

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(230)

RSA No. 5753 of 2014

Date of Decision : 10.05.2023

Ram Bhaj

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Virender Kumar, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. The present regular second appeal has been filed challenging the judgment and decree of the lower appellate court dated 03.07.2014 by which the judgment and decree of the trial court dated 12.11.2011 has been set-aside and the suit filed by the appellant-plaintiff has been dismissed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff is working in the Haryana Police Department. On 05.02.2007, the appellant-plaintiff was given an assignment to take an accused Sunil Kumar son of Ram Gopal from judicial custody to be produced in the Court of Judicial Magistrate Ist Class, Karnal in relation to FIR No. 26 of 2006, registered under Arms Act at Police Station Kunjpura, District Karnal. The said Sunil Kumar managed to escape from the custody of the appellant-plaintiff, due to which, an FIR No. 69 dated 15.02.2007 was registered against the appellant-plaintiff under Sections 223 and 224 of the IPC. Keeping in view the said incident,

departmental proceedings were also initiated against the appellant-plaintiff. In the departmental proceedings, the allegation of negligence was proved against the appellant-plaintiff, due to which, the punishing authority imposed the punishment of dismissal from service upon appellant-plaintiff but on an appeal preferred by him, the said punishment was modified with that of stoppage of three increments with cumulative effect. The said punishment was challenged by the appellant-plaintiff by filing a civil suit. Keeping in view the evidence, which came on record coupled with the facts of the present case, the civil suit filed by the appellant-plaintiff was allowed by holding that in the facts and circumstances of the present case, it cannot be said that the appellant-plaintiff was negligent and the findings of the Enquiry Officer are not correct, hence, the imposition of punishment by treating the appellant-plaintiff as negligent is set-aside.

4. Feeling aggrieved against the judgment and decree of the trial court dated 12.11.2011, an appeal was preferred by respondents-defendants, which appeal came to be decided by the lower appellate court vide judgment and decree dated 03.07.2014. The lower appellate court set-aside the judgment and decree of the trial court dated 12.11.2011 and the suit filed by the appellant-plaintiff was dismissed. The lower appellate court recorded a finding that once in a departmental proceeding, the allegation of negligence has been proved, the court will not sit in an appeal over the decision of the departmental authorities so as to arrive at a different conclusion by evaluating the evidence. Further, the Court held that the acquittal of the appellant-plaintiff from the criminal proceedings will have no effect on the disciplinary proceedings, as the evidence required to prove the negligence in the criminal proceedings as well as in the departmental

proceedings, is entirely different. The judgment and decree of the lower appellate court dated 03.07.2014 is under challenged at the hands of the appellant-plaintiff.

5. Learned counsel appearing on behalf of the appellant-plaintiff argues that in the present case, a well reasoned judgment of the trial court has been set-aside by the lower appellate court and that too without due application of mind. Learned counsel for the appellant-plaintiff further argues that in the present case, it has already come on record that keeping in view the Rule 18.44 of Punjab Police Rules, 1934 (hereinafter referred to as 'Rule 18.44 of 1934'), where there is a prisoner, who is to be escorted by a road or foot, there has to be two Police Constables required to escort the said prisoner, whereas in the present case, the assistance of the second constable was not given while the accused Sunil Kumar was to be produced before the Court. Further argument of the learned counsel for the appellant-plaintiff is that in the present case, the Incharge of the Escort Guard, namely, Chander Mohan was at fault as Chander Mohan should have ensured that two Constables are to be allotted so as to escort the said accused Sunil Kumar and also the fact that the said Sunil Kumar was a hardcore criminal, hence, he should have already taken the permission to handcuff the accused, therefore, in the facts and circumstances of the present case, proving of the allegation by the Enquiry Officer that the appellant-plaintiff was negligent, was rightly rejected by the trial court, which judgment has been set-aside by the lower appellate court without cogent reason.

