

State of Punjab

Vs

Raj Kumar

Criminal Appeal No. 580 of 1976

(A.P.Sen, S. Natarajan JJ)

11.02.1988

JUDGMENT

NATARAJAN, J. –

1. This appeal by certificate granted under Article 134(1)(c) of the Constitution is directed against the judgment of a Full Bench of the High Court of Punjab and Haryana in Raj Kumar, A. S. I. v. State of Punjab ((1976) 4 CLR (P&H) 39) allowing a petition under Section 561-A of the Code of Criminal Procedure, 1898 filed by the respondent. The objection in filing the appeal, it was conceded by Mr. R. S. Sodhi, learned counsel for the State is the determination of a larger issue transcending the narrow confines of the quashing of the criminal proceedings against the respondent viz. the construction of Rule 16.38 of the Punjab Police Rules and its applicability to criminal prosecutions launched against the members of the Punjab Police Service for offences under the Indian Penal Code and other Acts.

2. The controversy regarding the ambit of Rule 16.38 of the Punjab Police Rules has arisen in the following circumstances. One Jamuna Devi alias Mukhtiar Kaur gave a report against the respondent, who was an Assistant Sub-Inspector in the Punjab Police Service, to the Deputy Superintendent of Police, Patiala alleging demand of illegal gratification of Rs. 200 by him for releasing her husband and brother on bail bonds in a case pertaining to a land dispute. A first information report was registered and a trap was laid for the respondent and he was apprehended as soon as the marked currency notes treated with phenolphthalene were handed over to him and the marked currency notes were recovered from him. After completion of investigation, the respondent was charge-sheeted before the Special Judge, Sangrur. The respondent appeared before the Special Judge and raised an objection to the framing of charges against him on the ground the investigation of the case was in contravention of Rule 16.38. The Special Judge overruled the objection and framed charges and posted the case for trial.

3. The respondent filed a petition before the High Court under Section 561-A of the Criminal Procedure Code, 1898, for quashing the proceedings against him before the Special Judge. As there were conflicting decisions of the High Court in the interpretation of Rule 16.38, a learned Single Judge referred the matter to a Division Bench and in turn the Division Bench referred the matter to a Full Bench. A Full Bench of the High Court reviewed the earlier decisions and held that Rule 16.38 is mandatory and not directory in character and secondly the mandate would govern criminal prosecutions as well as department enquiries in equal measure and as such any prosecution launched or departmental enquiry held in violation of the terms of the rule would vitiate the proceedings concerned. Having interpreted Rule 16.38 thus, the Full Bench noticed that the investigation against the respondent had not been done in accordance with Rule 16.38 and therefore the Bench allowed

the petition and quashed the charges framed against the respondent. The High Court, however, granted a certificate under Article 134(1)(c) to the State to file an appeal to this Court and that is how the appeal is before us.

4. What, therefore, falls for consideration is whether the procedure prescribed in Rule 16.38 calls for observance in the case of departmental enquiries alone or whether it would govern criminal prosecutions also for offences under the Indian Penal Code and other Acts; and secondly whether the rule is mandatory in character or only directory. Our task has been considerably lightened by a pronouncement on the first question, with which we are primarily concerned, by another Bench of this Court in the State of Punjab v. Charan Singh ((1981) 2 SCC 197 : 1981 SCC (Cri) 407) declaring that Rule 16.38 cannot govern criminal prosecutions against the members of the Police Force as it cannot override the provisions of the Criminal Procedure Code. In spite of the said pronouncement, with which we are in respectful agreement, we feel it necessary to deal with the matter at some length because of certain misconceptions contained in the judgment of the High Court under appeal.

