

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

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2023:PHHC:110089
RSA-5461-2019 (O&M)
Date of decision: 23.08.2023

RAM AVTAR

..Appellant

Versus

STATE OF HARYANA AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mukesh Rao, Advocate
& Mr. Shubham Aneja, Advocate
for the appellant.

Ms. Vibha Tewari, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

1. The learned counsel representing the appellant has informed the Court that the appellant has died, however, he is representing the legal representatives of the appellant in terms of amendment applicable to States of Punjab, Haryana and Union Territory, Chandigarh in Order 22 of the Code of Civil Procedure, 1908.

2. The correctness of the concurrent findings of fact arrived at by the Courts below is assailed by the plaintiff in this second appeal.

3. The First Appellate Court has slightly modified the decree passed by the trial Court while setting aside the order recovering certain amount from the appellant.

4. In substance, the appellant who was working as a Station House Officer (SHO) of the police station was issued a chargesheet and after the departmental inquiry was conducted, the punishing authority ordered stoppage of two increments with the future effect. The appeal filed by the appellant before the Inspector General of Police (IGP) was dismissed. Thereafter, he filed the present suit seeking decree for grant of declaration that the orders of punishment are illegal, null and void.

5. The learned counsel representing the appellant has been heard at length.

6. He submits that the failure to arrest the accused is not a serious misconduct because the accused was not involved in heinous crime. He relies upon the judgment passed in *Lalita Kumari Vs. Govt. of UP and others, (2014) 2 SCC 1* and *Arnesh Kumar Vs. State of Bihar and another, 2014(3) RCR (Criminal) 527*. He further contends that before initiating the disciplinary proceedings, it was incumbent on the disciplinary authority to hold the preliminary inquiry while issuing the show cause notice to the appellant. He further submits that the order passed by the Inspector General of Police is cryptic and, therefore, not sustainable.

7. This Court has considered the submissions of the learned counsel representing the parties and perused the paperbook.

8. In this case, the appellant was at the relevant time posted as Station House Officer, Police Station, Uklana. He along with as many as four police officials searched the house of a known bootlegger, who had nine FIR's registered against him. The accused Madan was found present with 96 bottles of country made liquor, however, the accused is stated to have been escaped as certain persons named therein attacked the police officials. The competent authority found that the appellant failed to arrest the accused for more than one month. Thus, the disciplinary proceedings were initiated on 02.09.2009.

9. As regards the first argument, it may be noticed that the judgment passed by the Supreme Court in *Lalita Kumari's case (supra)* and *Arnesh Kumar's case (supra)* have been passed in the different context. The

present case is about a known bootlegger who escaped on account of the alleged threats by the certain residents of the village. In such circumstances, the accused had also escaped from the custody of the police. Moreover, the disciplinary authority considered that the appellant was required to take effective steps to arrest the accused. Hence, there is no substance in the first argument of the learned counsel representing the appellant.

10. The next argument of the learned counsel representing the appellant is based upon Rule 16.23 of the Punjab Police Rules, 1934 (hereinafter referred to as the '1934 Rules'). On a careful reading of the Rule 16.23, it is evident that the aforesaid Rule is applicable if a complaint is received from the general public alleging misconduct on the part of the police official. In this case, there was no complaint by the general public. Hence, the aforesaid Rule is not applicable to the facts of the present case.

11. The next argument of the learned counsel representing the appellant is related to Rule 16.24 of the '1934 Rules', which lays down the procedure for holding the departmental inquiry. Rule 16.24(1)(i) provides that the police official accused of misconduct shall be brought before an officer empowered to punish him and, thereafter, the disciplinary authority may direct the conduct of inquiry, if required. This issue has never been pressed before the Courts below, hence, it would not appropriate to entertain a wholly new ground in the second appeal.

12. The next argument of the learned counsel representing the appellant is with regard to the order passed by the appellate authority. On a careful reading of the order, it is evident that the appellate authority after noticing the facts has held that the departmental inquiry was conducted in

accordance with the Rules and Procedure and it does not suffer from any illegality or perversity. The appellate authority is not required to pass an elaborate order while upholding the order of punishment.

- 13. Hence, no ground to interfere is made out.
- 14. Dismissed accordingly.
- 15. All the pending miscellaneous applications, if any, are also disposed of.

August 23rd, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No