6. The another argument being raised by learned counsel for the appellant-plaintiff is that even otherwise, as per Rule 16.34 of Punjab Police

Rules, 1934 (hereinafter referred to as 'Rule 16.34 of 1934'), wherever there is a preliminary enquiry or investigation into a complaint alleging the commission of an offence and a judicial prosecution is to follow, before starting the departmental proceedings, the concurrences of the District Magistrate needs to be taken, whereas, in the present case, before starting the departmental proceedings an FIR in connection with the incident that an accused has absconded from the court premises already been lodged, but no permission of the District Magistrate was taken to initiate the departmental proceeding, which omission will render the enquiry proceedings void *ab-initio*. Reliance is being placed upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 277 of 1966 titled as ***Delhi Administration and others Vs. Chanan Shah***, decided on 12.12.1969. Further arguments raised is that where an employee has already been acquitted of a criminal charge, the findings recorded by the departmental proceedings loses its significance and cannot be allowed.

7. Learned State counsel, on the other hand, contends that in the present case, no objection was raised at any given point of time with regard to Rule 18.44 of 1934 while taking the prisoner in question to the Court premises for production, hence, no grievance can be raised by the appellant-plaintiff qua the said rule that instead of only one Constable, there should have been two Constables to accompany the prisoner. Learned counsel submits that qua the Rule 16.38 of 1934, said rule is only applicable where the criminal proceedings as well as departmental proceedings are contemplated and a decision is yet to be taken to start the criminal proceedings or the departmental proceedings only then concurrence of District Magistrate is needed, whereas in the present case, an FIR has

already been registered much prior to the starting of the departmental enquiry, hence, in the present case, there is no applicability of Rule 13.8 as being projected by the learned counsel for the appellant-plaintiff. Reliance is being placed upon the judgment of a Coordinate Bench of this Court in CWP No. 24413 of 2012 titled as ***Constable Pale Ram Vs. State of Haryana and others***, decided on 14.12.2012.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. The first question, which arises for consideration of this Court is whether, the civil court has the jurisdiction to overrule the findings of the Enquiry Officer by appreciating the evidence on record. As per the settled principle of law, the Civil Court has no jurisdiction to be an appellate authority over and above the disciplinary authorities so as to re-appreciate the evidence, which had come on record so as to reach at a different conclusion. The jurisdiction of the civil court is only to ensure that the procedure envisaged under Rules governing the service for conducting the departmental proceeding was followed and only where is a case of no evidence to prove the allegation, Civil Court can intervenes. Sufficiency of evidence cannot be looked into by civil court so as to set aside the finding of an enquiry officer.

10. In the present case, the trial court turned itself into the role of an Enquiry Officer so as to evaluate the evidence and to record a finding whether, the appellant-plaintiff was negligent or not. This act on the part of the trial court was beyond its jurisdiction and has rightly been set-aside by the lower appellate court. The civil Court had no role/jurisdiction to appreciate the evidence, which has come during the departmental

proceedings to record a finding other than the one recorded by the Enquiry Officer, which has been duly accepted by the punishing authority as well as the appellate authority, hence, the judgment of the trial court, on which the reliance is being placed upon by the learned counsel for the appellant-plaintiff to contend that the same should be accepted, is liable to be rejected and is accordingly rejected.

11. The second argument, which has been raised by learned counsel for the appellant-plaintiff is that in the present case, the Rule 18.44 of 1934 stood violated as only the appellant-plaintiff was asked to accompany a hardcore prisoner to be produced in Court and the assistance of the second Constable was not provided. Once, the said Rule was to the knowledge of the appellant-plaintiff at the time when he was asked to escort the hardcore prisoner alone, he should have taken an objection there and refused to escort the prisoner to the court and should have demanded that he needs another person also to escort the prisoner keeping in view the rules governing the said aspect. Once, there was no objection taken by the appellant-plaintiff at any given point of time till the said prisoner escaped from the custody of the appellant, Rule 18.44 of 1934 cannot come to the rescue of the appellant-plaintiff at a subsequent stage when the department intends to initiate proceedings for the negligence. Hence, in the facts and circumstances of the present case, when it has already come on record that no objection was raised for taking the prisoner to the court by the appellant-plaintiff at any given point of time upto the point, he had escaped, the argument being raised that the custody of the accused was handed over to the appellant-plaintiff by the authorities concerned in violation of Rule 18.44 of 1934, which will absolve him from the accusation of negligence,

cannot be accepted.

