

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

CRM-M-13023-2019 (O&M)

Date of decision: 25.11.2019

Satyawan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for expunging the observations made by the lower appellate Court regarding the petitioner in para No.16 of the judgment dated 14.01.2019 passed in Criminal Appeal No.272 of 2018 in FIR No.116 dated 01.08.2015 registered under Sections 323, 388, 452, 506 read with Section 34 IPC at Police Station Rajaund, District Kaithal.

Learned counsel for the petitioner has submitted that the lower appellate Court, while passing the aforesaid judgment dated 14.01.2019, has made following observations:

“15. No other point was urged before this Court.

16. In view of the above discussion, there is no merit in the appeal. Hence, the appeal of appellant against the acquittal, is dismissed and the judgment dated 4.9.2018, passed by the Court of Shri Manoj Dahiya, learned Judicial Magistrate First Class, Kaithal, is hereby affirmed. This Court would be failing in the discharge of its duties towards the system of Administration of Justice

if this Court does not record its displeasure against the conduct of the Investigating Officer who caused three individuals to be deprived of their liberty for extraneous considerations while acting as a 'petty tyrant' who placed himself above the law. The unfolding of the sordid saga in this case shows that sheer injustice was meted out to the unfortunate lady named Sunita and her co-accused Balraj and Jagbir by the Investigating Officer. His approach was not an error of judgment but blatantly wrong and fundamentally flawed. This Court in the given facts and circumstances would not be transcending its powers if it directs the police authorities to take into consideration these aspects in future while posting Investigating Officer Assistant Sub-Inspector Satyawar in connection with the affairs where liberty of an individual is involved. It is directed accordingly.

A copy of this judgment be sent to Additional Director General of Police, in charge of Police, Karnal Zone, Karnal."

Learned counsel for the petitioner has argued that while making the aforesaid observations against the petitioner, he was neither given any show cause notice nor was he given any opportunity of hearing.

Learned counsel for the petitioner further submitted that vide order dated 24.11.2015, passed by Superintendent of Police, Kaithal (Annexure P-3), a regular departmental enquiry was ordered against the petitioner, in which he was already exonerated, vide order dated 01.03.2016 (Annexure P-4).

Learned State counsel, on the basis of the affidavit of DSP, Kaithal, has not disputed the fact that a regular departmental enquiry against the petitioner was conducted by DSP (Hq.), Kaithal, in which the allegations

levelled against the petitioner were not proved and, therefore, the departmental proceedings were dropped, vide order dated 01.03.2016 (Annexure P-4).

Learned State counsel has further submitted that neither the State of Haryana has filed any appeal against the judgment dated 04.09.2018 passed by the JMIC, Kaithal nor the present petitioner or the State of Haryana was impleaded as respondents in the appeal filed by Surender Kumar/complainant, in which the aforesaid observations were made by the lower appellate Court against the petitioner.

After hearing learned counsel for the parties, I find merit in the present petition considering the fact that the observations, made by the lower appellate Court in the judgment dated 14.01.2019 against the petitioner, have been made primarily without following proper procedure.

It is well settled proposition of law that if an adverse order is to be passed against a person, either he should be given a show cause notice about the proposed action likely to be taken against him or at least, he should be given an opportunity of hearing.

However, in the present case, the aforesaid observations have been made without issuing any show cause notice to the petitioner or affording him any opportunity of hearing and had it been done, he could have very well explained that he already stood exonerated in the regular departmental enquiry.

In view thereof, the present petition is hereby allowed. Accordingly, the observations made by the lower appellate Court regarding petitioner in para No. 16 of the judgment dated 14.01.2019 passed in

Criminal Appeal No.272 of 2018 in FIR No.116 dated 01.08.2015 registered under Sections 323, 388, 452, 506 read with Section 34 IPC at Police Station Rajaund, District Kaithal, stand expunged.

25.11.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No