

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

Civil Writ Petition No.6154 of 1995

Date of decision: 14.9.2016

Hari Ram

... Petitioner

Versus

DGP, Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jagbir Malik, Advocate,
for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana,

RAJIV NARAIN RAINA, J. (Oral)

This petition has been filed for expunging adverse remarks recorded in the ACR for the period from 1.7.1991 to 31.3.1992 recorded by the Superintendent of Police, Sonapat. Against the adverse remarks, the petitioner's representation was rejected in 1993 by the competent authority. He filed a second representation which was also rejected on the ground that a second representation was not maintainable. That order was passed by IG of Police, Haryana. Thereafter, he waited for 7 years apparently for weather to change favourably and approached the new IGP with the prayer for expunging the remarks. The request was entertained by a general order and the remarks were expunged by the IGP in May 2000 even when he had no jurisdiction to do so in second appeal. However, the petitioner's euphoria

did not last long. The Director General of Police, Haryana suo motu directed the Inspector General of Police, Rohtak Range, Rohtak to initiate process for review of the illegal orders in exercise of his powers conferred by Rule 16.28 of Punjab Police Rules, 1934 as applicable to Haryana. In this review exercise, the illegal order passed by the earlier IG of Police, Sonapat in May 2000 was invalidated, the result of which is that adverse remarks for the year 1991-92 stand resurrected against the petitioner.

The prayer of Mr. Jagbir Malik for and adjournment is rejected off the reason that the matter being an old one listed for final disposal before all other urgent matters of the day where an adjournment cannot be sought as a matter of right.

Ms. Shruti Jain Goyal learned AAG, Haryana in support of the impugned order relies on the decision of the Supreme Court in Vinod Kumar v. State of Haryana and others; (2013) 16 SCC 293 where the Supreme Court *inter alia* dealt with rule 16.28 in the context of recording of annual confidential reports. The Supreme Court held that a second representation after a lapse of several years is not permissible. In *Vinod Kumar's* case, similar situation had arisen and adverse remarks were expunged *de hors* the rules, precedents and administrative practices in the police department. The second representation made by the petitioner which has led to the passing of the impugned order in May, 2000 was not maintainable. Therefore, it follows that the present writ is not maintainable against the order which sets aside an illegal order.

Ms. Goyal also relies on the decision of the Division Bench of this Court in Satish Kumar v. State of Haryana and others; 2006 (8) SLR 698. In this case, the Court dealt with the case of awarding of punishment

on a policeman for misconduct. The appeal against the order was rejected. The mercy petition to the State was declined. In the circumstances, the second mercy petition filed by Satish Kumar was held not entertainable since any alteration in the previous order would result in restoration of the earlier illegal order.

In view of the legal position on the maintainability of second appeal, no ground is made out to grant relief by way of expunging adverse remarks by setting aside an order which is sound in law.

(RAJIV NARAIN RAINA)
JUDGE

September 14, 2016

Paritosh Kumar

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes