

(2010) 09 DEL CK 0424

Delhi High Court

Case No: Regular Second Appeal No. 51 of 1982

Ex. Constable Ram Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Sept. 7, 2010

Acts Referred:

- Delhi Police (Punishment and Appeal) Rules, 1980 - Rule 15.2
- Punjab Police (Amendment) Rules, 1974 - Rule 16.24, 16.38, 16.38(1)

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: G.D. Gupta and Vivya Nagpal, for the Appellant; Rattan Lal, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

The impugned judgment is dated 8.4.1981. This had been passed by the first Appellate Court endorsing the judgment and decree of the Trial Judge dated 7.5.1980 thereby dismissing the suit of the plaintiff.

2. The plaintiff before the Trial Court is the appellant before this Court. The appellant was appointed as a constable with the Delhi Police on 21.6.1974; he was posted at the Police Post Tank Road falling within the jurisdiction of police station Karol Bagh. The appellant accompanied by Sub Inspector Chandan Singh during the investigation of a case had allegedly entered into a shop i.e. the shop bearing No. 1590, belonging to Om Prakash wherefrom a bag of containing broken utensils suspected to be stolen property were taken into possession. It had further been alleged against the appellant that he along with the Sub Inspector had beaten Om Prakash and an amount of Rs. 450/- had been demanded from him; the said amount had been accepted as an illegal gratification by the appellant and his accomplice i.e. Sub Inspector Chandan Singh. A departmental inquiry had been ordered and conducted against the appellant. Pursuant thereto the appellant had been

dismissed from his service on 19.3.1976.

3. plaintiff had filed a suit for declaration seeking a declaration to the effect that this order of dismissal dated 19.3.1976 was illegal, against the rules and violative of law; the same be struck down and the plaintiff be re-instated in service.

4. The Trial Judge had framed four issues. plaintiff had examined himself as PW-1. Defendant had examined three witnesses. Issue No. 3 was the crucial issue; which inter alia reads as follows:

Whether the impugned order of dismissal of the plaintiff dated 19.03.76 is illegal, unconstitutional, inoperative and void as on the ground given in the plaint? OPP.

5. Apart from the challenge to the rules of natural justice not having been followed by enquiry officer, it had also been contended by the counsel for the appellant/plaintiff that the mandate of Rule 16.38 of Punjab Police Rules (hereinafter referred to as the ♦PPR♦) have not been followed. It had been contended that the enquiry had disclosed the commission of a cognizable offence and normal course would have been a judicial prosecution. Nevertheless although the rule permitted a departmental enquiry yet the procedure contained therein had to be strictly adhered to. Trial Judge, however, negated these contentions of the learned Counsel for the appellant. This issue was decided against the plaintiff. Consequence of which was that the suit of the plaintiff was dismissed.

6. In appeal, the Additional District Judge on 8.4.1981 endorsed the finding of the Trial Judge; it was held that the order of dismissal of the appellant called for no interference; the said order was legal and was passed after following the mandatory procedure including the provisions of Rule 16.38 of PPR.

7. This is a second appeal. On 24.5.1982, the appeal was admitted and the following substantial questions of law were formulated:

1. Whether in criminal offences investigation is not necessary?

2. Whether a Police Officer can be prosecuted in a Court of law when no criminal case was registered against him as envisaged under Chapter 14 of the Code of Criminal Procedure?

3. Whether permission under Rule 16.38 of the Punjab Police Rules is illegal as having not been preceded by investigation under the Code of Criminal Procedure?

4. Whether the principles of natural justice were not observed in the departmental enquiry proceedings?

8. Attention has been drawn to Rule 16.38 of the PPR. Extract of which is reproduced herein under reads as follows:

16.38(1)

(a) On receipt of an information, which indicates the commission by a Police Officer of a criminal offence in connection with his official relations with the public, the District Superintendent of Police shall get enquiries conducted by an officer not below the rank of Deputy Superintendent of Police.

(b) A gist of the complaint and the action taken thereon should be sent to the District Magistrate by the concerned Superintendent of Police at the earliest.

(c) The District Magistrate may, at any time, stop the police enquiry and order an enquiry by a Metropolitan Executive Magistrate under intimation to the Administration giving reasons for entrusting the enquiry to such a magistrate.

(d) If, however, the complaint is received by the District Magistrate, then in consultation with the Superintendent of Police, he will decide whether the investigation of the complaint will be conducted by Police Officer or made over to a selected magistrate.

