

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.741 OF 2014.

Mr. Prajyot Ramchandra Kandolkar,
aged about 32 years, married,
Indian National, r/o. H.No.105,
Karaswada, Mapusa, Goa.

... Petitioner

V/s.

1. State of Goa, through the
Chief Secretary, having office at
Secretariat, Porvorim, Bardez, Goa.

2. Superintendent of Police (North),
Traffic, having office at Altinho,
Panaji, Goa.

3. Director General of Police,
Office of the Director General
of Police, Police Headquarters,
Panaji-Goa.

... Respondents.

Mr. S. Desai, Advocate for the petitioner.

Mr. D. Shirodkar, Additional Government Advocate for the
respondents.

**Coram:- M. S. SONAK &
PRITHVIRAJ K. CHAVAN, JJ.**

Date:- 4th October, 2019.

ORAL JUDGMENT (Per M. S. Sonak, J)

Heard Mr. S. Desai, learned Counsel for the petitioner and

Mr. D. Shirodkar, learned Addl. Govt. Advocate for the respondent nos.1 to 3.

2. The challenge in this petition is to the order dated 5.8.2015 made by the Superintendent of Police (Traffic) dismissing the petitioner from service by invoking the provisions of Article 311(2) (b) of the Constitution of India read with relevant Service Rules applicable to the petitioner.

3. Mr. Desai, learned Counsel for the petitioner submits that there is absolutely no material on record on the basis of which any subjective satisfaction could be arrived at to hold that it was not reasonably practicable to hold an enquiry into the alleged conduct of the petitioner. He submits that the only two reasons reflected in the impugned order are that the petitioner being member of the police force, will over awe the witnesses and that nobody will dare to depose against the petitioner in the course of regular departmental enquiry. Mr. Desai submits that these could never have been the reason to form an opinion that it was reasonably impracticable to hold an enquiry.

4. Mr. Desai, relying upon *Sandhya Gupta Vs. Director General of Police and State of Goa*¹ submits that the provisions of Article 311(2) (b) of the Constitution of India cannot be invoked against the member of the police force on the basis of some general impression that the member will overawe the witnesses or that no person will dare to depose against such members.

5. Mr. Desai also relied upon the judgment in the case of *Sudesh Kumar Vs State of Haryana and others*,² to submit the mere fact that the complainant who may be the main witness at the departmental proceedings was likely to leave India or was reluctant to name the petitioner, are not good enough grounds to dispense with the enquiry under Article 311(2) of the Constitution of India.

6. Mr. Desai submits that afford of reasonable opportunity under Section 311(2) of the Constitution of India is the rule in such matter and dispensation with the enquiry is only exception. He submits that in the facts of the present case, the exception has been unjustifiably invoked and, therefore, the impugned order is ultra vires

1 Writ Petition No. 531/2007 decided on 18.7.2009

2 (2005) 11 SCC 525

Article 311(2) of the Constitution of India. He submits that the provisions of Article 311(2) (b) cannot be used as against the petitioner only to avoid enquiry and thereby denying the petitioner reasonable opportunity in terms of Article 311(2) of the Constitution.

7. Mr. Desai has placed on record the judgment and order made by the JMFC, Mapusa by which the petitioner was acquitted of the offences punishable under Sections 507, 506(ii) and 384 read with Section 34 of IPC. He points out that the petitioner was also acquitted of the offences punishable under Sections 457, 380 read with Sections 120 B and 34 of IPC. He points out that some of the offences were in fact compounded. He submits that all these orders indicate that the petitioner was innocent throughout and this presumption of innocence, has been strengthened by acquittal. He also refers to certain scathing observations made against the Investigating Officer by JMFC while dealing with petitioner's bail application. For all these reasons, Mr. Desai submits that the impugned order warrants interference and the petitioner is required to be reinstated with all consequential benefits.

