

RSA-2797 of 1999 (O&M)

2024:PHHC:079153



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

RSA-2797 of 1999 (O&M)

Reserved on: 23.05.2024

Pronounced on: 31.05.2024

Ved Parkash and others

.....Appellants

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Naveen Daryal, Advocate,
for the appellants.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 22.09.1998, passed by the Court of learned Additional District Judge, Karnal, whereby judgment and decree dated 31.01.1998, passed by the Court of learned Civil Judge (Senior Division), Karnal, was reversed and suit of the appellant-plaintiff was dismissed.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Brief facts of the case are that plaintiffs filed a suit for declaration pleading therein that summary of allegations was served upon them on the allegations that on 22.04.1993 they without obtaining leave or any permission had gone to local cinema to watch movie. They were not having the tickets and in turn on being checked,

RSA-2797 of 1999 (O&M)

2024:PHHC:079153



picked up a fight with Nafe Singh, gate keeper, of the cinema, physically man-handled him. They also abused and gave beatings to Lok Raj, owner of the cinema. Jai Singh, DSP was appointed as Inquiry officer who after conducting inquiry, established the charges against the plaintiffs and submitted his report on 29.06.1993 and on the basis of the said inquiry report, S.P. Commando of Haryana served a show cause notice dated 30.06.1993 purposing to stop two future annual increments with permanent effect. It is further averred that the plaintiffs submitted reply to the show cause notice, however, the punishing authority without considering the reply inflicted punishment of stoppage of one future increment with permanent effect and the pay and allowances of the suspension period were restricted to the subsistence allowance already drawn, vide order dated 31.07.1993. It is further averred that the plaintiffs went in appeal against the said order and appeal was also dismissed by D.I.G. Police, Railway and Commando Haryana vide order dated 12.07.1996. Revision petition of the plaintiffs was also dismissed by the Director General of police, Haryana, Chandigarh, vide order dated 05.08.1996. It was prayed that the aforesaid orders passed by the authorities were illegal, arbitrary, against the rules of natural justice, void ab initio and not binding upon the rights of the plaintiffs. The trial Court vide judgment and decree dated 31.01.1998 decreed the suit of the plaintiffs. Aggrieved against the judgment and decree of the trial Court, defendant preferred an appeal, which was allowed and judgment and decree of the trial Court was set aside. Hence, the present Regular Second Appeal by the plaintiffs.

RSA-2797 of 1999 (O&M)

2024:PHHC:079153



3. Learned counsel for the appellants contended that the lower appellate Court has erred in reversing the well-reasoned judgment and decree of the trial Court. He further contended that the lower appellate Court failed to appreciate that departmental proceedings conducted against the appellants-plaintiffs were without jurisdiction and authority as in contravention of provisions of Rule 16.38 of the Punjab Police Rules, 1934 prior sanction of the District Magistrate was not obtained. He contended that judgment and decree of the lower appellate Court is perverse and liable to be set aside. Learned counsel relied upon the judgment of a Co-ordinate Bench of this Court in ***RSA No.3428 of 2011 – HC Rakesh Kumar v. State of Haryana – decided on 12.10.2015.***

4. Learned counsel for the respondent-State supported the judgment and decree of the lower appellate Court. He contended that in the case of the plaintiffs, no prior permission of District Magistrate was required, therefore, there is no violation of Rule 16.38 of the Rules, therefore, judgment and decree of the lower appellate Court does not call for any interference. He further submitted that appellants No.1 and 2, namely, Ved Parkash and Shiv Kumar have already been promoted to the post of Inspector and appellant No.3 – Kiran Pal was promoted as ASI and has been dismissed from service on 31.12.2013.

5. I have heard learned counsel for the parties and perused the record.

6. The present appeal was admitted on 28.08.2000.



7. The only question which arises for consideration in the present case is as to whether there is violation of Rule 16.38 of the Punjab Police Rules. Concurrence of the District Magistrate is only required if the charges framed against the enrolled police officer or the complaint alleges commission of a criminal offence in connection with the official relations with the public. If this situation does not exist, Rule 16.38(1) of the Rules would not apply. In the present case, order of punishment was passed against the appellants after holding departmental inquiry on the ground that while they were on special duty, without getting leave and/or permission from their superiors, they had gone to watch a movie and quarrelled with the owner and staff of the cinema hall, which was a mis-conduct on their part. Allegations against the appellants would not fall within the ambit of Rule 16.38 as the mis-conduct would not amount to commission of a criminal offence by them in connection with their official relations with the public. Thus, the lower appellate Court has rightly held that Rule 16.38 of the Rules would not be attracted in the present case. This Court finds no fault with the enquiry conducted by the department against the appellants as the same was conducted as per rules and following the principles of natural justice and the punishment awarded to them was proportionate to the mis-conduct committed by them.

8. The judgment relied upon by learned counsel for the appellants is of no assistance to him as the same is not applicable to the facts and circumstances of the present case.

RSA-2797 of 1999 (O&M)

2024:PHHC:079153



9. In view of the above, judgment and decree of the learned lower appellate Court is perfectly valid and does not call for any interference by this Court. Hence, the present appeal is dismissed.

10. Pending application(s), if any, stand disposed of accordingly.

31.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No