16.38(2)

(a) When enquiries in such a complaint by the police establish a prima-facie cognizable offence, in judicial prosecution shall normally follow. The matter shall be disposed of departmentally if the Inspector General of Police, Deputy Inspector General of Police so orders for reasons to be recorded. Case is made out, the matter be disposed of departmentally by the Superintendent of Police and the procedure prescribed in Rule 16.24 shall be followed.

(b) When investigation is conducted by a Metropolitan Executive Magistrate under the orders of the administration, further action shall be taken by the District Superintendent of Police only after obtaining the order of the District Magistrate on completion of such enquiries/investigations.

9. It is submitted that this rule is mandatory and non-adherence to the strict mandate of this provision of law will vitiate the entire enquiry proceedings; if this is proved the dismissal of the appellant is liable to be set aside; he would have to be re-instated. Learned Counsel for the appellant has placed reliance upon a judgment reported in AIR 1969 SC 1108 *Delhi Administration v. Chanan Shah* and also *Anr. judgment of the Division Bench of this Court reported in 1973 1 SLR 1222 Union of India v. Ravi Dutt* in which cases where the strict procedure of Rule 16.38 not having been complied with the departmental action taken against the delinquent had been declared to be invalid. In the case of *Chanan Shah (supra)*, the Supreme Court had held that it was not necessary for the Court to make an enquiry as to whether this provision is directory or mandatory. In the subsequent judgment *Ravi Dutt (supra)* the Division Bench of this Court had held that this rule i.e. the Rule 16.38 of the PPR is a mandatory requirement and where a preliminary enquiry had been made into a complaint by the Superintendent of Police without sanction of the District Magistrate and the approval of the District Magistrate was sought subsequently; it

was held that it was not a compliance in true letter and spirit of Rule 16.38 which is a mandatory rule. The dismissal order passed against the concerned official had been set aside.

10. It is submitted that the provisions of Rule 15.2 of the Delhi Police (Punishment and Appeal) Rules 1980 are paramateria Rule 16.38 of the PPR; in CWP No. 1553/2003 decided on 30.4.2003 titled Commissioner of Police v. R.C. Shekharan where there had been no adherence to the provisions of Rule 15.2 of the Delhi Police Rules; the order passed by the enquiry officer had been set aside. For the same proposition reliance has also been placed upon a judgment reported in [Vijay Singh Vs. Union of India \(UOI\) and Others,](#)

11. It is submitted that in this case, Om Prakash who had been the victim at the hands of the present appellant and had been beaten up by the appellant along with his accomplice i.e. Sub Inspector Chander Singh had made a complaint dated 24.6.1974 at the concerned police station but in spite of this complaint which had disclosed a cognizable offence, no action has been taken. It is stated that in [Ramesh Kumari Vs. State \(N.C.T. of Delhi\) and Others,](#) as also another judgment reported in 2002 II AD (Delhi) 841 Satish Kumar Goel v. State and Ors. passed by Division Bench of this Court, it has been reiterated that where a complaint discloses the commission of a cognizable offence, the officer in charge of the concerned police station is bound to register an FIR. There was no explanation as to why this had not been adhered to.

12. The trial judge while disposing of Issue No. 3 had dealt with this contention of the appellant in para 11. The relevant extract of which is reproduced as under:

The next contention is about the compliance with the requirements of P.P.R. 16.38. There is no dispute that the provisions of orders PPR 16.38 are mandatory. It was contended by the plaintiff that there is no permission under the provisions of 16.38. This contention in my view is totally wrong and against the facts. The permission under 16.38 (ii) though is Ex.D.W.3/1 and the permission under PPR 16.38 (1) is Ex.D.3. It was contended that the normal course was a criminal prosecution and not an enquiry. For this purpose we have to read the provisions of PPR-16.38. The P.P.R. 16 (.38)(1) provides that if the information disclosed the commission of a criminal offence in connection with his official relations with the public, the S.P. shall get an enquiry conducted. A gist of the complaint then has to be sent to the District Magistrate. The District Magistrate can either stop police enquiry and order enquiry by a Magistrate. In P.P.R. 16.38 (2) If the enquiry disclosed the commission of a cognizable offence, the judicial prosecution shall normally follow:- However, the matter can be disposed off departmentally if the I.G. or D.I.G. police so orders for reasons to be recorded. In this case as per Ex.D.3 the S.P. ordered an enquiry by a D.S.P. As the endorsement at sl. No. 1 in Ex.D3 the complaint was sent to the District Magistrate for necessary action. After such a complaint the District Magistrate may decide to hold an enquiry by police officer or by a Magistrate. It is, however, not

