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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5170/2015 & C.M. APPL. 9370/2015**

SAJJAN SINGH

..... Petitioner

Through: Mr. Ashok Mahajan, Advocate.

versus

COMMISSIONER OF POLICE AND ANR. Respondents

Through: Mrs. Avnish Ahlawat, Standing
counsel with Mr. N. K. Singh and Mr.
Palak Rohmetra, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER
25.11.2019

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1. The Petitioner has challenged order dated 21st October, 2014 passed by the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi in O.A.No.2614/2013. He has further prayed for quashing of the disagreement note dated 7th June, 2012 recorded by the Joint Commissioner of Police, South-Western Range, New Delhi, the order dated 17th December, 2012 passed by the Joint Commissioner of Police, South-Western Range, New Delhi as well as order dated 14th March, 2013 passed by the Commissioner of Police, Delhi.

2. Case of the Petitioner is that he joined Delhi Police as Sub-inspector in 1981 and after promotion now he is holding the post of Inspector. A circular dated 4th October, 2007 was issued regarding registration of FIRs involving

offences related to cheating and forgery. The said circular reads as under:

"It has been observed that cheating/forgery cases are being registered in the Districts with or without the approval of District DCP/Jt. CP. As per practice these cases are to be registered on the recommendation of DCP with the prior approval of Joint C.P. concerned. It is hereby directed that no such case shall be registered in the Police Station without the prior approval. The complaints for registration of such cases should be scrutinized properly and then sent to this office with the recommendation of District DCP. Similarly, before making arrest in cases registered u/s 156 (3) Cr.P.C., approval on guard file etc. should also be obtained."

3. The Petitioner was posted as SHO, Police Station Ranholla, in December, 2010. On 16th December, 2010, a PCR call vide DD No. 20A was received that a quarrel was going on at B-5, Vikas Nagar, Delhi. SI Ombir Singh was deputed to the spot who found one Mr. Sadiq and one Sh. Indresh present at the spot and both were claiming being owners of the said plot measuring 50 sq. yds. Both the parties were directed to stay away from the spot till completion of inquiry and they were asked to produce their respective documents of ownership. Thereafter Mr. Sadiq produced photocopies of his documents showing that his wife Saira Bano had purchased the said plot on 20th December, 1993 from Jalaldin, who in turn had bought this plot from Sh. Anil Kumar. On the other hand, Sh. Indresh produced photocopies of chain of documents showing his ownership. As per documents of Sh. Indresh, he had bought the plot from Sh. Manoj Kumar, who in turn had bought the plot from Sh. Anil Kumar.

4. During investigation, statement of Jalaldin was recorded, who confirmed that he had sold the plot to Saira Bano but as per him the documents of

ownership of transaction between him and Anil Kumar had been misplaced by his wife. Statement of Anil Kumar was also recorded who stated that he had sold the plot to Jalaldin. Anil Kumar further denied selling the plot to Manoj Kumar. Mr. Indresh was asked to produce Mukesh Kumar, who had witnessed the said transaction of sale of plot but he failed to produce him. Again, on 1st March, 2011 another PCR vide DD No. 45B was received that a quarrel was going on at B-14/5, Vikas Nagar and illegal possession of the plot was being taken. This DD entry was marked to SI Amit Dutt who found that both Sadiq and Indresh were present and both were claiming ownership of the plot measuring 50 sq. yds. Both were asked to produce original documents and maintain peace till completion of enquiry. Thereafter Mr. Sadiq produced original documents but no original documents were produced by Mr. Indresh. On 6th March, 2011, Petitioner submitted report regarding dispute to ACP, Nangloi. On the same date, Mr. Indresh also filed a complaint before Commissioner of Police stating therein that the police personnel were harassing him.

5. On 7th March, 2011, Petitioner alongwith ASI Jai Singh went to office of Registrar at Kashmiri Gate to verify the documents of Will executed by Jalaldin in favour of Smt. Saira Bano. The Will was verified but no other document was found with the said Will. Some attorneys and stamp vendors were consulted regarding documents of the plot submitted by Indresh. Certain discrepancies were found in the documents involving transaction between Anil Kumar and Mukesh Kumar like no such documents are prepared on stamp paper of Rs.5/-; letters of the date on stamp paper were not uniform in size; there are no stamp on most of the documents; the GPA

stamp looks to be fabricated and back side of the stamp paper was photocopied twice. ASI Jai Singh was sent to Sham Nath Marg for verification of the stamp papers used for the transaction but the same could not be verified as the record was prior to 1998 had already been destroyed. So, the documents submitted by Indresh were not found to be genuine. The interim report dated 8th March, 2011 was sent to ACP, Nangloi to be forwarded to DCP for approval. On 25th April, 2011, Petitioner sought permission of ACP, Nangloi to register a case under Sections 420/467/468/471 IPC against Indresh. The ACP directed to trace the notary and documents of Indresh be verified from the Court; Smt. Krishna Devi first owner of the land be examined, witness Bagho in the documents of Saira Bano be traced. The documents of transaction between Amit and Jalaldin be obtained from the complainant and witness Chander Shekhar be examined.

