

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

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CM Nos.4004-4005-C of 2017 in/and
RSA No.1664 of 2017

Date of Decision: February 11th, 2019

PHC Gursharan Singh

...Appellant

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mandeep Kumar Dhot, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

Prayer in CM No.4004-C of 2017 is for condonation of delay of 183 days in filing the appeal.

Perusal of the application would show that the ground which has been given for the delay in filing the appeal is that the applicant-appellant was not aware of the limitation period for filing the appeal. He came to know about the same in the second week of February 2017 and thereafter he approached the counsel, who proceeded to file the appeal resulting in the delay of 183 days in filing the same.

The explanation as has been given by the applicant-appellant in the application cannot be accepted, especially in the light of the fact that the applicant-appellant is a police official (P Head Constable) and it cannot be accepted of him to be not aware of the period of limitation and in any case, ignorance of law cannot be treated as a ground for not filing the appeal within time. The delay of 183 days in filing the appeal, therefore, has not been explained and this Court does not find any justification for accepting the prayer of the applicant-appellant for condonation of delay.

The application, therefore, deserves dismissal.

At the insistence of the counsel for the appellant, the case has also been considered on merits as it was asserted by the counsel for the appellant that he is raising a basic legal issue by asserting that the provisions of Rule 16.38 of the Punjab Police Rules, 1934, which have been framed in exercise of the powers under the Police Act, 1861 have been violated.

It is the contention of learned counsel for the appellant that as per the allegations and the findings recorded by the Inquiry Officer, which have been accepted by the Punishing Authority, the allegations were that the appellant was handed over the sworn affidavit dated 09.01.2009 from Suwidha Centre, Gurdaspur, of a complainant in FIR No.26 dated 02.03.2007 registered under Sections 363, 366, 120-B IPC at Police Station Dhariwal, stating therein that Surjit Singh and Ranjit Singh had kidnapped her, which was to be delivered in the office of the Advocate General, Punjab, along with the reply to Criminal Miscellaneous No.23637-M of 2009 filed by accused Ranjit Singh in the Punjab and Haryana High Court but he removed the affidavit of Manpreet Kaur prior to delivering the same in the office of the Advocate General, Punjab. ASI Baljit Singh, the Incharge, Police Post Kunjar, enquired from appellant-plaintiff with regard to the delivery of the affidavit of Manpreet Kaur, to which he answered in the affirmative. However, on the next date of hearing, Head Constable Gurmukh Singh, No.209, was deputed to Chandigarh, when it transpired that the office of the Advocate General, Punjab, did not find the affidavit of Manpreet Kaur in the envelope. The matter was further inquired and it came out that the appellant had intentionally, with a motive to help the accused, taken out the affidavit. Upon the charge-sheet having been issued, the

the Rules was followed, which has not been challenged by the counsel for the appellant in the present appeal but he has primarily pressed upon non-compliance of the mandatory provisions of Rule 16.38 of the 1934 Rules, according to which approval of the District Magistrate prior to proceeding against the police official departmentally has not been obtained, vitiating the departmental inquiry and consequently the subsequent proceedings. Concurrence of the District Magistrate being mandatory amounted to non-compliance of the statutory rules and, thus, the order passed by the Superintendent of Police imposing punishment of stoppage of one increment with cumulative effect vide order dated 31.12.2010 and the dismissal of the appellant by the Deputy Inspector General of Police, Border Range, Amritsar, on 01.02.2013, are illegal, erroneous and violative of the statutory rules and, thus, deserve to be set aside.

Learned counsel for the appellant, in support of this contention, has placed reliance upon the judgment of this Court in *RSA No.1369 of 1987* titled as *Haryana State Versus Harbans Lal* decided on 27.11.2009, where this Court has held relying upon the judgment of the Supreme Court in *State of Punjab Versus Raj Kumar AIR 1988 SC 805* that Rule 16.38 of the Punjab Police Rules, 1934 are mandatory and non-compliance thereof, vitiates the inquiry proceedings and consequently the order of punishment.

I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments as also the judgments relied upon by him, referred to above.

