

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

CWP No. 1730 of 2019 (O&M)

Reserved on : April 18, 2022

Date of Decision: May 16, 2022

ASI Charanjit Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Pawan Kumar, Senior Advocate with
Mr. Rohit Kumar, Advocate,
for the petitioners.

Ms. Ambika Bedi, AAG, Punjab.

Mr. P.S. Hundal, Senior Advocate with
Mr. P.S. Hundal, Advocate,
for respondent No.5.

Mr. S.S. Rangi, Advocate,
for respondent No. 6.

JAISHREE THAKUR, J.

1. The petitioners herein by way of instant writ petition seek issuance of a writ in the nature of Mandamus directing respondents No. 1 to 4 to proceed departmentally against respondents No. 5 to 7 under the provisions of the Punjab Police Rules for falsely implicating the petitioners in a murder case by recording a false Daily Diary Report and to award them punishment of dismissal from service; with a further prayer for issuance of a writ in the nature of Certiorari quashing the impugned report dated 22.5.2018 (Annexure P/10) and the impugned order dated 27.6.2018 (Annexure P/13).

2. Brief facts of the case are that petitioner No. 1 joined as

Constable in the Punjab Police on 8.8.1994 and at present he is working as ASI. Similarly, petitioner No.2 joined as Constable on 1.5.1993 and presently working as a Head Constable. Both the petitioners claim that their entire service record is unblemished and no adverse remark has ever been conveyed to them. The genesis of the present controversy erupted on 12.5.2016 when a FIR No. 42 came to be registered under Sections 302/34 IPC against the petitioners, when they were posted at Police Post Handiaya, District Barnala, Punjab. It is alleged that the aforesaid FIR was registered falsely due to the pressure of the Kissan Union. The allegations, as alleged by the complainant—Sukhwinder Singh @ Babli in the FIR, were to the effect that on 11.5.2016, at about 7.00 to 7.30 p.m., he, along with one Sukhpal Singh, had come to Handiaya due to the injury to his foot. When they reached near a picket (Naaka), near Tempo Stand State Bank of Patiala, they saw both petitioners beating their neighbor—Baldev Singh. Immediately, he made a telephone call to Baldev Singh's brother and informed him about the incident and asked him to reach the Police Post. It was alleged that the said Baldev Singh was taken to the Police Station and put in the lock up and was administered sulfas tablets. This was disclosed to the complainant by the said Baldev Singh himself. When Baldev Singh became unwell, he was taken to Vijay Nursing Home, Barnala, in a private car, which referred him to DMC, Ludhiana, but he died on the way. It is in this background that FIR dated 12.5.2016 (Annexure P/1) came to be registered against the petitioners under Sections 302/34 IPC. However, the petitioners aver that the said Baldev Singh was under the influence of some narcotic drug and was taken to the police station from the police post. When he started vomiting, there was some smell of sulfas emerging from his

mouth. He was rushed to Vijay Nursing Home, Barnala, which referred him to DMC, Ludhiana, however, Baldev Singh died on the way due to consumption of sulfas. The sequence of events that follow are enumerated hereunder:-

- On 12.5.2016, SHO Navdeep Singh—respondent No.5 prepared a zimni/case diary (Annexure P/2) and noted in the diary report that the complainant—Sukhwinder Singh @ Babli and the Kissan Union were threatening that they will keep on protesting and would not allow post mortem to be conducted till such time the petitioners are not arrested. The postmortem was done and body handed over to the relatives.
- On 13.5.2016, when the matter was reported to the higher officers, a Special Investigation Team (SIT) was constituted headed by Shri Swarn Singh, Superintendent of Police, Barnala, which registered a DDR No. 40 dated 18.5.2016 (Annexure P/3) and after thorough investigation, and after recording the opinion of the doctors found that no case under Sections 302/34 IPC is made out against the petitioners, but substituted the offence under Sections 409, 342, 304-A IPC. It was specifically mentioned that Sections 302/34 IPC be dropped.
- On 19.5.2016, Inspector—Navdeep Singh—respondent No.5 recorded DDR No. 6 (Annexure P/4) and proceeded to investigate FIR No. 42 dated 12.5.2016 under Sections 409, 342, 304-A IPC. However, it is alleged that, SI Baljeet Singh—respondent No. 6, while recording DDR 7 dated 18.5.2016

(Annexure P/5), under the pressure of the Kissan Union, deliberately did not remove Sections 302/34 IPC but substituted the offence with Sections 342, 409, 304-A read with Sections 302/34 IPC.