6. On 11th May, 2011, the Petitioner submitted his interim report. As per the circular dated 4th October, 2007, the FIR for cheating/forgery was to be registered after the approval of DCP but no approval was forthcoming from the concerned DCP in writing. On 2nd June, 2011 on verbal instructions of DCP, FIR was registered against Indresh at Police Station Ranholla. Accused Indresh was summoned to police station on 15th June, 2011 and as per the directions of the ACP, who was present in the police station, Indresh was allowed to go after giving him a notice under Sections 160 and 91 of the Cr.P.C. and he was asked to produce the original documents.

7. It has been further mentioned that Joint Commissioner of Police, South-

Western Range vide order dated 30th September, 2011 initiated departmental inquiry against the Petitioner. The said inquiry was entrusted to one Sh. Shibesh Singh, Additional Deputy Commissioner of Police, South West District, New Delhi. The summary of the allegations as served against the Petitioner is reproduced as under:

"It is alleged against Inspector Sajjan Singh, No. D-I/843 (PIS No.16810061) that while posted as SHO Ranholla West District on 16.12.10, complainant HC Sadiq made a PGR call that alleged person Sh. Indresh Chaudhary and his associates are trying to illegally occupy his plot measuring 50 sq. yards vide Khasra No.38/4/1 situated in the area of village Hastal, Vikas Nagar, Uttam Nagar, Delhi owned by his wife Smt. Sayra Bano. The PGR call was attended to by the Emergency Officer SI Omvir Singh of P.S. Ranholla and the staff of PGR Vari-62 who on reaching the spot and from local enquiry found that the plot was owned by HG Sadiq but alleged person Indresh Chaudhary was getting the plot dug to construct a wall on the front/open side of the plot which he was claiming to be his. In view of the dispute, Emergency Officer got the work stopped and asked the complainant and Indresh Chaudhary to come to the Police Station with their property documents to prove their ownership. But Indresh Chaudhary returned to the plot later and occupied it by constructing a wall and installing a gate with the lock on it despite instructions not to do so by the local police. The complainant HG/ Sadiq produced his original documents of the plot before you and the Emergency Officer SI Ombir Singh while Indresh Chaudhary produced only the photocopy of documents. The Emergency Officer and the beat staff informed you that Indresh Chaudhary has illegally occupied the plot in question without proving his ownership. On the basis of local enquiry, original documents provided and the intimation provided by the Beat staff and Emergency Officer, the alleged person Indresh Chaudhary had prima facie committed an offence of trespass but you failed to take any legal action against him on the day of incident and thus helped the aggressor Indresh Chaudhary to illegally occupy the complainant's plot. A

case vide FIR No. 103/11 dated 2.6.11 u/s 420/467/468/471/448 IPC P.S. Ranholla was however registered against him only after a lapse of more than 167 days after detailed verification of documents which should have been done during investigation after registration of the case soon after the incident. It is further alleged that the accused was apprehended on 15.6.11 but was again let off after serving a Notice u/s 160/91 Cr.P.C. directing him to produce the documents by 22.6.11 with the intent to help him as the accused had never produced his original documents during enquiry either, thus, the accused took benefit and filed an anticipatory bail in the court instead of supplying of documents asked for and the court dismissed the bail application.

This is gross misconduct, negligence, carelessness and dereliction in the discharge of official duty on the part of Inspector Sajjan Singh, No. D-I/843 (PIS No. 16810061) the then SHO/Ranholla for which he is liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

8. Eleven prosecution witnesses were examined in this inquiry. After examination of prosecution witness the Inquiry Officer framed charges which were put before the Disciplinary Authority. The Disciplinary Authority approved the charge framed by the Inquiry Officer on 10th April, 2012. The following charges were framed against the Petitioner:

"I, Shibesh Singh, Addl. DCP-II/SWD, E.O. of the DE hereby charge you Inspector Sajjan Singh, No. D-I/843 (PIS No. 16810061) that while posted as SHO Ranholla West District on 16.12.10 complainant HC Sadiq made a PGR call that alleged person Sh. Indresh Chaudhary and his associates are trying to illegally occupy his plot measuring 50 sq. yds. vide Khasra No.38/4/1 situated in the area of village Hastal, Vikas Nagar, Uttam Nagar, Delhi owned by his wife Smt. Sayra Bano. The PGR call was attended to by the Emergency Officer SI Ombir Singh of P.S. Ranholla and the staff of PGR Van-62 who on

reaching the spot and from local enquiry found that the plot was owned by HG Sadiq but alleged person Indresh Chaudhary was getting the plot dug to construct a wall on the front/open side of the plot which he was claiming to be his. In view of the dispute, the Emergency Officer got the work stopped and asked the complainant and Indresh Chaudhary to come to the Police Station with their property documents to prove their ownership. But Indresh Chaudhary returned to the plot later and occupied it by constructing a wall and installing a gate with the lock on it despite instructions not to do so by the local police. The complainant HC Sadiq produced his original document of the plot before you and the Emergency Officer SI Ombir Singh while Indresh Chaudhary produced only the photocopy of documents. The Emergency Officer and the beat staff informed you that Indresh Chaudhary has illegally occupied the plot in question without proving his ownership.