Facts are not in dispute and the only question which has been

the Punjab Police Rules has not been complied with, which is mandatory in nature. In the light of the judgment of the Supreme Court in the case of Raj Kumar (supra), it cannot be disputed that Rule 16.38 is mandatory, however, the scope and ambit of this Rule has to be looked into for the purpose of its applicability. Rule 16.38 of the Punjab Police Rules, 1934 reads as follows:-

“16.38 (1) Immediate information shall be given to the District Magistrate of any complaint received by the Senior 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 .

(2) When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in rule 16.24 shall be followed, an officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.

(3) Ordinarily a Magistrate before whom a complaint against a police officer is laid proceeds at once to judicial enquiry. He is, however, required to report details of the case to the District Magistrate, who will forward a copy of this report to the Superintendent of Police. The District Magistrate himself will similarly send a report to the Superintendent of Police in case of which he himself takes cognizance.

(4) The Local Government has prescribed the following supplementary procedure to be adopted in the case of complaints against police officers in those districts where abuses of the law with the object of victimizing such officers or hampering investigation is rife. The District Magistrate

will order that all petitions against police officers shall be presented to him personally. If he considers that these petitions are of a frivolous or fictitious nature, it is within his discretion to take no action on them. When he considers an enquiry to be necessary he will use his discretion whether to send the papers to the Superintendent of Police or to a Magistrate for judicial enquiry.”

Earlier this Court had an occasion to deal with this aspect in CWP No.10062 of 2011 titled as *Balbir Singh s/o Ram Kishan Versus State of Haryana and others* decided on 03.11.2012, where it has been held as follows:-

Rule 16.38 of the 1934 Rules reads as follows:-

“Rule 16.38 Criminal offences by police officers and strictures by courts-procedure regarding:

(1) Where a preliminary enquiry or investigation into a complaint alleging the commission by an enrolled police officer of a criminal offence in connection with his official relations with the public, establishes a prima facie case, a judicial prosecution shall normally follow. Where, however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained.”

A perusal of the above Rule would show that where the Superintendent of Police on the basis of the preliminary enquiry or investigation conducted into a complaint prima-facie establishes allegations of commission of a criminal offence in connection with an enrolled police official in relations with the public and if the Superintendent of Police instead of initiating judicial prosecution, which should normally follow, takes a decision and proposes to proceed in the case departmentally, he has to seek the concurrence of the District Magistrate prior to initiating the departmental enquiry. It, therefore, indicates that in case the Superintendent of Police decides not to proceed with the judicial prosecution and instead proceed against the enrolled police officer departmentally, prima-facie commission of a criminal offence in connection with the

official relations with the public should be established. If this is not there, the Superintendent of Police, on its own, can proceed against the enrolled police officer and concurrence of the District Magistrate is not required. Therefore, the applicability of Rule 16.38 of the 1934 Rules would depend from case to case and the facts involved therein, which has to be primarily determined by the Superintendent of Police.

Present is a case where the allegations against the appellant would not fall within the ambit of Rule 16.38 as the misconduct would not amount to commission of a criminal offence by him in connection with his official relations with the public. Thus, the Courts below have rightly held that Rule 16.38 of the Punjab Police Rules, 1934, would not be attracted in the case in hand.

The judgments which have been relied upon by the counsel for the appellant i.e. *RSA No.1369 of 1987* titled as *Haryana State Versus Harbans Lal* decided on 27.11.2009 and *State of Punjab Versus Raj Kumar AIR 1988 SC 805* were not cases, where no criminal offence was found to have been committed by the police official in performing his duties in connection with the official relation with the public. Rather those cases were otherwise and thus, the said judgments would not be applicable to the present case. The appeal, therefore, deserves to be dismissed being devoid of merits.

In view of the above, application for condonation of delay of 183 days in filing the appeal stands dismissed. As a consequence of the dismissal of the application for condonation of delay, the appeal stands dismissed as barred by limitation.

In the light of the dismissal of the appeal,
CM No.4005-C of 2017 stands disposed of as infructuous.

February 11th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No