

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-17638-2019

Date of Decision: 10.09.2019

Dr. Bhupinderjit Singh

... Petitioner

vs.

State of Punjab and Another

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. K.S.Dadwal, Advocate  
for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

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ARUN MONGA, J.(ORAL)

Grievance of the petitioner is that the charges levelled in the impugned charge-sheet dated 30.05.2019 (Annexure P-3 colly) by no stretch of imagination are covered under Rule 3 (1) (ii) of the Punjab Government Employees (Conduct) Rules, 1966. For ready reference the said rule is reproduced hereinbelow:

*3. General- (1) Every Government employee shall at all time -*

*(i) maintain absolute integrity;*

*(ii) maintain devotion to duty;*

*(iii) do nothing which is unbecoming of a Government employee; and*

*(iv) intimate his latest permanent as well as temporary address to his appointing authority.*

*(2) (i) Every Government employee holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government*

*employee for the time being under his control and authority.*

*(ii) No Government employee shall in the performance of his official duties or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.*

*(iii) the direction of the official superior shall ordinarily be in writing. Oral direction to subordinates shall be avoid , as far as possible, where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter.*

*(iv) A Government employee who has received oral direction from his official superior shall seek confirmation of the same in writing as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing.*

2. In order to ascertain whether the charges levelled against the petitioner are in violation of the Rule, *ibid*, it would be apposite to reproduce the same hereinbelow:

*“1. You were made prosecution witness by the Vigilance Bureau in the case FIR No.09 dated 23.06.2015 under sections 7,1,13(2) of Prevention of Corruption Act, 1988 registered at Police station Vigilance Bureau, Jalandhar against Sh. Pargat Singh, Principal, Technical Training Institute, Mehalpur, District Hoshiarpur but you have denied your earlier statement got recorded to the police, in the Hon'ble Court being a witness.*

*2. Due to denial of your evidence/defence in the Hon'ble Court, rule 3 (1) (ii) of Punjab Government Employees (Conduct Rules), 1966 has been violated.*

3. A perusal of the charges above, reflects that at best the petitioner is alleged to have committed the delinquency of being at variance

with the statement given by him on oath before the Court vis-a-vis his statement recorded by the police under Section 161 of Cr.P.C. Assuming that to be so, Section 162 of Cr.P.C. clearly puts prohibition that a statement made under Section 161 Cr.P.C. cannot be used in any Court proceedings and/or inquiry proceedings and/or departmental proceedings. Section 162 of the Cr.P.C. is reproduced hereinbelow:

*“No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*

*Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872 ); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.*

*(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872 ), or to affect the provisions of section 27 of that Act”*

4. Reliance may be had to a Division Bench Judgment dated 09.12.2013 rendered by Delhi High Court in case titled as **Naresh Kumar vs. State**, reported as 2014 (206) DLT 1. Mr. Kailash Gambhir, J. speaking for Division Bench observed as below:

*“It is a settled legal position that the statement of any witness recorded by the police officer during the course of investigation is not a substantive piece of evidence and the same can be used only for the limited purpose of contradicting prosecution. No sanctimony has been attached to the statement of a witness recorded by the police during the course of investigation as before the police witness is susceptible to all kinds of pulls and pressures to follow a particular line and therefore, ultimately it is deposition of a witness before the court of law which is held to be sanctimonious.”*

5. I am in respectful agreement with the above observation and of the opinion that the case of the petitioner is squarely covered by the same.

6. Having perused the statements made by the petitioner under Section 161 Cr.P.C., contained at Annexure P-1, vis-a-vis his statement before the Court, I am of the view that the argument of the learned State counsel that the petitioner was declared hostile and, therefore, charges have been rightly framed under Rule 3, *ibidi*, is devoid of any merit.

7. Having gone through the statement of the petitioner under oath, contained at Annexure P-2, I am of the opinion that the petitioner has not been declared hostile though his statement may be at variance with what was recorded before the police. Even otherwise, trial against the other accused qua which the petitioner was associated as an official witness in FIR No. 09 dated 23.06.2015 under Sections 7, 13(2) of Prevention of Corruption Act, 1988 is still going on before the competent criminal Court

and the outcome thereof will take its own course.

8. In view of my discussion above and the reasoning contained therein, the impugned charge-sheet dated 30.05.2019 is quashed with all consequential benefits.

10.09.2019  
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(ARUN MONGA)  
JUDGE

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|---------------------------|----------|
| Whether speaking/reasoned | : Yes/No |
| Whether Reportable        | : Yes/No |