

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 6027 of 2019 (O&M)

Date of Decision: 21.09.2023

Vijaypal

... Appellant(s)

Versus

The State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. S.K.Verma, Advocate
for Mr. Nishant Arya, Advocate
for the appellant(s).

Ms. Vibha Tewari, Assistant Advocate General,
Haryana, for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

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

3. The plaintiff's suit for the grant of decree of declaration with a consequential relief of mandatory injunction declaring that the punishment of stoppage of three increments with cumulative effect is illegal, null and void, has been dismissed by both the Courts below. It has come on record

that the appellant was posted as a Moharrir in the Police Station. The

accused in FIR No. 241 dated 27.10.2010, registered under Section 15/16 and 27A of the Narcotic Drugs and Psychotropic Substances Act, 1985, escaped. The departmental proceedings were initiated against the appellant and various other officials, who were required to prevent the escape of the accused. After the completion of the inquiry, the Inquiry Officer held that the charges against the appellant and other officials stand proved. Ultimately, the Disciplinary Authority, after taking note of the explanation furnished, passed the order which was upheld in appeal as well as the revision petition. Thereafter, the plaintiff filed a suit which, as already noticed, has been dismissed by both the Courts below.

4. Heard the learned counsel representing the appellant at length and with his able assistance, perused the paper-book.

5. The learned counsel representing the appellant has made the following two submissions:-

- i) Rule 16.38 of the Punjab Police Rules, 1934 (hereinafter referred to as “the 1934 Rules”), has not been followed as the concurrence of the District Magistrate, which was mandatory, was not taken.
- ii) While awarding punishment, the Disciplinary Authority has discriminated amongst the various officials.

6. This Court has considered the submissions. The learned counsel relies upon the judgment in *State of Punjab v. Raj Kumar AIR 1988 (SC) 805*.

7. Rule 16.38 of the 1934 Rules, reads as under:-

“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 or 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.*

(2) *Orders have been issued by the Hon'ble Judges of the High Court making it obligatory on all civil and criminal courts, whenever they make strictures on the personal character of professional conduct of a police officer, to send a copy of the judgment to the executive authorities. In case of the High Court itself the copies will be forwarded to the State Government. In the case of all other courts (including Courts of Sessions), the copies will be sent by the Judges and Magistrates concerned to the District Magistrates.*

(3) *In cases in which strictures are passed on the conduct of the police by a Sessions Court or by a Magistrates Court and no specific recommendation is made by the Court making such strictures that an enquiry should be made, the District Magistrate will comply with such request. When strictures on the conduct of the police*

are made by the High Court and communicated to the State Government direct in accordance with sub-rule (2) above, the instructions of Government as to the action to be taken by the local authorities will be communicated to them through the ordinary channels. In cases in which the High Court suggests that an enquiry should be made, that State Government will give orders accordingly.

(4) Rules 24.14 and 24.15 provide for reports of all serious charges against the police being communicated to the State Government by a special report. In cases where such serious charges arise from strictures passed by criminal courts, the Superintendent of Police and the District Magistrate should communicate, either in the report itself or in a covering letter, the procedure which they propose to adopt and any information or notes in connection with the case which they consider should be brought to the notice of Government. Rule 24.15 provides the opportunity for Deputy Inspectors-General and Commissioners similarly to communicate their comments to the State Government.”

8. On a careful reading of Rule 16.38 of the 1934 Rules, it is evident that where there is a complaint alleging the commission of a criminal offence by an enrolled police officer in connection with his official relations with the public, a judicial prosecution shall normally be followed.

In that case, if the Superintendent of Police proposes to proceed against the

police official departmentally, the concurrence of the District Magistrate will be required.

9. In the present case, no criminal case has been registered and no judicial prosecution has been launched against the appellant. Moreover, the nature of allegations against the appellant is not in connection with his official relations with the public. The appellant has been grossly negligent in preventing the escape of accused in the case involving the offence under the Narcotic Drugs and Psychotropic Substances Act, 1985. Thus, it is evident that Rule 16.38 of the 1934 Rules is not applicable. The matter before the Supreme Court in ***Raj Kumar's case (supra)*** was entirely different. In fact, this distinction has been noticed by a coordinate Bench in ***Balbir singh v. State of Haryana (Civil Writ Petition No. 10062 of 2011, decided on 03.11.2012)***. After interpreting Rule 16.38 of the 1934 Rules, it was held as under:-

“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 arguments of the learned counsel based upon Rule 16.38 of the 1934 Rules has no substance.

11. The next argument of the learned counsel is with regard to the alleged discrimination in awarding the punishment. The trial Court has examined this issue in para 25, in detail. It has been found that the EHC Jaibir Singh was posted as a Santry and his duty was on the main gate, whereas the accused escaped from the stair case and roof of the police station.

12. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

13. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 21, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No