On the basis of local enquiry, original documents provided and the intimation provided by the Beat Staff and Emergency Officer the alleged person Indresh Chaudhary had prima facie committed an offence of trespass but you failed to take any legal action against him on the day of incident and thus helped the aggressor Indresh Chaudhary to illegally occupy the complainants plot, a case vide FIR No.103/11 dated 2.6.11 u/s 420/467/468/471/448 IPC P.S. Ranholla was however registered against him only after a lapse of more than 167 days after detailed verification of documents which should have been done during investigation after registration of the case soon after the incident. It is further alleged that the accused was apprehended on 15.6.11 but was again let off after serving a notice u/s 160/91 Cr.P.C. directing him to produce the documents by 22.6.11 with the intent to help him as the accused had never produced his original documents during enquiry either, thus the accused took benefit and filed an anticipatory bail in the court instead of supplying the documents asked for and the Court dismissed the bail application. This is gross misconduct, negligence, carelessness and dereliction in the discharge of official duty on the part of you Inspector Sajjan

Singh, No. D- 1/843 (PIS No. 16810061) for which you are liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

9. The Petitioner pleaded not guilty to the charges. He was asked to produce witnesses in his defence. The Petitioner submitted his written defence statement on 23rd April, 2012. The Inquiry Officer in his final report found the charge against the Petitioner as not proved. Relevant portion of the inquiry report is as under:

"From the deposition of PWs and evaluation of relied upon 85 other documents brought on DE file, it is clear that PW-3 did not submit chain documents of the plot till 1.3.2011 and the documents may have been submitted thereafter during the enquiries conducted by PW-7, and as such delay in registration of case against the accused cannot be attributed to the delinquent Inspector. It is also established that none of material witnesses have deposed anything adverse against the delinquent Inspector except PW-3 the complainant himself, that too general in nature. This case was always in the knowledge of ACP who also reportedly directed to defer the arrest of accused till to production of original documents of plot in question as is evident from DD N0.76B dated 15.6.2011 which is submitted by the delinquent Inspector with his defense statement. There is force in the contentions raised by the delinquent Inspector in his defense statement.

CONCLUSION

From the statements of prosecution witnesses, relied upon documents as well as other relevant documents brought on DK file, the charge against Inspector Sajjan Singh, No. D-I/843 is not substantiated."

10. The disciplinary authority did not agree with the finding of the enquiry officer and recorded the disagreement note dated 7th June, 2012. The Petitioner submitted his reply to the disagreement note on 22nd June, 2012.

The disciplinary authority vide order dated 17th December, 2012 ordered that one year's approved service of the Petitioner be forfeited permanently entailing reduction in his pay with immediate effect. Petitioner submitted an appeal to the Commissioner of Police on 15th January, 2013, which was dismissed on 14th March, 2013.

11. Under these circumstances, O. A. No. 2614/2013 was filed before the CAT, New Delhi. The said OA was dismissed on 21st October, 2014. Hence, the present petition has been filed on the grounds that CAT has erred in dismissing the O.A. of the Petitioner; CAT failed to appreciate that inquiry officer had exonerated the Petitioner from the charges framed against him; CAT failed to appreciate that reply of the Petitioner to disagreement note was not properly considered by the disciplinary authority; the disciplinary authority ought to have sent back the matter to Inquiry Officer for recording further evidence in view of Rule 16 (x) of the Delhi Police (Punishment and Appeal) Rules, 1980; the CAT failed to appreciate that the Appellate Authority did not assign any reason for dismissing the appeal of the Petitioner; The CAT failed to appreciate that the charge against the Petitioner was in two parts i.e. delay of 167 days in registration of FIR against Indresh and the Petitioner on 15th June, 2011 deferred the arrest of Indresh when he was summoned to police station but there was no material to support the said charges in view of the circular dated 4th October, 2007. It was further the case of the Petitioner that CAT failed to appreciate the evidence recorded during inquiry and the order of CAT is based upon conjuncture and surmises. In the above circumstances it has been prayed to quash the order of the CAT dated 21st October, 2014 and grant consequential

reliefs.

12. Record of the CAT has been filed. We have heard Mr. Ashok Mahajan, learned counsel for the Petitioner and Mrs. Avnish Ahlawat, learned counsel for the Respondents.

