lodge about a burglary committed in his shop in the month of December 1955, and similarly while posted as Station Officer of Suar Police Station he refused to record a report of one Gokul Haldia regarding a burglary committed in his house during the month of September 1957. On complaints being made by Rahim Bux and Gokul departmental proceedings were started against the applicant u/s 7 of the Police Act, and on the conclusion of that inquiry he was called upon to show cause

why he should not be punished. But instead of submitting a proper reply to this notice the applicant tiled complaints u/s 500, I. P. C. against Rahim Bux and Gokul in the court of the Judicial Officer (1), Rampur, on 31-1-1959. On this the Superintendent of Police of Rampur lodged a complaint against the applicant with the City Magistrate on 23-5-1959, asking for him to be punished under Sec. 29 of the Police Act for breach of Rule 25 of the Uttar Pradesh Government Servants' Conduct Rules, which runs as follows :

"Vindication of acts and character of Government servants--No Government servant shall, except with the previous sanction of the Government, have recourse to any court or to the press for the vindication of any official act which has been the subject-matter of adverse criticism or an attack of defamatory character."

3. The first line of argument adopted by learned counsel for the applicant is that breaches of the U. P. Government Servants' Conduct Rules are not punishable u/s 29 of the Police Act, the relevant portion of which runs:

"Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months" pay, or to imprisonment with or without hard labour for a period not exceeding three months, or to both,"

The contention is that the rules "made by competent authority" mentioned in this section mean only the rules made by the Inspector General of Police u/s 12 of the Police Act or by the State Government u/s 46. I can see no justification, however, for interpreting the words used in Section 29 in this narrow restricted fashion. If it had been intended that only the breach of rules made under Sections 12 and 46 of the Act was to be punishable u/s 29, one would have expected the section to use the words "any rule..... made under this Act by competent authority"; but the section merely refers to rules and regulations in general, without restriction, and in the circumstances there seems to be no reason why rules made by a competent authority otherwise than under the Act should not also come within the scope of the section. The case of [Banslochan Lal and Another Vs. Emperor](#), cited by the learned Sessions Judge in his referring order, is no authority for the proposition which the applicant steaks to establish: it merely declares that breaches of rules and regulations framed by the Inspector General of Police u/s 12 come within the scope of Section 29 of the Police Act, not that Section 29 is confined to breaches of such rules only. Learned counsel for the applicant has been unable to cite any ruling that supports his interpretation of the section, and I have no hesitation therefore in rejecting his argument. There can be no denying that Rule 25 of the U. P. Government Servants Conduct Rules, which was made by the Governor in exercise of the powers conferred by the proviso to Article 309 of the Constitution, is a "rule made by competent authority"; and consequently I hold that breach of Rule 25 by a police officer is punishable u/s 29 of the Police Act.

4. The other main argument advanced on behalf of the accused-applicant is that Rule 25 of the U. P. Government Servants Conduct Rules is void and inoperative by virtue of Article 13 of the Constitution, because it violates Article 14. The suggestion is that every citizen of India has the right of access to a court of law, to obtain redress for wrongs done to him, and that Rule 25, by barring such action on the part of Government servants, unfairly discriminates against them and deprives them of "the equal protection of the laws" guaranteed by Article 14. Mere differential treatment, however, is not necessarily violative of Article 14: it is only when this differentiation is unreasonable or arbitrary that it will amount to discrimination such as is prohibited by the equal protection clause. The test is whether the distinction made between different classes of persons rests on any rational basis, having regard to the object for which the legislation or rule in question was passed or framed. Applying this test to the circumstances of the present case, it is obvious that Government servants form a separate well-defined class, with special duties as well as special rights and privileges; and there is a clear nexus between the basis of this classification and the object of the rule that is under consideration. The rule, it is important to note, restrains a Government servant from having recourse to courts of law only in vindication of official acts; and it cannot be said that there is anything unreasonable or arbitrary in differentiating between Government servants and other persons on this basis.

5. An attempt has also been made to argue that the rule in question denies "equal protection of the laws" because it confers an unfettered and arbitrary discretion on the Government to grant or to withhold sanction to a Government servant to approach a court of law. We must not however lose sight of the fact that this discretion has been vested not in a subordinate official but in the State Government itself. As pointed out by the Supreme Court in [Pannalal Binjraj Vs. Union of India \(UOI\)](#), .

"This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials..... There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law..... There may be cases where improper execution of power will result in injustice to the parties. A has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law. What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself."

In view of this pronouncement, there is obviously no force in the argument that Rule 25 violates Article 14 merely because it vests an unfettered discretion in the State Government.

6. Another argument relating to Article 14 is that if breaches of the U. P. Government Servants Conduct Rules are to be made punishable u/s 29 of the Police Act, there will be an unfair discrimination between police officers on the one hand and all other kinds of Government servants on the other. But this distinction has an obvious rational basis and cannot possibly be considered unfair or unreasonable. The police force is entrusted with the maintenance of law and order and must naturally be subject to a far more stringent discipline than other breaches of the civil service. Indeed this distinction has received recognition in the constitution itself, for Article 33 permits Parliament to determine to what extent the fundamental rights guaranteed by Part III shall be restricted or abrogated in their application to members of "the forces charged with the maintenance of public order". The mere fact that Section 29 of the Police Act subjects police officers to penalties that may even include imprisonment for breaches of rules, which if committed by other Government servants would entail nothing more than departmental action, does not therefore mean that there is any discrimination that constitutes a violation of Article 14.

7. Finally, learned counsel for the applicant has attempted to argue that the U. P. Government Servants Conduct Rules 1946 cannot be treated as binding and authoritative because they were not published in the Hindi version of the gazette but were published only in the English version, Even assuming this to be a fact, however, the validity of the rules would not be affected thereby, in view of the recent Full Bench decision in [Jaswant Sugar Mills Ltd. Vs. The Presiding Officer, Industrial Tribunal \(III\) and Others](#), in which it has been held that both versions. Hindi and English of any Bill, Act, Rule etc. are equally valid and authoritative.

8. My conclusion is that there is no illegality whatsoever in the proceedings that have been started against the applicant Sub-Inspector Asa Ram u/s 29 of the Police Act. This reference is accordingly rejected.