

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 9366 of 2019**

- Amar Singh Komre S/o Late Shri Hiralal Komre, Aged About 48 Years R/o Civil Line, Albelapara, Kanker, Police Station City Kotwali, Tahsil And District Kanker Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through Its Secretary, Department Of Home/police, Mahanadi Bhawan, Mantralaya, Police Station and Post Rakhi, Atal Nagar, Raipur, District : Raipur, Chhattisgarh
2. Director General Of Police (D.G.P.) Police Headquarters (PHQ), Near Mahanadi Bhawan, Police Station And Post Rakhi, Atal Nagar, Raipur, District : Raipur, Chhattisgarh
3. Deputy Inspector General Of Police (D.I.G.P.) Office Of Dy. Inspector General Of Police, Kanker Range, District : Kanker, Chhattisgarh
4. Superintendent Of Police (S.P.) Office Of Superintendent Of Police (S.P.), South Bastar, Kanker, District : Kanker, Chhattisgarh

---- Respondents

For Petitioner : Shri Abhishek Pandey, Advocate

For Respondents/ State : Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****18/11/2019**

1. The grievance of the petitioner is that the petitioner was served with a charge sheet dated 01.10.2019. The same has been issued by the Dy. Inspector General of Police, Kanker. It is stated that the said notice/charge sheet issued by the incompetent authority as per the Police Regulations. It is only the Superintendent of Police, who is vested with the power to issue a charge sheet of the like nature.

2. Learned counsel for the petitioner submitted that this Court in the matter of Lallan Singh and ors. Vs. State of C.G. and ors. in WPS No.4209/2015 and Shyam Sundar Patel Vs. State of C.G. and ors. In WPS No.6798/2017 has held that apart from the Superintendent of Police, charge sheet issued by other authority would be bad and contrary to the Police Regulations framed by the State of Chhattisgarh.
3. Learned counsel for the State do not dispute the fact that the similar Writ Petition has been decided by this Court wherein the Authority of issuing charge sheet other than Superintendent of Police has been considered to be without authority.
4. Perused the documents. The documents would show that the charge sheet has been issued by the Dy. Inspector General of Police on 01.10.2019 and not by Superintendent of Police.
5. This Court in the earlier round of litigation, the similar ratio in respect of the case (Supra) has passed the following orders in the matter of Lallan Singh and ors. Vs. State of C.G. and ors. in WPS No.4209/2015 and Shyam Sundar Patel Vs. State of C.G. and ors. In WPS No.6798/2017:-

“4. Learned Counsel for the Petitioners at the outset submitted that service conditions of the Petitioners are governed by the Chhattisgarh Police Regulations. Regulation 228 of the said Regulation very emphatically holds that the officers subordinate to the rank of SP would be charge-sheeted only by the SP and not by any other officer. He further submits that in the instant case since the charge-sheet has been issued by the IGP the same is therefore not sustainable and is in contravention to the Police Regulations and thus prayed for the same to be set aside/quashed.

*5. Learned Counsel for the Petitioners also relied upon a Division Bench decision of the Madhya Pradesh High Court in the case of **Arun Prakash***

Yadav v. State of Madhya Pradesh & Ors., 2013 LawSuit (MP) 2242, wherein the Division Bench has categorically held that for the purpose of deciding competence of an authority to institute disciplinary proceedings/issuance of charge-sheet against an Inspector of Police, the Police Regulations alone would apply to the exclusion of M.P. Civil Service (Classification, Control and Appeal) Rules, 1966. It was held by the said Division Bench that the SP alone is the competent authority to initiate disciplinary proceeding/issuance of charge-sheet for major penalties against an Inspector of Police as per the Regulation 228 of the Police Regulations. Learned Counsel for the Petitioner has further relied upon a subsequent decision of the Madhya Pradesh High Court in the case of **Yogendra Singh Yadav v. State of M.P. & Ors., 2015 (2) MPHT 406**, which again reiterated the decision of the Division Bench in **Arun Prakash Yadav** (supra).

6. Learned Counsel for the State however opposing the petitions referred to the Police Regulation 223 wherein it has been envisaged that the IGP has been empowered to impose punishment upon the officer subordinate to him and that in the process if the IGP himself has issued a charge-sheet the same cannot be said to be bad in law or contrary to the Regulations and thus he prayed for the dismissal of the writ petitions.

7. Having heard the contentions put forth on either side and on perusal of record, admittedly the Petitioners before this Court in the two writ petitions are working as Inspectors/Sub Inspectors in police department. Both the rank of officers are subordinate to the SP in the District. It is also not in dispute that the service conditions of the Petitioners are governed by the Chhattisgarh Police Regulations.

There is also no quarrel insofar as the Regulation 228 of the Chhattisgarh Police Regulation being *pari materia* to the provisions of the Madhya Pradesh Police Regulations, which for ready reference is reproduced herein under:-

“228. D.E. -- When and how to be held. -- In every case of removal, compulsory retirement from service, reduction in rank, grade or pay or withholding of increment for a period in excess of one year a formal proceedings must

be recorded by the Superintendent in the prescribed form, - setting forth].”