obligatory for the D.M. to take a decision under this provision. It shows that the provisions of 16.38 (1) were substantially complied with. P.P.R. 16.38 (2) as discussed above empowers the I.G. to order an enquiry instead of prosecution for reasons to be recorded. As per Ex.DW3/1 the D.I.G. found that the evidence and material on record are not sufficient for a criminal prosecution and thereafter he ordered an enquiry departmentally. This order, is therefore, competent under the said provisions. A copy of the order was sent to the District Magistrate for necessary action. LPA No. 68-D/1961 Punjab Chanan Shah v. Delhi Administration and Ors. decided on 23.1.63 is with respect to PPR 16.38 as it was then existing. This rule was amended in 1974 and for the word "investigation", the word ♦enquiry♦ was substituted. Therefore, this authority of the Punjab High Court does not apply, because under the amended P.P.R. the investigation is not essential. The decision of the Supreme Court in appeal against this judgment given on 12.12.1969 is also of no help to the plaintiff [Union of India \(UOI\) Vs. Ram Kishan,](#) is also a case before the amendment of this Rules and this authority has also no application. However, there has been compliance of provisions of PPR 16.38 in this case. In the same way in 1973 (1) SLR 1222, is on the same footings and before the amendment of the PPR. So in my view the provisions of 16.38 have been fully complied with. So this ground of attack on the dismissal of order is not tenable. The plaintiff has been given full opportunity of being heard and defend himself. The enquiry in my view has been conducted according to rules. So issue No. 3 is answered against the plaintiff.

13. The suit of the plaintiff was dismissed.

14. In appeal on 08.04.1981, the first appellate court endorsed the finding of the trial judge. It was held that the principles of natural justice had been adhered to by the Enquiry Officer. The documents including the statements of the witnesses had been supplied to the appellant against a receipt dated 23.10.1975; he was given full opportunity to cross-examine the witnesses; appellant had at no point of time made any request either orally or in writing seeking assistance of a person having legal knowledge to defend him in the enquiry; the witnesses of the plaintiff had been adequately cross examined; no prejudice had been suffered by the appellant in the course of the departmental proceedings. The provisions of 16.38 of the PPR had been duly complied with from the stage of holding the preliminary enquiry till the order of his dismissal; there was no defect in the procedure; proper opportunity had been given to the defaulting officer; first appellate court stamped its approval on the findings of the trial judge which had dismissed his suit.

15. Vide Ex.D3 dated 29.06.1974, the Superintendent of Police, Sh. Arun Bhagat, had passed an order that on the complaint of Sh. Om Prakash an enquiry be ordered under Rule 16.38(i)(a) of the PPR to be conducted by Sh. N.N. Chopra, DSP/Hdqs, Central District, Delhi. The order passed by Sh. Arun Bhagat, Superintendent of Police, Central District, Delhi is reproduced as follows:

Whereas a complaint dated nil has been received from Shri. Om Prakash r/o 1590 Shastri Nagar, Delhi-52, against Const. Ram Kumar No. 894/C of P.P. Tank Road (P.S. Karol Bagh) and the facts indicate the Commission of a Criminal Offence, by the said police official, in connection with his official relations with the public, therefore, I, Arun Bhagat, Supt. of Police, Central District, Delhi order under PPR 16.38(i)(a) that an enquiry be made by Shri. N.N. Chopra, DSP/Hdqrs, Central District, Delhi.

(Arun Bhagat)

Supt dt. of Police: Central District: Delhi.(*UDAI*)

No. 10120-22/HAP (C)., dated Delhi, the 29.6.1974

Copy to:

1. The D.I.G.(R), through S.P./Vigilance, Delhi alongwith a copy of complaint for information.
2. The A.D.M/Central, Delhi for information, along with a copy of complaint.
3. Shri N.N. Chopra, DSP/HQ, working as SDPO/AN, Central District, Delhi alongwith original complaint for conducting P.E. in the matter and to submit his report within 15 days positively.

