

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

137

RSA-129 of 2020

Date of Decision:01.09.2023

ASI Brish Bhan

....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naveen Daryal, Advocate, for the appellant.
Ms. Vibha Tewari, AAG, Haryana

ANIL KSHETARPAL, J. (Oral)

1. The correctness of concurrent finding of fact arrived at by the Courts below is challenged in this second appeal by the plaintiff (appellant herein). In order to comprehend the controversy involved in this litigation, the relevant facts, are required to be noticed. The appellant was a police official. He without complying with the provisions of sending a notice under Section 160 of the Code of Criminal Procedure called three accused in Police Station, Butana. Thereafter, he took all the three suspects under the pretext to take them to CIA, Karnal for interrogation. However, he never took the accused to CIA staff and badly thrashed Tikka due to which Tikka became unconscious. Thereafter, the appellant got Tikka admitted in Ajmani Hospital and left the place and subsequently Tikka was referred to the hospital run by Dr. Rajiv Gupta where he remained admitted for quite some time. On receipt of the complaint, Superintendent of Police started disciplinary proceedings. Charge sheet was served on the appellant and thereafter Enquiry Officer was appointed who reported that the charges against the appellant are proved. Superintendent of Police vide order dated 30.10.2008 awarded

punishment of five annual increments with permanent effect. However, in appeal the punishment was reduced to two annual increments with cumulative effect. The civil suit filed before the trial Court to challenge the order of punishment has been dismissed. The first appellate Court on re-appreciation of evidence has upheld the same.

2. Learned counsel representing the appellant contend that before starting disciplinary proceedings, the concurrence of the District Magistrate as required under Rule 16.38 of Punjab Police Rules, 1934 (as applicable to the State of Haryana) was never obtained and therefore the initiation of disciplinary proceedings is illegal.

3. On the other hand, learned State counsel while drawing the attention of the Court to the judgment passed in **Balbir Singh versus State of Haryana and others** 2013 (1) RSJ 49 to contend that that Superintendent of Police was not required to seek concurrence of the District Magistrate particularly when the appellant was not acting in discharge of his official duty while badly thrashing Tikka. She submits that a co-ordinate Bench has explained the applicability of Rule 16.38 of the Punjab Police Rules, 1934 in the following manner:-

“8. I have considered the submissions made by the counsel for the parties and have gone through the records of the case. 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 relation 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.”

9. *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.*

10. *The facts in the present case, which have been depicted above, would, therefore, determine whether Rule 16.38 would be applicable or not. A perusal of the same would not support the claim of the petitioner that the allegations made against the petitioner prima-facie establish commission of any criminal offence by the petitioner in connection with his official relations with the public. The primary allegations against the petitioner are that he has used the official motorcycle by following Indica car of Dharminder on the asking of Joginder only for another person and thereafter, misbehaved with the women and driver seated in the car by misusing his official position and thereafter, to hide his mistake, he made false entry in the log*

book and further in connivance with the owner of Balaji Automobiles, Gohana Road, Panipat, from where he got the official motorcycle i.e. HR-06-K/8098 serviced, obtained a false repair bill of the motorcycle and thus, committed a misconduct, which act has tarnished the image of the police in the eyes of the general public.

11. A perusal of the above leads to a conclusion that this action of the petitioner was not in his official capacity or in connection with his official relations with the public. If that be so, Rule 16.38 (1) would not be applicable to the facts of the present case and, therefore, the concurrence of the District Magistrate was not mandated to be obtained by the Superintendent of Police to proceed against the petitioner departmentally. The judgments relied upon by the counsel for the petitioner would thus, not apply to the facts of the present case.”

4. This judgment was also upheld by a Division Bench in Letters Patent Appeal.

5. This Court has considered the submission.

6. It was not the part of the official duty of the appellant to badly thrash Tikka by using third degree. It has also come on record that Tikka accused was never taken to CIA Staff which was required as per the procedure laid down. In such circumstances, Rule 16.38 is not applicable. Moreover, this issue has never been pressed before the Courts below.

7. Keeping in view the aforesaid facts, finding no merit, the present Regular Second Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

September 01, 2023
dinesh/

Whether speaking : Yes/No

Whether reportable : Yes/No