8. Mr. Shirodkar, learned Additional Government Advocate submits that material on record is more than sufficient to sustain subjective satisfaction that it was not reasonably practicable to hold an enquiry in the present matter. He submits that cogent reasons have been set out in the impugned order. He submits that scope of judicial review in such matter is extremely limited and even the issue of sufficiency of material may not be gone into in such proceedings. He points out that the scathing observations made by the learned JMFC have already been expunged by this Court in proceedings to which the petitioner was very much a party. He points out that subsequent acquittals are of no avail. He further points out that acquittal orders indicate that the petitioner settled the matter with the complainant and some of the offences were even permitted to be compounded. He submits that all these in fact buttresses the satisfaction recorded in the impugned order that it would not reasonably practicable to hold an enquiry into the conduct of the petitioner.

9. Mr. Shirodkar, relying upon *Union of India and another vs. Tulsiram Patel*³ and *Southern Railway Officers Assn. & Anr. Vs.*

³ (1985) 3 SCC 398

Union of India & ors.⁴ to submit that the scope of judicial review in such matters is quite limited. He submits that applying the restrictive parametres of judicial review in such matters, this petition deserves to be dismissed.

10. The rival contentions now fall for our determination.

11. The impugned order dated 5.8.2014 recites that on 28.2.2014 between 19.03 hours to 20.00 hours, the complainant (Mr. Toraskar) received about four phone calls from the unknown person regarding payment of ransom amount of ₹30,00,000/- (Rupees thirty lakhs only) and later on Rs.1,00,00,000/- (Rupees One Crore Only). Thereupon, the complainant immediately contacted the police authorities. Police, commenced with the investigation and on 29.07.2014, the complainant was informed that mobile number from which the call was made to the complainant has been tracked. On the next day i.e. on 30.7.2014 at about 17.30 hours, the complainant was called at Mapusa police station where two male persons were present in the cabin of Police Insepctor Mapusa. Upon seeing them, the complainant recognized the petitioner who was attached to traffic cell

4 AIR 2010 SC 1241

at Mapusa. At the chamber of Police Insepctor, Mapusa police station, the said two persons i.e the petitioner and Denzil who was also a policeman, confessed that they were together involved in demanding ransom and blackmailing the complainant. In fact, Denzil admitted that he made a phone calls demanding ransom but at the instance of and in the presence of the petitioner.

12. The impugned order further recites that the complainant was requested by Police Insepctor, Mapusa Police Station to lodge a complaint, however, the complainant was reluctant to do so on the ground that the petitioner was his friend. Nevertheless, the complainant appeared at CID Crime Branch, on 1.8.2014 and lodged his complaint. The second accused person including the petitioner were thoroughly interrogated and placed under arrest. They were thereafter remanded to police custody.

13. The impugned order then proceeds to record satisfaction on the part of superintendent of police that it was not reasonably practicable to hold an enquiry against the petitioner for the reason that he being the member of the police force, he will be in a position to

over awe the witnesses and nobody will dare to depose against him in regular departmental enquiry. The impugned order proceeds to recite further that when the Police Inspector of Mapusa police station requested the complainant to lodge his complaint against the petitioner, the complainant was reluctant to do so. The impugned order further states that these circumstances suggest that the complainant was not likely to name the petitioner in the course of regular departmental proceedings since, the petitioner was obviously in a position to exert influence upon him. Cumulatively, for all these reasons, the impugned order states that it would reasonably not be practicable to hold an enquiry and in fact, holding of such enquiry will prove counter productive and may cause irreparable and irreversible damage, destruction of evidence, fear of threat and harassment to the witnesses. The impugned order states that the petitioner, despite being member of police force and in that sense a protector of law, had turned into a criminal and thereby the petitioner has tarnished the image of the police force.

14. The Memo of petition instituted by the petitioner, if perused, then as rightly pointed out by Mr. Shirodkar, the petitioner

apart from simply stating that complaint against him is baseless, has not even bothered to contest the recitals in the impugned order. In particular, there is not even any denial as regards the incident of 30.07.2014 which has been graphically set out in the impugned order. According to us, in the wake of such detailed recitals, it was not sufficient for the petitioner to vaguely allege that the complaint against him is baseless. At this stage, we are really not concerned with the issue as to whether the complaint was right or not. However, we are concerned with the issue as to whether the subjective satisfaction arrived at by the Superintendent of police that it was not reasonably practicable to hold an enquiry warrants interference or not.