13. Petitioner and Respondents both have filed their written synopsis. We have gone through the said synopsis.

14. In our considered view, there is no dispute regarding the circular issued by the Joint Commissioner dated 4th October, 2007 regarding the procedure to be followed for registration of FIRs involving offences relating to cheating and forgery. It is also admitted case that two different persons were claiming ownership rights regarding the property in dispute on the basis of the alleged documents in their possession. The contention of the Petitioner is that when the first PCR call was received on 16th December, 2012 and SI Ombir Singh was sent to spot and he found Mr. Sadiq and Sh. Indresh present at the spot then both parties were asked to produce their respective documents of ownership and they were directed to stay away from the spot till completion of inquiry. Thereafter, there are two versions of the events. As per the Petitioner Mr. Sadiq as well as Sh. Indresh produced photocopies of the documents and no original documents were produced by them. As per the disciplinary authority the original documents were produced by Sadiq on the said date. PW-8 SI Ombir Singh, whose statement was recorded during inquiry against the present Petitioner, had stated as under:

“PW-8: SI Ombir Singh No.D-4490 P.S. Ranholla

On 16.12.2010, I was performing emergency duty in P.S. Ranholla, DD No.20A dated 16.12.2010 P.S. Ranholla was handed over to me regarding a quarrel at B-14/5 Vikas Nagar, Uttam Nagar, Delhi. I reached at the spot and did not find any quarrel. One Indresh Chaudhary was carrying out construction work on the plot. I got stopped the construction work being carried out by Indresh Chaudhary, I contacted the PGR caller on mobile phone. I directed Indresh Chaudhary and Sadiq to come to the Police Station and produce the original documents. Both of them were told to produce the documents later on but none of them produced original documents to me. I recorded DD N0.45-B dated 16.12.2010 Ex.PW-8/B. The investigation of case FIR No.103/11 dated 2.6.11 u/s 420/467/468/471/448 IPC P.S. Ranholla was handed over to me. On 15.6.11 I issued notice u/s 160 85 91 Cr.P.C. to Indresh Chaudhary to produce the original documents of the plot in question who told me that the original documents were with his advocate who was out of station. Indresh Chaudhary assured me to produce the original documents on 22.6.2011. On 15.6.2011, Sh. Sandeep Bayala, ACP Nangloi was present in the Police Station Ranholla in the office of SHO, Ranholla. The matter regarding the arrest of Indresh Chaudhary in the case was discussed by the SHO with ACP in his presence. ACP Nangloi directed the SHO that arrest of Indresh Chaudhary be affected only after production of original documents of the plot by him. Thereafter I handed over the investigation to SI Amit Dutt."

15. The findings recorded by the Inquiry Officer also referred to the statement of complainant HC Sadiq Mohd, examined as PW-3 and who has stated as under:

PW-3: HC SADIQ MOHD. NO.1240/COMN

He stated that he had purchased a plot measuring 50 yards at Vikas Nagar, Delhi, from one Jalalddin s/o Raildin r/o R.K. Sweets Shop No. 123, Gole Market, Delhi for Rs.12000/- on 20.12.93 in the name of his wife Smt. Sayra Bano. He had not constructed any house on the said plot and used to visit the site occasionally and also used to get information from the

neighbour Mr. Iliyas, ON 15.12.2010, he telephonically contacted his neighbour Iliyas and enquired about his plot upon which Iliyas asked him why he was still enquiring about the plot when he had already sold it to a property dealer named Indresh Chaudhary. Iliyas further revealed that the property dealer was claiming that he had bought the plot from a police wala who urgently needed money. He was shocked to hear the news and he clarified to Iliyas that he had not sold the plot to anyone. Thereafter he called up the Police Station, obtained the mobile no. of the beat HC and contacted him. He visited the plot on 15.12.2010 and contacted Head Constable Ranbir and a Constable. He also contacted Indresh Chaudhary. HC Ranbir directed Indresh Chaudhary and him to bring their respective documents of the plot to the Police Station Ranholla on 16.12.2010. On 16.12.2010 at 11.30 A.M., he again received a telephone call from Iliyas that Indresh was trying to occupy his plot. Upon this he made a PCR call and rushed to PS Ranholla from where he came to the plot on a motorcycle with a Head Constable. On his information, a PCR van reached at the spot. At the spot, Indresh and his associates was trying to dig the foundation on his plot. The Head Constable directed Indresh to stop the work and ordered both parties to reach the Police Station along with their original documents. He and Indresh reached at the Police Station and met the SHO. SI Ombir Singh was dealing with the call who directed both the parties to produce their chain of documents. On 17.12.2010 at 11.00 A.M., SI Ombir Singh called him. He reached there but Indresh did not come. SI Ombir Singh asked him to bring his wife and the chain of documents. He met DCP West in this regard who directed him to meet AGP, Nangloi. ON 20.12.2010, he went to ACP Nangloi office along with HC Rafiq Ahmad who directed them to meet the SHO. He met SHO, P.S. Ranholla and SHO directed him to produce Jalalddin from whom the plot was purchased and also asked the other party to produce the documents. On 17.1.2011, he produced Jalalddin to the I.O. ASI Jai Singh who recorded his statement. On 29.1.2011, property dealer Anil was produced and his statement was recorded by ASI Jai Singh. On cross-examination, he clarified

