

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.M. No.9018 of 2015 in/and
C.W.P. No.8424 of 2015
Date of Decision : 03.08.2015**

Ex. ASI Ravinder Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Vinod S. Bhardwaj, Advocate
for the applicant-petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

C.M. No.9018 of 2015

For the reasons recorded, the application is allowed subject to all just exceptions. Documents (Annexures P-12 to P-17) are taken on record.

C.W.P. No.8424 of 2015

By this petition the petitioner has challenged the dismissal order passed against him.

The facts which have emerged are that on 04.09.2013 one girl Meenakshi of Village Bapoli, District Panipat left her house alongwith her

paramour one Annu. On 05.09.2013 she made a complaint to the Superintendent of Police, Panipat about the fact that since she wanted to marry Annu she apprehended danger from her parents. Thereafter it is stated that she went home to her parents and the petitioner had been found to be involved because he recorded the DDR whereby she stated that she wanted to live with her parents. Thereafter on 23.09.2013 it had been reported that she had been killed and also already cremated. On 23.09.2013 the husband Annu appeared before the Duty Magistrate, Panipat and made a statement under Section 164 Cr.P.C. as per which he stated that he and Meenakshi had got married on 04.09.2013 and due to fear of her parents he left her in the custody of his friend. However, her parents and brother along with the petitioner traced his whereabouts, picked him up and threatened him to disclose the whereabouts of Meenakshi. Under their threat he got Meenakshi recovered and because of the fear he came back to village as instructed and did not mention about the facts to anybody. The petitioner was arrested in the resulting FIR and by the impugned order dated 27.09.2013 (Annexure P-4) was dismissed without holding an inquiry while he was still in custody. In Annexure P-4 the disciplinary authority recorded the fact that the petitioner was involved in a very heinous crime and further that it had come to the notice that even while in jail he had been terrorizing witnesses by threatening that once he was out of jail he would settle his scores with them. It may be mentioned here that the dismissal order of the petitioner has been upheld not only in appeal but his revision/mercy petition has also been rejected by the Director General of Police, Haryana. The relevant portion of the dismissal order is reproduced herein below:-

“The following grounds are sufficient to dismiss him from service under 311 (2) (b) of Constitution of India :-

- i) The victim girl was murdered and the ashes were washed away in Yamuna by the time the information reached the Police Station. This shows that already the crime has been committed with detailed planning to destroy all the evidence.*
- ii) There is a lot of resentment in the village regarding police station in this matter and no one is coming forward to help in the investigation and enquiry.*
- iii) The delinquent official has already been arrested in case FIR No.101 dated 23.09.2013 u/s 302/201/34/120B IPC PS Bapoli as one of the accused and presently he is under judicial custody. So it is not possible to hold a departmental enquiry against him.*
- iv) The witnesses have already received threats from this ASI, that once he comes out of jail, he will still be a police official and will take his revenge. A DDR No.39 dated 26.09.2013 of PS Safidon district Jind has already been recorded to this effect.*
- v) Terrorizing and intimidating the witnesses and complainant not to come forward to depose against the delinquent in the departmental enquiries has now become common tactic adopted by the involved police officials. The person in this case is in a position of authority being a police official. Hence no witness will come forward to depose against him in this enquiry.*
- vi) Moreover, “Honour Killing” is the rarest of the rare crimes and deserves no leniency or sympathy.*

The involvement of the delinquent in such a shameful criminal activity has eroded the faith of common people in

Police force and his continuance in the force is likely to cause further irreparable loss to the functioning and credibility of Police. ASI Ravinder Kumar has acted in a manner highly unbecoming of a police official.

After such act of serious misconduct, if he is allowed to continue in the Police force, it would be detrimental to public interest. Besides it also calls for great courage to depose against such a desperate person and the task becomes more acute and difficult where the delinquent is a police official who may use his position to influence their statements/deposition. It would, indeed, be too much to expect from such helpless victim to show requisite resolve throughout the departmental proceedings.....”

The first argument raised by learned counsel for the petitioner is that the respondents erred in dispensing with the inquiry. The second argument is that in this scenario the petitioner having been acquitted, no action could have been taken against him, and the third argument is that the Superintendent of Police was not competent to dismiss the petitioner.

Taking the third argument first, learned counsel has fairly accepted that the petitioner was an Assistant Sub-Inspector of Police and as per rules the Superintendent of Police is the disciplinary authority in the case of ASI. In the circumstances the argument, that dehors this statutory provision, since the petitioner was promoted under the order of the Inspector General of Police only he would be the disciplinary authority, cannot be accepted. No doubt it has been held by Court that where a rule is silent the appointing authority is the disciplinary authority, but this cannot be taken as an inflexible principle of law, more so when there are rules to the contrary.