15. According to us, the reasons set out in the impugned order are required to be cumulatively considered. In the case of ***Sandhya Gupta*** (supra), the Division Bench of this Court noted that the authority which made the impugned order had not even recorded a satisfaction that it was not reasonably practicable to hold an enquiry in the matter. Dismissal order was based upon some general impression or some omnibus statement that the members of the police force are bound to overawe the witnesses and, therefore, it

may not reasonably practicable to hold an enquiry. It is in these circumstances that termination in case of *Sandhya Gupta* (supra) came to be interfered with.

16. In the present case, from the perusal of the impugned order is quite clear that the same is not based upon any general impression or any omnibus inference as regards the members of police force. The impugned order cites specific instance or other instances in order to support subjective satisfaction that it was not reasonably practicable to hold an enquiry in this matter. These specific instances have not even been denied by the petitioner. Merely saying that the complaint is baseless does not amount to denial of the specific instances referred to in the recitals or of the factum of what transpired on 30.07.2014 in the chamber of PI, Mapusa Police Station. Subjective satisfaction recorded by Superintendent of Police, in the present case is based upon objective material. Such material cannot be said to be either insufficient or irrelevant.

17. Mr. Desai's contention virtually proceeds on the basis that unless it is impossible to hold an enquiry against the officer

concerned, the provisions of Article 311(2)(b) of the Constitution can never be invoked. He also suggests that subsequent events like acquittals in criminal cases are required to be taken into consideration for determining whether there was sufficient material on record before the Superintendent of Police ordered the dismissal of the petitioner by dispensing with formal inquiry, in terms of Section 311(2)(b) of the Constitution.

18. In *Tulsiram Patel* (supra), the Constitution Bench of the Apex Court has made it quite clear that the provisions in Article 311(2)(b) do not contemplate some “*impossibility*” or “*absolute impracticability*” in the matter of holding of enquiry, but what is contemplated is only the absence of “*practicability*” or rather “*reasonable practicability*” in the matter of holding an enquiry. Therefore, such matters cannot be examined on the touchstone of some impossibility or absolute impracticability in holding an enquiry. But such matters will have to be examined to find out whether subjective satisfaction recorded by the Authority on the aspect of “*reasonable practicability*” to hold an enquiry, is well founded or not.

19. In paragraph 130 of *Tulsiram Patel* (supra), this is what the Constitution Bench has observed in the context of expression “*not reasonably practicable*” in Article 311(2)(b) of the Constitution.

*“130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". **Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.....**”*

(Emphasis supplied)

20. In *Tulsiram Patel* (supra), the Hon'ble Apex Court has also discussed the scope of judicial review under Article 226 of the Constitution of India, in matters of this nature. The Hon'ble Apex

Court has held that the Court will examine the charge of malafides, if any, made in the writ petition. In examining the relevancy of the reasons, the Court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the enquiry. If the Court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) of Article 311(2) and would take the case out of the purview of that clause. In considering the relevancy of the reasons given by the disciplinary authority, the Court will not, however, sit in judgment over them like a Court of first appeal. In order to decide whether the reasons are germane to clause (b), the Court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the enquiry should be dispensed with or not in the cool and detached atmosphere of a Court room, removed in time from the situation in question. Further, where two views are possible, the Court will decline to interfere.

21. Similarly, in the case of ***Southern Railway Officers Association*** (supra), the Hon'ble Apex Court has considered several cases under Article 311(2)(b) of the Constitution. In that case, the employees who were terminated from service by resort to provisions in Article 311(2)(b) of the Constitution were alleged to have assaulted one Mr. S. M. Krishnan, Deputy Chief Mechanical Engineer at the Railway Station platform. The allegation was that they abused Mr. Krishnan with filthy language, threatened to kill Mr. Krishnan and all this was very pre-planned because handwritten poster was displayed in the workshop as well as at the railway station. In such circumstances, the Hon'ble Apex Court ruled that it was not reasonably practicable to hold an enquiry and action under Article 311(2)(b) of the Constitution warranted no interference.