that the details of the person from whom Jalalddin had purchased the plot are not written/mentioned in the GPA, Agreement to Sell and Will executed by Jalalddin in favour of his wife, marked as Ex.PW-3/A, B and C. He also admitted that he had all the papers of the chain of documents of this plot except the document i.e. GPA, Will, Agreement to Sell executed by Anil in favour of Jalalddin and this chain was missing. He also admitted that the enquiry into the matter was being conducted by SI Ombir Singh, ASI Jai Singh and SI Amit Dutt who had been asking for the chain of documents and the concerned persons, the executor of the documents. He had produced all the documents except the GPA, Will and Agreement to Sell executed by Anil Kumar, properly dealer in favour of Jalalddin. He however produced Anil Kumar on 29.1.2011 to ASI Jai Singh. He also admitted that the opposite party Indresh Chaudhary had also produced photocopies of the chain of documents of the plot in question and 10 had directed Indresh Chaudhary to produce the original documents on 1.3.2011. He also admitted that Inspector Sajjan Singh, the then SHO P.S. Ranholla had informed him on 27.5.2011 in the Police Station that the chain of documents of both the parties have been verified by the 10 and he has submitted his report to ACP, Nangloi to seek permission to register FIR against Indresh Chaudhary. He also admitted that the plot was in the name of his wife Sayra Bano and the address given in the GPA, Agreement to Sell, Will was of Baljeet Nagar where he was residing as tenant earlier. He also admitted that he met ACP, Nangloi as per information given by Inspector Sajjan Singh and ACP, Nangloi told him that the file pertaining to his plot enquiry is lying with him. He also stated that he did not know HC Jagdish 1145/W and Const. Naresh 825/W, P.S. Ranholla earlier and he met them for the first time on 16.12.2010”

16. The statement of the Complainant nowhere shows that he had produced and shown original documents to the Petitioner or to SI Ombir Singh on 16th December, 2010 immediately thereafter. The incident of 16th December,

2012 was immediately brought to the notice of DCP and ACP as stated by Sh. Sadiq Mohd. He had met the DCP before 20th December, 2010 and he met the ACP on 20th December, 2010. There was no impediment faced by the DCP and ACP to order the Petitioner to register the FIR even without verifying the documents but that was not done. Even after 27th May, 2011 Sh. Sadiq Mohd. met the ACP, Nangloi who informed him that file pertaining to his land inquiry was lying with him. It is pertinent to mention here that concerned ACP was not examined as a witness in this inquiry.

17. It is only PW-4 HC Anil Kumar, who had stated that Sh. Sadiq had shown the original documents of plot to Inquiry Officer and SHO but Sh. Sadiq himself has nowhere stated that he had shown the original documents to Inquiry Officer or the SHO. PW-7 SI Anit Dutt Sharma had deposed regarding the incident dated 1st March, 2011 and he has stated that he was emergency officer on duty and on PCR call he had reached the plot and both parties were claiming the ownership of the plot and they assured to produce the documents within half an hour. HC Sadiq did not bring any document. On the other hand, Indresh produced photocopies of the documents so Indresh was permitted to produce original documents who told that his original documents were lying with his advocate and he will produce them very soon. Both the parties agreed to maintain the status quo in writing till production of documents. SI Anil Dutt conducted a detailed inquiry about the documents produced by the Indresh Choudhary and found that same were not genuine. On the basis of his inquiry, a report was sent by Petitioner to ACP, Nangloi for registration of case against Indresh Choudhary with a request to forward the same to DCP, West for approval.

HC Sadiq was informed by the Petitioner about result of the inquiry and about seeking permission to register FIR, which was registered on 2nd June, 2011 on complaint of Smt. Saira Bano.

18. PW-8 SI Ombir Singh had reached at the spot on 16th December, 2010 and his evidence has been reproduced hereinabove wherein he has specifically stated that none of the parties had produced the original documents before him. On 15th June, 2011 he had issued a notice to Indresh Choudhary under Sections 160 and 91 Cr.P.C. to produce original documents of the plot in question. ACP, Nangloi was present in the police station on 15th June, 2011 and the matter regarding arrest of Indresh Choudhary was discussed by Petitioner with ACP in presence of SI Ombir Singh but ACP directed that arrest of Indresh Choudhary be affected only after production of original documents of plot by him. As mentioned earlier, no steps were taken by the Inquiry Officer to examine the concerned ACP to verify whether the SHO on his own had deferred the arrest of Indresh Choudhary or it was done at the instance of the ACP. PW-10 is a neighbour of the plot, who had deposed about the incident on cross-examination. She admitted that Sadiq never showed any document of ownership to her at any point of time. The police had got stayed the construction work being carried out by Indresh Choudhary. Both the parties were directed to produce their original documents. She also admitted that 2 ½ feet wall had been already constructed by Indresh Choudhary in the absence of police but further construction was stopped by police.