16. Admittedly in this case, the PPR Rules as amended in 1974 are the applicable rules. Perusal of the record shows that this mandate has been fully complied with. The aforementioned provision i.e. Rule 16.38 has been reproduced hereinabove. Under Rule 16.38(1), the D.I.G, Sh. V.P. Marwah, on 17.12.1974 had passed the following order Ex.DW-3/1 which is herein reproduced as follows:

With reference to an enquiry under P.P.R. 16.38(i) by Sh. N.N. Chopra, DSP/Hdqrs, Central District, Delhi against S.I. Chandan Singh No. D/1002 and Const. Ram Kumar No. 894/C of P.P. Tank Road (P.S. Karol Bagh), some of the allegations against the said police officials have been substantiated.

And whereas the evidence and material available for prosecuting them may not be sufficient to prove their guilt beyond all reasonable doubts as required in the court of law but which, nevertheless, seems sufficient to hold departmental proceedings.

Now, therefore, I, V.P. Marwah, Deputy Inspector General of Police, (Range), Delhi, order under P.P.R. 16.38(ii) that the said police officials be dealt with departmentally.

Sd/-

(V.P. Marwah)

Deputy Inspector General of Police: (Range):

Delhi: (Sharma)

No. 2740 vig./MIS/74/ dated Delhi the, 17.12.74.

Copy forwarded to:

1. Superintendent of Police, Central Distt. Delhi with reference to his memo No. 19637/HAP(C) dated 2.12.74, The P.E. file containing 54 pages is returned herewith.

2. District Magistrate, Delhi for information with reference to

S.P./Central end st. No. 19638/HAP(C) dated 2.12.1974.

3. A.I.G. (I)(through CA/CPO) for information.

17. Perusal of the aforementioned orders show that the Superintendent of Police and then the D.I.G. were well within their discretionary power to formulate an opinion that the material on record may not be sufficient to prove the guilt of the appellant beyond all reasonable doubt as required in a court of law but which, nevertheless, was sufficient to hold a departmental enquiry which was accordingly ordered; he was ordered to be dealt with departmentally. Judgments of Ramesh Kumari and Satish Kumar Goel (supra) have no application. Perusal of Ex.D-3 shows that a copy of this order had been forwarded to the A.D.M/Central, Delhi for information, along with a copy of complaint which is evident from the endorsement at serial No. 2 of Ex.D-3. Ex.DW-3/1 shows that at serial No. 2 a copy of this had been endorsed to District Magistrate for information with respect to the S.P./Central end st. No. 19638/HAP(C) dated 2.12.1974.

18. This documentary evidence clearly shows that copies of these orders had been sent to the Additional District Magistrate and to the District Magistrate who had been duly informed. As such; the necessary requirement of Rule 16.38(1)(b) had been followed.

19. The vehement argument of the learned Counsel for the appellant is that DW-3 who had proved this document has negated this contention. Attention has been drawn to his cross-examination wherein he had inter alia stated as follows:

My file which have brought does not contain any reference from S.P. Central to D.M.

20. This submission of the learned Counsel for the appellant is devoid of any merit. The testimony of the witnesses has to be read as a whole and no one line or sentence can be extracted and detached from the rest of its version to suit or non-suit one party. In his examination-in-chief, DW 3 had brought the official record wherein he had categorically stated that the S.P (Central) had recommended to the D.I.G. for grant of permission under P.P.R. 16.38 to proceed departmentally against the appellant; the said permission is exhibit as Ex.DW-3/1. Ex.DW-3/1 been proved in this version; at serial No. 2, this document clearly reflects that a copy of this order had been sent to the District Magistrate for information with reference to SP/Central endorsement No. 19638/HAP(C)dated 2.12.1974. Order of SP dated 2.12.1974 has been proved as Ex.D-3. Even assuming that the copy of the letter sent to the District Magistrate has not been separately proved, it does not destroy the veracity or the

authenticity of Ex.D-3 and Ex.DW-3/1 which clearly state that the copy of these orders had been sent to the Additional District Magistrate and to the District Magistrate with reference to the SP's endorsement which was dated 2.12.1974. This has also been clarified in the version of the DW 3 who had stated that the SP Central had recommended to the D.I.G. for grant of permission under Rule 16.38 of the P.P.R. to proceed departmentally against the appellant. The procedural requirements as mandated under Rule 16.38 had been strictly and fully adhered to. There is no force in this submission of the learned Counsel for the appellant.

21. No other separate argument has been addressed on the principles of natural justice.

22. Out of the substantial questions of law formulated on 24.05.1992, question No. 1 and question No. 2 are not pressed. Question No. 3 and question No. 4 have been answered as supra.

23. There is no merit in the appeal. It is dismissed.