12. Further argument, which has been raised by the learned counsel for the appellant-plaintiff is that in the present case, Rule 16.38 of 1934 has been violated and, therefore, the impugned order of punishment is liable to be set-aside. The reliance is being placed upon the judgment of the Hon'ble Supreme Court of India in ***Chanan Shah's case (supra)***. The facts mentioned in ***Chanan Shah's case (supra)*** are entirely different as compared to the present case. In ***Chanan Shah's case (supra)***, before any action could be taken by the District Magistrate so as to decide, who should investigate the case, the Superintendent of Police had already passed an order of censure, whereas, in the present case, an FIR was registered meaning thereby that criminal proceedings had already been initiated on the direction of the District Magistrate, hence, the further concurrence to start the departmental proceedings was not at all required for as the same only fell within the domain of the administrative department, where the appellant-plaintiff was employed, therefore, the reliance of the appellant-plaintiff on the judgment of ***Chanan Shah's case (supra)*** is totally misplaced.

13. Further, the Coordinate Bench of this Court had an occasion to interpret Rule 16.38 of 1934 while passing order in ***Constable Pale Ram's case (supra)***. The relevant findings of the Coordinate Bench are as under :-

“Reliance upon Rule 16.38 of the 1934 Rules again for challenging the impugned order is misplaced. Rule 16.38 of the 1934 Rules reads as follows:-

“ Rule 16.38

a) Criminal offences by police officers and strictures by courts-procedure regarding-

1) Where a preliminary enquiry of 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.”

This Rule again would not be applicable to the case is hand for the reason that the said Rule comes into operation in case the punishing authority i.e. the Superintendent of Police instead of proceeding against the delinquent employee for judicial prosecution decides not to proceed for the same purpose and instead decides to take action departmentally. It is in this situation that the concurrence of the District Magistrate has to be obtained. Present is a case where judicial prosecution had followed the registration of an FIR against the petitioner. Apart from proceeding against the petitioner on the criminal side in the judicial proceedings, the Superintendent of Police has proceeded against him departmentally as well. In such a situation, the concurrence of the District Magistrate is not mandated under this Rule.”

14. The facts and circumstances of the case in **Constable Pale Ram's case (supra)** are similar to that of the present case, hence, the argument being raised by the learned counsel for the appellant-plaintiff qua the applicability of Rule 16.38 of 1934 cannot be accepted.

15. The last argument, which has been raised by learned counsel for the appellant-plaintiff is that both the proceedings i.e. the departmental as well as the criminal could not have been allowed to continue simultaneously and especially, when the appellant-plaintiff has been acquitted by the competent court of law in the criminal proceedings, the findings recorded in departmental proceedings stood overruled, hence, on this account also, the punishment imposed is bad in law.

16. The argument being raised by learned counsel for the appellant-

plaintiff is contrary to the settled principle of law. It is a settled principle of law that in order to record a finding of guilt, the Court trying criminal proceedings and the department holding a disciplinary proceedings, the proof of evidence recorded to prove the allegation is entirely different. Therefore, merely that the appellant-plaintiff has been acquitted in the criminal proceedings, does not mean that the finding of guilt recorded in the departmental proceedings becomes bad *ipso facto*. In order to support the said finding, the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 7403 of 2021 titled as ***Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay***, decided on 03.01.2022 can be cited.

17. Rather as per the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal Nos. 1763-1764 of 2022 titled as ***State of Karnataka and another Vs. Umesh***, decided on 22.03.2022 even after the acquittal in criminal proceedings, the employer is not debarred to conduct the departmental proceedings, which shows that the departmental proceedings and the criminal proceedings stand on a different footing and cannot be compared with each other as being claimed by the appellant-plaintiff in the present case.

18. Keeping in view the totality of the circumstances mentioned hereinbefore, it cannot be said that the judgment of the lower appellate court is either perverse on the facts or the settled principle of law and needs any interference by this Court in the present regular second appeal.

19. Dismissed.

May 10, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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