- On 19.5.2016 itself, both the petitioners were arrested under Sections 304-A, 409, 342 and 34 IPC by the Inspector—Navdeep Singh. However, the Kissan Union protested and blocked the National Highway and demanded that the accused be arrested under Sections 302/34 IPC and accordingly the Inspector added Sections 302/34 IPC. This addition of Sections 302/34 IPC was done in the memo of arrest of the petitioners (Annexure P/6 colly). Thus, it is contended that it is apparent that Section 302 IPC was added only to appease the Kissan Union, though it was found that the petitioners have not committed any offence under Section 302 IPC.
- Thereafter, the entire matter was brought to the notice of the DGP, Punjab and DIG, Patiala Range, who constituted another SIT headed by DIG, Patiala Range—Sardar Balkar Singh Sidhu. The newly constituted SIT investigated the entire matter and after analyzing the documents, recommended that challan against the petitioners be presented under Sections 306, 342, 323 IPC. This was recommended on the basis of a secret inquiry, which revealed that Baldev Singh had been abused at the check point set up and due to fear he consumed sulfas. In the meanwhile, the

petitioners were released on bail by the Sessions Court, Barnala on 11.8.2016. (Annexure P 7 dated 5.8.2016).

- The petitioners, after getting the bail, represented to the Inspector General of Police, Patiala, complaining that they have been falsely framed in the case and even offence under Section 306 IPC is not made out against them. This complaint was inquired into by the Inspector General of Police, Patiala, who after scrutinizing the record gave his report on 10.3.2017 (Annexure P/8). The Inspector General of Police, in his report mentioned that Section 306 IPC was added against the petitioners on the basis of a secret inquiry and no other inquiry was conducted so as to prove offence under Section 306 IPC against the petitioners. In the report, it was found that Section 302 IPC was entered illegally. Since the CCTV footage had not been looked into, despite it being in police custody, and while pointing out the discrepancies occurred in the investigation, it was recommended that necessary approval be taken from the Court for conducting a further investigation under Section 173 (8) of the Code of Criminal Procedure.
- Therefore, keeping in view the report of the Inspector General of Police, Patiala, dated 10.3.2017 (Annexure P/8), fresh investigation was conducted by SHO—Kuldeep Singh, who had submitted cancellation report dated 18.4.2017 before the trial court stating that no case is made out against the petitioners and the deceased had died by consuming the

sulfas on his own. The trial court acquitted the petitioners as the witnesses cited also had turned hostile. One of the witnesses stated that on account of death of Baldev Singh, pressure was put by the Kissan Union to register a case against the police and signatures were obtained on blank papers to register the complaint.

4. Since the petitioners were ultimately found innocent and acquitted of the charges by the trial Court, they made a complaint to the DGP, Punjab, against respondents No. 5 to 7 for taking action against them under the provisions of the Punjab Police Rules praying for their dismissal from service because they had tampered with the record. However, the Superintendent of Police (Investigation), Barnala, vide his report dated 22.5.2018 (Annexure P/10) held that since entire matter has now been concluded by the trial court, hence there is no necessity to proceed against respondents No. 5 to 7.

5. Aggrieved against the report dated 22.5.2018, the petitioners sent a legal notice requesting that respondents No. 5 to 7 be proceeded against departmentally as well as criminal prosecution be launched against them. Apart from the legal notice, they also sent a complaint for registration of a criminal case against the erring police officials, who had falsely implicated the petitioners in a murder case. However, the Senior Superintendent of Police, Barnala, vide his order dated 27.6.2018 rejected the legal notice, while observing that since the entire matter has already been adjudicated by the Court, there is no necessity of any other action in the matter, giving rise to the instant case.

6. Mr. Pawan Kumar Senior Advocate assisted by Mr. Rohit

Kumar Advocate appearing for the petitioners would contend that the request made to proceed departmentally against respondents No. 5 to 7 and also to launch criminal prosecution has been wrongly declined. It is submitted that both the petitioners were falsely implicated in the case by adding Sections 302/34 IPC, on account of the pressure from the Kissan Union, whereas the deceased had died as he himself had consumed sulfas. It is submitted that the two reports submitted by the SITs leave no manner of doubt that the petitioners had been falsely implicated by respondents No. 5 to 7 under the pressure of the Kissan Union. It is submitted that the petitioners have suffered a stigma after they had been falsely implicated by respondents No. 5 to 7 in a murder case.