19. As per the report the charges were framed after approval of the

disciplinary authority and the Petitioner was asked to produce his witnesses but he did not produce any defence witness and preferred to submit his defence statement. His defence statement was to the effect that HC Sadiq Mohd. did not produce any original document or photocopies of the document on 16th December, 2010. He also submitted that construction work at disputed spot was stopped by police on 16th December, 2010 and no construction was carried out after that. There was no question of committing an offence of trespass by Indresh. HC Sadiq did not bring any document till 1st March, 2011 and he could not produce entire chain of documents which created suspicion of his claim of ownership/possession. On the other hand, documents produced by Indresh Choudhary were found fake, hence inquiry report was forwarded to ACP for his approval for getting the case registered against Indresh Choudhary on 11th May, 2011. The charge of holding the case by letting Indresh off while apprehended by issuing a notice under Sections 160 and 91 Cr.P.C. was also rebutted and bail application of accused was strongly opposed by the Petitioner by filing reply dated 20th June, 2012 and the said bail application was rejected on the basis of the discussion on evidence.

20. After detailed discussion the IO reached to the conclusion regarding production of original documents as under:

“From the deposition of this PW-3, actual date of production of original documents of plot in question by this PW is not clearly established. However, it has come on record through deposition of PW-7 that till 1.3.2011, no documents chain of the plot was produced by PW-3 HC Sadiq Mohd.”

21. On the basis of the entire discussion regarding evidence led by the Department and after going through other documents, the Inquiry Officer came to the conclusion that PW-3 Sadiq did not submit chain of documents on 1st March, 2011 and the said documents must have been submitted thereafter during inquiry conducted by PW-7, so delay in registration of case against the accused cannot be attributed to the present Petitioner.

22. After going through the documents and record of inquiry proceedings, the Inquiry Officer reached to a reasoned conclusion that none of the material witness deposed anything adverse against the Petitioner and even the allegations made by PW-3 Sadiq are too general in nature. Moreover, the case was throughout in the knowledge of the concerned ACP who had directed to defer the arrest of case till production of original documents of plot by him. Same is also evident from DD No.76B dated 15th June, 2011 which was submitted by the Petitioner during defence statement. The final conclusion arrived was that the charges against the Petitioner are not substantiated.

23. On the other hand, disagreement note of the disciplinary authority notes that the Inquiry Officer had failed to evaluate the evidence properly which came on record during the departmental inquiry. The disciplinary authority has noted as under:

“1) HC Sadiq (complainant) examined as PW-3 as HC Anil Kumar examined as PW-4 have clearly deposed that on 16.12.10 Shri Sadiq had shown original documents of the said plot to SI Ombir Singh and he further showed the same to the delinquent Inspector. The I.O. had also enquired the matter from the neighbourers, who supported the claim of HC Sadiq to

be the occupant. This is why, the I.O. stopped the construction work being carried out by Shri Indresh Choudhary and his associates. On the other hand, when Shri Indresh Choudhary was asked to produce the original documents in support of his claim, he failed to do so. Since prima-facie evidence were available, a case of trespass should have been registered on the day of incident, but the SHO did not get the case registered.

2) The statements of PWs-10 and 11 namely Smt. Shabnam and Smt. Sunita respectively have supported that Shri Indresh Choudhary on the direction of I.O. stopped the construction work at the said plot, but later on he erected a wall despite instructions to him not to do so by the local police. It shows connivance on the part of SHO/Ranholla (delinquent).”

24. This conclusion arrived at by the disciplinary authority that HC Sadiq clearly deposed that on 16th December, 2010 he had shown original documents of the said plot to SI Ombir Singh and to the Petitioner is not reflected in the evidence of PW-3. This fact has been noted by the disciplinary authority on the basis of surmises and conjuncture as it was only HC Amit Kumar/PW-4 who had deposed that Sadiq had shown original documents of the plot to the police authorities but Sadiq himself has nowhere stated that he had shown original documents to the Petitioner or to SI Ombir Singh. There is no discussion about the statement of SI Ombir Singh who had reached the spot and he has specifically stated that no original documents were produced by Sadiq. The said disciplinary authority has nowhere mentions that the ACP of the area was in knowledge of the incident right from beginning. The contentions of the Petitioner as well as the witnesses who were examined before the Inquiry Officer by the Department is that area ACP was present in the police station when Indresh

Choudhary came there and accused Indresh Choudhary was let off at the instance of the area ACP as he had directed that accused be not arrested till he produced the original documents and accordingly a notice under Sections 160 and 91 Cr.P.C. was served upon him to produce the documents till 20th January, 2011.

25. It appears that disciplinary authority has intentionally ignored the evidence which did not suit the conclusion to be arrived at by the disciplinary authority to prove the Petitioner guilty of the charges framed against him. The said disciplinary authority has also nowhere mentioned that HC Sadiq had met the higher police officials between 17th December, 2010 to 24th December, 2010 and what was their response to his claim of being owner of the plot or the alleged trespass by Indresh Choudhary on the plot purchased by HC Sadiq in the name of his wife. The disagreement note is totally silent on that. Had it been a case where an FIR of trespass is made out on the allegations of forcible trespass on the plot by Indresh on 16th December, 2010, the higher officials could have ordered the SHO to register the FIR then and there but no such instructions were issued by the said higher officials being the ACR and the area DCP. The disciplinary authority in the disagreement note is silent as to what action has been proposed or taken against the said higher officials who maintained silence on hearing the complaint of HC Sadiq, who is a member of their own police force and who knew the ways to escalate his complaint and who had met the said higher officials immediately after the incident dated 16th December, 2010.

