

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 120 of 2023

Reserved On: 07.12.2023
Pronounced On: 01.01.2024

ASI/ESI Balwan Singh
... Appellant(s)

Versus

Additional Chief Secretary to Government of Haryana, Home Department,
Chandigarh and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Suresh Kumar Redhu, Advocate
for the appellant(s).

Mr. Jaspal Singh Pannu, 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. In this regular second appeal, the concurrent findings of facts arrived at by both the Courts below while dismissing the plaintiff's suit for the grant of decree of declaration that the order passed by the Superintendent of Police on 16.08.2013, whereby the major penalty of the stoppage of three annual increments with cumulative effect has been imposed upon him which, in appeal, in revision petition as well as mercy

petition has been upheld as illegal, null and void.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. One Sh.Anil married Kavita daughter of Hoshiar Singh. A man named Lalit gave beatings to Anil. When Anil raised voice, his brother Sanjeev came out, who was also beaten by Lalit and others. In the aforesaid scuffle, Lalit and Anil sustained injuries and were admitted in Agroha Medical College. The appellant was appointed as an Investigating Officer who registered an FIR against Anil, however, he did not register any case against Lalit. With these allegations, the charge sheet was served upon him and the Deputy Commissioner of Police, Hisar, was appointed as an Inquiry Officer. The department examined as many as five witnesses, whereas the appellant examined as many as seven witnesses. Ultimately, the inquiry officer reported that the charges against the appellant are proved. A show cause notice was issued by the Superintendent of Police proposing to dismiss the appellant from service. However, the Disciplinary Authority, after considering all the facts, ultimately penalized the appellant with stoppage of three increments with cumulative effect, which was the subject matter of challenge in suit after the appeal, revision and mercy petition of the appellant was dismissed.

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

5. The learned counsel representing the appellant contends that Rule 16.38 of the Punjab Police Rules Volume-II has not been followed while penalizing the appellant. While relying upon the judgment passed by the Supreme Court in *Union of India v. Ram Kishan (1971) 2 SCC 349*, he

contends that without permission of the District Magistrate, the Superintendent of Police has no jurisdiction to initiate a departmental inquiry against the appellant.

6. This Court has considered the submission of the learned counsel representing the appellant. Rule 16.38 of the Punjab Police Rules Volume-II, as applicable in the State of Haryana, is extracted 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 or 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.”

7. This Court has also carefully read the judgment passed by the Supreme Court in ***Ram Kishan’s case*** (*supra*). In the aforesaid case, Rule 16.38 of the Punjab Police Rules Volume-II, as applicable in the Union Territory of Delhi, was the subject matter of interpretation before the Supreme Court which is different from the Rule applicable in the State of Haryana. Hence, the aforesaid judgment does not help the case of the appellant.

8. In the present case, no criminal case has been registered against the appellant. There is not even an allegation that the appellant has committed a criminal offence in connection with his official relations with the public. Hence, Rule 16.38(1) of the Punjab Police Rules Volume-II, as applicable in the State of Haryana, is not applicable to the case of the appellant. In fact, this distinction has been noticed by a Co-ordinate Bench in ***Balbir Singh v. State of Haryana (Civil Writ Petition No. 10062 of 2011, decided on 03.11.2012)*** in the following manner:-

“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.”

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

(Anil Kshetarpal)
Judge

January 01, 2024
“DK”

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