8. It would now be relevant to refer to a Division Bench judgment of the Madhya Pradesh High Court in the case of Arun Prakash Yadav (*supra*), relevant paragraphs of which are reproduced herein for ready reference:

“19. A bare reading of Regulation 228 indicates that Superintendent alone has been mentioned as the authority to frame and issue a charge-sheet in respect of major penalty or penalties which have the effect of major penalties. The term “Superintendent” means the Superintendent of Police, which is evident from Regulation 32 which describes the SP as the head of the Police Force of his District. The Police Regulations do not prescribe the competence of any authority to issue a chargesheet in any other provisions except Regulation 228, which solely empowers the SP. This power of issuance of charge-sheet is bestowed upon the SP in regard to all persons holding the rank subordinate to that of the SP. By necessary implication, the provisions of Regulation 228 exclude all authorities, superior or inferior to the SP to issue a charge-sheet to any Police personnel holding the rank subordinate to that of SP. It can, thus, be safely held that for an Inspector of Police, which in rank is subordinate to SP, the sole competent authority to issue charge-sheet is the SP under the Police Regulations, which exclusively govern the field as held *supra*.

20. From the above discussion, it is crystal clear that no other authority except SP is empowered under the Police Regulations to institute disciplinary proceedings/issue charge-sheet to an Inspector of Police.

21. It is now to be seen that in the background of the abovesaid findings of the SP alone being competent to issue charge-sheet to an Inspector, can the DIG/IG or for that matter any Officer superior in rank to the SP, institute disciplinary proceedings/issue charge-sheet to an Inspector of Police.

35. This Bench, thus, answers the refrained question in the following manner:-

(i) An Inspector of Police while assailing the competence of authority to issue major penalty/charge-sheet against him

cannot avail induction into the gazetted cadre constituted under the Gazetted Rules of 2000 merely because of being declared as Gazatted and being upgraded in the scale of pay of Rs.6500-10,500/-, unless the Gazetted Rules of 2000 are amended suitably. (ii) For the purpose of deciding the competence of an authority to institute disciplinary proceedings/issuance of charge-sheet against an Inspector of Police, the M.P. Police Regulations alone would apply to the exclusion of M.P. Civil Service (Classification, Control and Appeal) Rules, 1966.

(iii) As per Regulation 228 of Police Regulations, the Superintendent of Police alone is the competent authority to initiate disciplinary proceedings/issue charge-sheet for major penalties, against an Inspector of Police; and...”

9. The said view of the Division Bench of the Madhya Pradesh High Court further stood reiterated by another Division Bench of the same High Court in the case of **Manoj Verma v. State of M.P., 2014 (3) JLJ 150**, wherein in paragraph 13 while concluding the judgment the Division Bench has held as under:

“13. Having thus perused the order of the writ Court it is amply clear that the grounds which are embarked upon before this court were taken into consideration by the writ Court at earlier point of time and nothing was left to be considered. At the time of consideration of the case of the appellant, the provisions contemplated under the Regulations 213 and 228 of Madhya Pradesh Police Regulations have broadly been considered by the learned writ Court and it was only thereafter concluded that case of the appellant is governed under the M.P. Police Regulations under which the Superintendent of Police alone is the competent authority to initiate disciplinary proceedings/issue charge-sheet for major penalties, against an Inspector of Police. Thus, after taking into consideration the entire matter along with relevant rules, this Court is also with the agreement that the case of appellant is fully covered by the decision rendered in the case of Arun Prakash Yadav (supra) and is of the considered view that the findings given by the learned writ Court are perfectly legal and not suffered from any infirmity or perversity. In other words, the

order passed by the writ court is well merited calling for no interference by this court.”

10. The same view has further been relied upon by the Madhya Pradesh High Court in the case of **Yogendra Singh Yadav (supra)** where in paragraph 9 and 10 it was observed as follows:

“9. Counsel for respondents has referred to the subsequent notification dated 12-7-2013 whereby Regulation 223 has been substituted and following Regulation 223 has been incorporated:-

“223. Powers of the Zonal Inspector General of Police or any Police Officer equivalent to the rank of Inspector General of Police.–

The Zonal Inspector General of Police or any police officer equivalent to the rank of Inspector General of Police to exercise the following powers:-

(a) Power to suspend any officers up to the rank of Inspector pending enquiry into their conduct.

(b) Power to inflict any of the punishments specified in Regulations 216 and 217 on Head Constables and Constables.

(c) Power to inflict on all ranks from Constables to Inspector any of the penalties specified in Regulations 214 and 215.”

Under the above Regulations, the Zonal Inspector General of Police or any police authority equivalent to the rank of Inspector General of Police has been empowered to inflict any of the penalties in Regulations 214 and 215 but since there is no amendment in Regulation 228, therefore, the position about issuance of the charge sheet in terms of the judgment of the Division Bench in the matter of Arun Prakash Yadav (Supra), will not alter even after the said amendment.

10. Thus, I am of the opinion that the impugned charge sheet dated 20-12-13 issued by the Inspector General of Police cannot be sustained in view of the Division Bench judgment in the matter of Arun Prakash Yadav (supra), and is hereby set aside with liberty to the Competent Authority to issue fresh charge sheet.”

11. In view of the three authoritative decisions on the subject which is *pari materia* in the State of Chhattisgarh, this Court has no hesitation in holding that the chargesheet which has been issued by the IGP is without competence and

is beyond his authority and contrary to the Police Regulations framed by the State of Chhattisgarh.

12. For the aforesaid reasons, the charge-sheet as it stands would not be sustainable in the eye of law and the same deserves to be and is accordingly set aside, reserving the right of the Respondents, if they feel so, to initiate fresh proceedings in accordance with the Police Regulations.”

6. Since, there is no dispute about the same that the issuance of the charge sheet is by the Dy. Inspector General of Police, the law laid down by this Court in Supra would be applicable in the instant case. As, the charge sheet has not been issued by the Superintendent of Police, the same deserves to be and is accordingly set aside.
7. However, the right of the respondent would be reserved that if they feel so, they may initiate fresh proceedings in accordance with the Police Regulations.

Sd/-
(Goutam Bhaduri)
Judge