26. The Petitioner has submitted a detailed representation against the

disagreement note on 22nd June, 2012. The order dated 17th December, 2012 also proceeds on the surmise that the complainant HC Sadiq had produced the original documents of the plot before the Petitioner and SI Ombir Singh on 16th December, 2010. As far as the defence taken by the Petitioner in response to the disagreement note is concerned, a very strange justification has been given in the order dated 17th December, 2012 as under:

“A copy of the above, disagreement note together with a copy of the finding of EO was served upon' Insp. Sajjan Singh, No. D-I/843. The defaulter Inspector has submitted his reply in response to the said disagreement note. I have gone through his reply and' also heard him in OR twice. He did not submit anything new except what he has submitted in writing. However, during OR, he stated that his senior officers were in know of the facts and also- they were aware of delay. "He further requested for taking a lenient view as he is in the line of promotion and also he has unblemished record.

The submissions made by the defaulter in OR carry no weight. In this case, the plot of Head' Constable Sadiq was trespassed, but he failed to take action and he is taking shield of procedural issue. Even if ACP was delaying it, he should have discharged his legal duty and gone up to seniors. Showing any leniency in such matters will not only send a wrong signal of misplaced sympathy, but will also be grossly detrimental to the norms of conduct/discipline that is expected from the police officers.”

27. The second part quoted above shows that the disciplinary authority is encouraging the junior officers in the police force to disregard their senior officers and if the finding of the disciplinary authority is that it was the ACP who was delaying the entire process, no action is stated to have been initiated against him. The defense raised by the Petitioner has been nowhere discussed or rather it appears that the order has been passed in a routine

manner based upon certain surmises and conjunctures and the disciplinary authority has informally reached to a conclusion that the Petitioner was partial and not true to his duty and has defaulted. The appeal filed by the Appellant on 15th January, 2013 was again dealt with in a cursory manner by the Commissioner of Police. The said order reads as under:

“It is noted that the EO did not substantiate the charge against the appellant and the case was registered, though after a considerable delay of 167 days, against the alleged Indresh Choudhary vide FIR No. 103/2011 dated 02.06.2011 u/s 420/467/47I/448 IPC PS Ranholla on the submission of a report to the ACP/Nangloi. Several correspondence made by the appellant to verify the documents submitted by the parties from the concerned, authorities consumed a lot of time. On perusal of the DE file it is clear from the statement of SI Omvir Singh, who dealt the matter on the 1st day of the incident that the call was kept pending due to non-availability of original, documents regarding the ownership of the said plot. Call vide DD No.13 A dated 01.03.2011 was received at PS Ranholla regarding, a quarrel at the same plot. The call was marked to SI. Amit-Dutt Sharma who alongwith Inspector/ATO Shambhu Dayal reached at the spot and found that the complainant HC Sadiq and alleged Indresh Chaudhary there. Both the parties were asked to produce the original documents by the SI. Both the parties came back, Indresh Chaudhary stated that he does not have the documents as they are lying with his counsel. HC Sadiq also did not produce the original documents but stated that he had already given copies of the documents to ASI Jai Singh of the PS. On that day, both the parties also gave in writing that they will resolve the matter amicably. The appellant had submitted an interim report dated 06.03.2011 to ACP/Nangloi mentioning that the enquiry about the dispute is yet to be completed.

Keeping in view the facts circumstances and records placed on file, I am of the view that no infirmity has been committed by the Disciplinary Authority in awarding the punishment. None of

the appellant pleas has any force and are devoid of merits. I see no reason to interfere with the Impugned punishment order. Hence, the appeal of the appellant is hereby rejected.”

28. The concluding paragraphs of the order in appeal also noted that no original documents were produced by HC Sadiq. In turn, report was submitted by ACP, Nangloi that the inquiry was yet to be completed but on the basis of the facts and circumstances the Appellate authority found that there was no infirmity in the order of disciplinary authority so there was no reason to interfere with the impugned punishment or order. It shows that in the entire order on appeal only reproduction from the parts of the earlier inquiry report, the disagreement note and submissions of the Petitioner were noted and the conclusion was arrived only in the last three lines without any discussion to the effect that in view of the facts and circumstances and record, there was no infirmity in the order of disciplinary authority.

