

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

CWP No. 1955 of 2016

Date of decision : 20.09.2018

EHC Dhan Singh and others

..Petitioners

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Manish Soni, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl. A.G. Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioners are seeking quashing of order dated 05.11.2014 (Annexure P-2) passed by respondent No. 2 whereby regular departmental enquiry has been ordered against the petitioner as well as statement of allegations dated 14.11.2014 (P-3) issued to the petitioners by respondent No. 3.

The factual matrix of the present case are that petitioner No. 1 joined Haryana Police as EHC on 15.08.2001, petitioner No. 2 joined as Constable on 31.01.2009 and petitioner no. 3 joined as Constable on 02.08.2007. They were posted in Police Guard, Gurgaon when F.I.R No. 928 dated 03.11.2014 u/s 3/7/13 of Prevention of Corruption Act and 120-B/34 IPC (P-1) was lodged at P.S. Civil Lines, Gurgaon at the instance of complainant Amit of CIA Staff, Gurgaon against the petitioners with the allegations that they were assigned the duty of taking the accused Vijay Bhardwaj to CBI Court Panchkula from Bhondsi Jail, Gurgaon for hearing in case F.I.R No. 117 dated 23.08.2008 under Section 302 IPC and Arms

Act, registered at P.S. Civil Lines, Gurgaon. The allegations against the petitioners in the F.I.R are that they after taking bribe and in collusion with the aforesaid accused, has illegally taken the accused to his house and on receiving secret information, the complainant found the accused Vijay Bhardwaj to be taking rest in the front drawing room of the house whereas the petitioners were taking rest in the back side room of the house of the accused.

Pursuant to registration of the above F.I.R against the petitioners, respondent No. 2 placed the petitioners under suspension, vide communication/order dated 05.11.2014 (P-2). Thereafter, respondent No. 3 issued statement of allegations dated 14.11.2014 (P-3) against the present petitioners along with list of witnesses and documents to prove the charges. The departmental proceedings were then initiated against the present petitioners. The police also submitted the report under Section 173 Cr.P.C against the petitioners and vide order dated 05.01.2016 charges were framed against the petitioners.

Learned counsel for the petitioners has referred to the decision given by the Hon'ble Supreme Court in *Union of India Vs. Ram Kishan*, 1972 SLR 11 and this Court in *State of Haryana Vs. Ex. HC Anant Ram*, 2015 (4) SCT 575, to contend that before initiating a departmental enquiry, sanction of the Magistrate was mandatory under Rule 16.38 of the Punjab Police Rules, 1934 (for short 'Rule 1934').

On the other hand, learned State counsel contends that Rule 16.38 of Rules 1934 will be applicable only if criminal offence has been committed by a police officer in connection with his official relations with the public but such rule has no relevance to the fact of the present case. As

per Rule 16.38, it is not every type of offence which is required to be brought to the notice of District Magistrate.

Learned counsel for the petitioners has further informed the Court that vide judgment dated 16.08.2016, the petitioners have been acquitted from the charges framed against them as the prosecution case became doubtful.

Heard learned counsel for the parties.

The question for consideration before this Court is that whether as per Rule 16.38, before initiating a departmental enquiry, prior sanction of the Magistrate is mandatory.

Reference at the very outset can be made to Rule 16.38 of Rules 1934, which reads as under:-

16.38(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected Magistrate having 1st Class powers.

The above said Rule has come up for consideration before this Court in ***CWP No. 24413-2012, titled as Constable Pale Ram v. State of Haryana and others, decided on 14.12.2012*** wherein the petitioner was seeking quashing of order dated 21.12.2006 vide which the SSP has imposed punishment of stoppage of three annual increments with permanent effect. The appeal as well as revision against the above said order also stands dismissed. This Court dismissed the petition and while referring to Rule 16.38, observed as under:-

“This Rule again would not be applicable to the case in hand for the

reason that the said Rule comes into operation in case the punishing authority i.e. the Superintendent of Police instead of proceeding against the delinquent employee for judicial prosecution decides not to proceed for the same purpose and instead decides to take action departmentally. It is in this situation that the concurrence of the District Magistrate has to be obtained. Present is a case where judicial prosecution had followed the registration of an FIR against the petitioner. Apart from proceeding against the petitioner on the criminal side in the judicial proceedings, the Superintendent of Police has proceeded against him departmentally as well. In such a situation, the concurrence of the District Magistrate is not mandated under this Rule.

The above said judgment makes it abundant clear that once the F.I.R is registered, no prior sanction of the District Magistrate is required before initiating a departmental inquiry. As per Rule 16.38 of Rules 1934, it is only at the stage of the complaint when the sanction of District Magistrate is required.

The judgment in ***Pale Ram's case (supra)*** has also been followed by this Court in a case of ***Ishwar Singh vs. State of Haryana and others, passed in CWP No. 8085-2013, decided on 23.04.2014***

The judgment cited by learned counsel for the petitioner mentioned above will not be applicable to the facts of the present case, as in those cases, F.I.R had not been registered and as per Rule 16.38, it is only at the stage of the complaint when the sanction of District Magistrate is required.

Further acquittal of the present petitioners vide judgment dated 16.08.2016 is based upon the fact that the prosecution has not been able to

prove their case against them and they were acquitted by extending the benefit of doubt.

This Court vide interim order dated 01.02.2016 restrained the respondents from passing final order in departmental proceedings. The petitioners cannot take benefit of the judgment of acquittal, as enquiry proceedings stands completed before the judgment of acquittal and it is only the final order, which has to be passed in departmental proceedings.

In view of the discussion made above, the present writ petition is dismissed being devoid of any merit.

20.09.2018

G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>