22. In ***Southern Railway Officers Association*** (supra), the Hon'ble Apex Court referred to its ruling in ***Satyavir Singh Vs Union of India***⁵, it holds that where the disciplinary authority feels that crucial and material evidence will not be available in an enquiry because the witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be

5 (1985) 4 SCC 252

available, namely, in this case, of policemen, police officers and senior officers, would only be peripheral and cannot relate to all the charges and enquiry may be only a farce. In such a situation, the disciplinary authority would be justified in coming to the conclusion that an enquiry was not reasonably practicable.

23. In *Indian Railway Construction Co. Ltd., Vs Ajay Kumar*⁶, the Hon'ble Apex Court has held that the satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. Where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the Court to substitute its view for that of the disciplinary authority as if the Court is sitting as an appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly taken note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry.

6 (2003) 4 SCC 579

24. At this stage, there is no question of reference to subsequent acquittals. The scope of judicial review as explained by the Constitution Bench of the Apex Court, relates mainly to examining where subjective satisfaction recorded by the Authority in the matter of reasonable practicability of holding an enquiry, was well founded or not. The issue of any subsequent acquittals is therefore, strictly speaking not relevant. In any case, upon perusal of the orders placed by Mr. Desai on record, it is apparent that the acquittals, far from being on merits, are because the petitioner and the complainant were permitted to compound certain offences and further since the complainant refused to cooperate with the prosecution, the Courts were left with no alternative than to acquit the petitioner.

25. ***Southern Railway Officers Association*** (supra), is also an authority in the proposition that mere acquittal in criminal case, makes no dent to the order of dismissal made under Article 311(2)(b). The Hon'ble Apex Court has held that 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. The scope of criminal proceedings and departmental proceedings is quite different

and distinct. In fact, in the present case, if the orders of acquittal are perused, it is clear that the orders are premised upon the circumstance that the complainant refused to cooperate with the prosecution and even turned hostile. The complainant openly stated that he has settled the matter amicably with the Petitioner and on this basis the acquittal came to be recorded and some offences came to be compounded in the sense. Therefore, Mr. Shirodkar is right that these acquittals, though recorded much later date, post facto vindicate the apprehension expressed in the impugned order.

26. The case of *Sudesh Kumar* (supra) is clearly distinguishable because in that case Hon'ble Apex Court found that the reason that the complainant might leave the country and may not return to depose at the departmental proceedings was itself non-existent. The Apex Court noted that the VISA of the complainant had already been extended and, therefore, there was no difficulty in securing the presence of the complainant at the enquiry. Such facts, do not arise in the present case.

27. The contention based upon certain scathing observations

made against the prosecution by the Judicial Magistrate First Class in his order dated 05.08.2014 releasing the petitioner on bail, are of no assistance to the petitioner whatsoever. In the first place, such observations came to be specifically expunged by this Court at the behest of the Investigating officer. Further, we find that even the petitioner was very much party to the proceedings in which scathing observations were expunged. Therefore, it was duty of the petitioner to place subsequent order on record at the stage when the petition was taken up for final hearing. Secondly, such observations, have no bearing on the issue of dispensation or otherwise with the enquiry in terms of Article 311(2)(b) of the Constitution.

28. The scope of interference with the exercise of subjective satisfaction, particularly in such matters, is quite limited. It is not for this court to go into the issue of sufficiency of material. It is not for this Court to examine the material on record, as if, this Court was exercising appellate jurisdiction in the matter. It is not for this Court to substitute its own opinion to the opinion of the superintendent of police. Applying these principles, we are satisfied that no case is made out to warrant any interference with the impugned order.

29. For all the aforesaid reasons and upon cumulative consideration of the material on record as well as the limited scope of judicial review in such matters, we are satisfied that no case is made out to interfere with the impugned order. This petition is therefore required to be dismissed and is hereby dismissed.

30. Rule is discharged. In the facts and circumstances of the present case, however, there shall be no order as to costs.

PRITHVIRAJ K. CHAVAN, J.

M. S. SONAK, J.

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