7. Per contra, learned counsel for the respondents—State would submit that the instant writ petition is not maintainable in the present form. The petitioners have suppressed material facts and, therefore, the instant petition deserves to be dismissed with costs. It is denied that Inspector Navdeep Singh gave any reference to the threat given by the Kissan Union in the case diary, as alleged by the petitioners. It is further denied that DDR No. 7 was prepared by SI Baljit Singh under the pressure of Kissan Union or that Sections 302/34 IPC were not deliberately removed. It is submitted that Superintendent of Police (Investigations) Barnala, conducted a detailed inquiry into the complaint dated 25.1.2018 filed by the petitioners after joining both the petitioners, one Jora Singh and respondents No. 5 and 6. The Superintendent of Police, on the basis of the versions of both the parties and after perusing the record, had clearly held that originally the case was registered against the petitioners on 12.5.2016 under Sections 302/34 IPC on the basis of the statement of the complainant—Sukhwinder Singh @

Babli. It was further found by the Inquiry Officer that DDR No. 40 dated 18.5.2016 and DDR Nos. 6, 16 and 17 dated 19.5.2016 were recorded by the concerned Computer Operator due to lack of communication gap between him and Inspector Navdeep Singh, or on account of error in giving or receiving instructions for online recording/feeding of the information in the computer because Inspector Navdeep Singh had left and returned to the police station, as per the said report. It has also been found by the Inquiry Officer that there is nothing on the record to suggest or prove that Inspector Navdeep Singh or SI Baljit Singh had tampered with the official Rojnamcha or any record of the file intentionally in order to cause any loss to the petitioners. It is further submitted that various offences are added or omitted during the course of investigation depending upon the evidence collected at various stages of the investigation and it is only upon completion of the entire investigation that a final report is prepared under Section 173 of the Code of Civil Procedure by the concerned Station House Officer (SHO). It is, therefore, wrong to suggest that Section 302 and 304-A IPC cannot go together being ante thesis of each other. Recording of Sections 302/304-A IPC during the course of investigation is there only for the purpose of carrying out investigation so as to sift the evidence vis-a-vis the same and to arrive at a just conclusion upon completion of the investigation. Therefore, inclusion or dropping of offences at intermediate stages cannot be described as forgery or change of the case diary by tampering with the record. It is further submitted that a perusal of the judgment dated 18.4.2017 would reveal that the petitioners were not acquitted on merit, but were acquitted by giving them benefit of doubt due to resiling of witnesses, namely, Sukhwinder Singh (PW-1), Shoukin Singh

(PW-2), Sukhpal Singh (PW-3) and Labh Singh (PW-4).

8. Mr. P.S. Hundal, learned Senior Counsel appearing on behalf of respondent No. 5 and Mr. S.S. Ranghi, appearing on behalf of respondent No. 6, would contend that the petitioners were held guilty of causing custodial death of Baldev Singh deceased by the court of Chief Judicial Magistrate Barnala, vide his report dated 29.5.2018 (Annexure R5/1) prepared by him while conducting proceedings under Section 176 (1) (A) of the Code of Criminal Procedure and, therefore, all the allegations, as levelled by the petitioners against the private respondents are absolutely false and frivolous. It is submitted that the respondents did not act at all in a biased manner qua the petitioners, while performing their official duties and various sections of IPC were added or deleted as per the report of the SITs (whose members were of the rank of DIG, AIG and SP) constituted during the course of the investigation of the FIR in question.

9. I have heard learned counsel for the parties and have gone through the record of the case.

10. The main thrust of the argument of the learned Senior Advocate appearing for the petitioners is that the petitioners were falsely implicated in the FIR in question because of the act and conduct of respondent No. 5 to 7, who had intentionally added Sections 302/34 IPC in the FIR. On account of these sections the petitioners were arrested and had to face criminal prosecution, and their image was lowered in the society and, therefore, a direction is sought to be issued to respondents No. 1 to 4 to proceed departmentally against respondents No. 5 to 7 under the provisions of the Punjab Police Rules.

11. The petitioners want Rule 22.50 of the Punjab Police Rules to be invoked against the petitioners which is reproduced as under:-

“Rule 22.50 Punishment for making false entry:

Any police officer who enters or causes to be entered in the daily diary a report which he knows, or has reason to believe, to be untrue, whether he has or has not been directed to make such entry by a superior officer, shall ordinarily be dismissed from the service.

A copy of this rule and also a copy of the following certificate shall be affixed on the cover of the daily diary in every police station or post and in lines.

“Certified that this register contains - leaves in duplicate. No page should be removed from it. Wrong entries, if any, should be scored out by means of single line and initialed by a Senior Police Officer, in no case should any such entry be mutilated or rendered illegible nor should paper be pasted over it.”

From a reading of the aforesaid rule, it is clear that in case a police officer enters or causes to be entered in the daily diary a report which he knows, or has reason to believe, to be untrue, even if he has been directed to make such entry by a superior officer, shall ordinarily be dismissed from the service.