29. In the written submissions submitted on behalf of the Respondents, it has been noted:

“The facts of the case are that one Shri Indresh Chaudhary forcibly occupied HC Sadiq’s plot of land and this was brought to the notice of Emergency Officer SI Omvir Singh who got the work stopped. Despite this, Shri Indresh Chaudhary returned to the plot and constructed a wall and installed a gate with lock on it despite instructions not to do so by the local police. Shri Indresh Chaudhary was apprehended but let off by the Inspector. An FIR should have been lodged on the day of the incident i.e. 16.12.2010, but it was lodged after 167 days on 02.06.2011. The only defence that the applicant takes is the existence of a Memo by Joint Commissioner of Police dated 04.07.2007, which has been cited above. It is found that FIR was lodged u/s 420/467/468/471/448. Section 420 deals with cheating; Section 467,468 and 471 relates to forgery. However,

Section 448 relates to punishment for house trespass. Therefore, it is obvious that Section 448 is not covered in the Memo dated 04.10.2007. It is appalling that a Police Officer of the rank of an Inspector takes this tenacious plea to defend an act of gross negligence on his part. Relying on the evidence of PW-7 to make out a case that delay in registering FIR was also because of both sides not producing documents only further goes to show the inefficiency of the applicant as an SHO who takes 167 days to ensure that the documents are produced before him. He certainly does not deserve to be assigned any responsible Police function. Therefore, his reliance also on PW-8 that ACP Nangloi was responsible for not arresting Shri Indresh Chaudhary also sounds hollow. When a cognizable offence is committed in the area u/s 448/468/471 and 420 and some of these Sections are non bailable (Section 420, 467 and 468) then this elaborate exercise of document hunting and seeking the instructions only confirms that the applicant had some personal agenda. We also fail to see what is sought to be stated by the applicant that evaluation depends from person to person. Obviously, it does, and if the Enquiry Officer had failed to evaluate the evidence properly, then that reflects on his inability poorly even if, motive is not attributed. Since we have already extracted the four issues identified by the Disciplinary Authority, we do not repeat it here. They are self-speaking. The crux of the issue is however, listed below:

(i) Shri Sadiq had shown original documents of the said plot to SI Ombir Singh, and he further showed the same to the applicant.

(ii) Since prima facie evidence was available, a case of trespass should have been registered on the day of evidence, but the SHO did not get the case registered.

(iii) The evidence of PW-10 and 11 clearly demonstrate that the construction work was stopped but later on wall and the gate etc. were constructed. This strongly suggests connivance on the part of the applicant.

(iv) The FIR was registered only on the intervention of senior officers.

10. There could not have been a more clear-cut case of gross misconduct, negligence, carelessness and dereliction in the discharge of official duty on the part of the applicant. The respondents have been rather lenient in awarding the punishment in the facts and circumstances of the case.”

30. The Inquiry Officer, who conducted an impartial inquiry and who had himself recorded the statements of the witnesses, had found that the original documents of ownership of disputed plot were not handed over by HC Sadiq on 16th December, 2010 or immediately thereafter to SI Ombir Singh or to Petitioner and the interim report on inquiry was submitted in May, 2011 after verification of the documents. As stated by HC Sadiq himself that he had met the higher police officials between 17th December 2010 and on 24th December, 2010 and in spite of this, the higher officials did not order for registration of an FIR. Hence, no fault can be attributed on the part of the Petitioner for not registering an FIR without conducting a proper inquiry and without seeking permission of the area DCP in view of the circular dated 4th October, 2007. Even the contentions raised by the Respondent that at least an FIR of trespass should have been registered on 16th December, 2010 it is to be noted that the main basis of FIR, which was registered after due direction under Sections 420/468/471 IPC is cheating and forgery, although Section 448 IPC has also been invoked. The major thrust of allegation in FIR is on the forgery and cheating and in the face of circular dated 4th October, 2007 there was no ground to register FIR immediately without even verifying the documents of the contesting parties and without getting

the permission from the higher authorities.

31. The strange arguments raised by the disciplinary authority that if ACP was sleeping over the file, the SHO should have approached the higher officials, is not in the line with the discipline and the chain of authority as provided in a responsible police department. If junior officer start complaining against their senior officers, it will take a heavy toll on the discipline and the chain of subordination in the police department, which is not to be encouraged as it will have very serious consequences. The disciplinary authority should have been cautious before making this type of observation in its zeal to ensure that a fault is found with the conduct of the Petitioner. The disciplinary authority conveniently ignored the fact that complainant HC Sadiq had met the higher official immediately after the incident dated 16th December, 2010 and even, they had not directed the Petitioner to register the FIR of trespass without conducting the proper enquiry. Similarly, regarding the incident where after registration of FIR accused Indresh was served with the notice under Section 161/90 Cr.P.C. with a direction to produce the original documents and he was let off at the instance of ACP, the disciplinary authority has conveniently ignored the acts of its own ACP and has put the entire blame on the door of the present Petitioner.

32. In view of the above, the order of the CAT dated 21st October, 2014 and order of the Appellate authority and the order of the disciplinary authority and the disagreement note are hereby set aside. The findings of the enquiry officer dated 10th April, 2012 are hereby restored.

33. The writ petition is allowed in the above terms and the pending application stand disposed of. No orders as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 25, 2019

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