As regards the first and the second argument, they are both intertwined. The issue before this Court is whether in the circumstances of the case it was justified in dispensing with the inquiry and straightway dismissing the petitioner. While discussing this issue, the Hon'ble Supreme Court in the case of ***Southern Railway Officers Assn. And another vs. Union of India (UOI) and others***, reported as ***AIR 2010 SC 1241***, has observed as under:-

“The question came up for consideration before a Bench of this Court in Union of India and Anr. v. Tulsiram Patel, AIR 1985 SC 1416, wherein this Court opined that the reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. The concerned authority is generally on the spot and knows what has been happening. It was observed:

It is because the disciplinary authority is the best judge of this that Clause (3) of Article [311](#) makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article [311\(3\)](#) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.”

In my opinion, the key determinants in this case are, firstly the statement recorded of aforesaid Annu under Section 164 Cr.P.C. where he clearly mentioned that he was apprehended by the petitioner along with

police and brother of Meenakshi and forced to disclose her whereabouts and then threatened with death. This coupled with the information available with the Superintendent of Police that the petitioner was threatening witnesses from jail, to my mind, constituted sufficient grounds for taking action against the petitioner. The counter-story being brought forward now that after having made a complaint to the Superintendent of Police and after having got married to Annu, Meenakshi voluntarily went back to her parent's house and expressed the desire to live with them may have carried some weight if she was not killed promptly. As matters stand the original apprehension shown by Meenakshi that she would meet an unnatural death if she persisted in her relationship with Annu unfortunately came true. The fact that the petitioner was acquitted because the main protagonist Annu resiled from his statement under Section 164 Cr.P.C. or that the Magistrate who recorded the statement did not appear before the Court would not in my opinion wipe out the statement. A perusal of the trial Court judgment reveals that before the Court Annu stated that the statement before the Magistrate had been recorded under the pressure of the police. There is no allegation as to who was the police officer so inimically deposed towards the petitioner that he would force Annu to have got recorded a false statement and why this fact was not noticed by the Magistrate before whom the statement was recorded. In view of the facts of the present case, I have no hesitation in coming to the conclusion that there is a reasonable chance that Annu resiled only because of the threats which were noticed by the Superintendent of Police in the impugned order.

As regards the second argument also, it would be seen that the

judgment in Southern Railway's case (supra) would be closest case on facts because there also the employee was first dismissed (under the proviso) without holding an inquiry but was later on acquitted by the Criminal Court.

The Hon'ble Supreme Court held as under:-

“33. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge. In Sahadeo Singh v. Union of India: (2003) 9 SCC 75, this Court held:

7. Learned Counsel for the appellants, as stated above, strongly relied upon the judgment of this Court in the case of Singasan Rabi Das. A perusal of this case shows that the observations of this Court in the said case do not apply to the facts of the present case. In that case, the Railways gave an excuse that it is not feasible or desirable to procure the witnesses because they were likely to suffer personal humiliation and may become the targets of acts of violence. This opinion expressed in the said case was held to be not justified as could be seen from the said judgment because of lack of material produced by the Railways, hence, this Court proceeded on the basis that on facts of that case, the Railways were only trying to protect the witnesses and in fact there was no reasonable apprehension that the witnesses will not appear before the inquiry officer. That is not the case in these appeals, as noticed by us hereinabove. The three preliminary enquiries made on the spot, clearly established the fact that though people have witnessed

the theft of rice bags in which incident these appellants are involved, they are not willing to come forward because they apprehend danger to their lives. The apprehension of danger to life in this appeal is not that of the inquiry officer but is that of the witnesses themselves. therefore, we do not think the appellants can take advantage of the observations of this Court in the case of Singasan Rabi Das.

34. This Court upon perusal of the entire record satisfied itself that the same was sufficient to dispense with the enquiry.”

The argument that the petitioner was dismissed within 3 days of his arrest and that showed the bias against him can be turned on its head. This can also show the extreme revulsion and the need for remedial action where a police officer is threatening witnesses even while in jail. The fact that a Criminal Court has the luxury of completely blocking out of its consideration the fact that a young girl has died is a necessary safeguard for inflicting punishment under the IPC but the disciplinary authority is not bound to treat the petitioner as an accused in a criminal case and is therefore not hamstrung by the strict parameters of having to establish the involvement of the petitioner beyond any reasonable doubt.

Consequently, the petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

AUGUST 03, 2015

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**(AJAY TEWARI)
JUDGE**