12. In the instant case, the department has refused to accede to the request of the petitioners for dismissing the private respondents from service under Rule 22.50 or to register a case against them. Can the High Court sit in appeal against such a decision?

13. Before going into this question, it would also be pertinent to note that a report was called for and sent under Section 176(1) (A) of the Code of Criminal Procedure to the National Human Rights Commission New Delhi, vide memo no 1952 dated 22.2.2019, regarding the custodial

Barnala, after recording statements, came to the conclusion that “*clearly Baldev Singh died due to poisoning in the custody of the Police of Police post Handiaya and thus the death of Baldev Singh is hereby declared to be a custodial death due to unnatural cause of poisoning.*” This report further noticed that the petitioners stand acquitted under FIR No 42 of 12.5.2016 registered at Barnala.

14. Great stress has been laid that there is interpolation in the document Annexure P-6 Colly, i.e. Memo of Personal Search, Memo of Arrest, Memo of Information dated 19.5.2016, as Section 302 IPC has been added by respondents No. 5 to 7 despite the fact the SIT recommended dropping of the said charge. The matter has been gone into by the competent authority and an opinion has been formed that no alteration has been made in the case file or daily dairy report. A General Diary (GD) entry or a Daily Diary Report (DDR) is made when any kind of complaint is lodged and the police enter the details in their records. Thereafter, if the police believe that there is some prima facie evidence of a cognizable offence being committed, it is registered as an FIR.

15. Rule 22.45 of the Punjab Police Rules pertains to the registers/books that are required to be maintained in a Police Station, one of them being the First Information Report Register and in certain stations the Register of Petty Offences. Whereas Rule 22.46 pertains to general orders regarding station registers, which emphasis that all entries shall be made and clearly written and if words or line are omitted from any entry the same shall be attested. Section 44 of the Punjab Police Act 1861 specifies that it shall be the duty of every officer in charge of a Police Station to keep a general diary in such form shall, from time to time, be prescribed by the

State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined. Rule 22.48 of the Punjab Police Rules, 1934 pertains to the maintenance of the Daily Dairy. Furthermore, Rule 22.49 PPR enlists the matter to be mentioned in the Daily Dairy. On the other hand, the case diary pertaining to each and every case is to be maintained individually as prescribed under Section 172 (1) of the Code of Criminal Procedure read with Rule 25.52 of the Punjab Police Rules.

16. In the opinion of the court, there was no interpolation of the daily diary by the private respondents as the FIR came to be registered under Sections 302, 34 IPC immediately on a statement given by Sukwinder Singh that Baldev Singh had been administered sulfas, while he was in the lock up. The FIR was registered in terms of the judgment rendered in a Constitution Bench of the Supreme Court in **Lalita Kumari v. Govt. of U.P 2014 (1) SCC (CrI.) 524**, where it has been held that registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. It is only the documents annexed as Annexure P 6 i.e. Memo of Personal Search, Memo of Arrest, Memo of Information dated 19.5.2016 which have Sections 302 , 34 IPC added in it even though the SIT had recommended dropping the two Sections. These are argued to be interpolations in the daily dairy, enough to invoke dismissal under Rule 22.50 of the Punjab Police Rules. Under no circumstances can an “arrest memo” be considered a daily dairy report, but

may be part of a case diary. Therefore, it is not possible to hold that interpolation has been made in the daily dairy report. The FIR had already come into existence on the night when the incident took place and there has been no interpolation in the same. It is also worthwhile to note that the challan was eventually put up under Section 306 IPC as recommended by the SIT and the petitioners did not face trial under Section 302 IPC.

17. Another reason for dismissal of the writ petition is, that High Courts cannot go into the issue of evidence nor are High Courts in a proceeding under Article 226 of the Constitution are Courts of appeal over the decision of the authorities holding a departmental inquiry against a public servant. In the case of **Union of India v. P. Gunasekaran (SC), 2015 (2) SCC 610**, the Hon'ble Supreme Court once again explaining the scope and interference in service matters and disciplinary proceedings, which was only permissible in case of perversity, held thus:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*

- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

Once the authorities have found no interpolation and have declined to interfere in the matter to invoke any rule to dismiss respondents No. 5 to 7 and, it is not within the jurisdiction of this Court to do so. It is the prerogative of the department to invoke Rule 22.50 the Punjab Police Rules 1934, and that too it is not mandatory since the wording in the section is “ordinarily dismiss.”

punitive damages is also rejected in the light of the fact that there has to be some evidence before this court that there was malicious prosecution. For that the petitioners would have to lead evidence and claim damages.

19 Consequently, this writ petition is dismissed as being without merit, leaving it open to the petitioners to avail any other remedy in accordance with law.

May 16, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No