5. Before we advert to the decisions pertaining to Rule 16.38, we may refer to certain provisions of the Police Act, 1861 and the Punjab Police Rules framed thereunder. Section 3 of the Police Act, confers the right of superintendence of the police force throughout the general police district on the State Government and vests in such government the right to exercise such powers in that behalf. Section 7 deals with the appointment, dismissal, etc. of inferior officers. The section lays down that "subject to the provisions of Article 311 of the Constitution, and to such Rules as the State Government may from time to time make under this Act, the Inspector General, Deputy Inspector General, Asst. Inspector General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty or unfit for the same" or to award any of the lesser punishments prescribed under clauses (a), (b), (c), (d) for discharge of duty in a careless or negligent manner etc. Besides the power conferred on the State Government to make Rules under Section 7, there is also provision under Section 12 for the Inspector General of Police, subject to the approval of the State Government, to frame such orders and rules as he shall deem expedient relative to the organisation, classification and distribution of police force, the places at which the members of the police force shall reside, the services to be performed by them etc. for ensuring the efficiency of the police force in the discharge of its duties. It is in exercise of the powers conferred by Sections 7 and 12 of the Police Act that the Punjab Police Rules, 1934 have been framed. The Rules have been categorised under 28 Chapters for dealing with various matters such as organisational set-up, uniforms, arms and ammunition, leave, pension, promotions, rewards, punishments, training, supervision, investigation, prosecution etc. The matters covered by the Rules make it clear that the Rules have been framed for regulating the set up and the service conditions of the police force as well as for awarding them rewards and departmental punishments and other matters of internal administration for keeping the force an efficient and disciplined one. It is in that perspective Rule 38 of Chapter 16 has to be viewed.

6. The very first rule in Chapter 16 sets out the scope and purpose of the rules comprised in that chapter. Rule 16.1 reads as follows :

- (1) No police officer shall be departmentally punished otherwise than as provided in these rules;
- (2) The departmental punishment mentioned in the second column of the subjoined

table may be inflicted on officers of the various ranks shown in the heading Nos. 3 to 6, by the officers named below each heading in each case, or by any officer of higher ranks :

Rule 16.38 with which we are concerned, contains 7 sub-clauses. For our purpose it is enough if we extract sub-clauses (1) to (4) and refer in general terms to the contents of clauses (5) to (7).

16.38 (1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having first class powers.

(2) When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in Rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.

(3) Ordinarily a magistrate before whom a complaint against a police officer is laid proceeds at once to judicial enquiry. He is, however, required to report details of the case to the District Magistrate, who will forward a copy of this report to the Superintendent of Police. The District Magistrate himself will similarly send a report to the Superintendent of Police in cases of which he himself takes cognizance.

(4) The Local Government has prescribed the following supplementary procedure to be adopted in the case of complaints against police officers in those districts where abuses of the law with object of victimising such officers or hampering investigation is rife. The District Magistrate will order that all petitions against police officers shall be presented to him personally. If he considers that these petitions are of a frivolous or factious nature, it is within his discretion to take no action on them. When he considers an enquiry to be necessary he will use his discretion whether to send the papers to the Superintendent of Police or to a magistrate for judicial enquiry.

In the case of formal criminal complaints, the District Magistrate will arrange for all cases to be transferred from other courts to his own.

Clauses (5) to (7) relate to strictures passed by the High Court and other courts against police officers and the manner of communication of the strictures to the District Magistrate and the government.

7. Different interpretations were given by different benches of the High Court of Punjab and Haryana regarding the scope and force of Rule 16.38. In Criminal Revision No. 1100 of 1972 (Amarjit Singh v. State of Punjab) M. R. Sharma, J. held that Rule 16.38 debarred criminal proceedings if the same had been instituted without a prior sanction of the District Magistrate. In Ram Parkash, Asstt. Sub-Inspector v. State (1974 CLR 205) Gurnam Singh, J. took a diametrically

opposite view. In *Hoshiar Singh v. State* (1965 PLR 438 (Pun)) a Division Bench of the High Court held that Rule 16.38 was attracted in the case of departmental enquiries only and the departmental enquiry would be vitiated if the papers has not been produced before the District Magistrate for getting his sanction at the initial stage. In *Nand Singh v. Superintendent of Police* (1964 CLJ (Pb) 146) it was held that the rule was mandatory. The said view was affirmed by a Full Bench in *Nand Nandan Sarup v. District Magistrate* (1966 CLJ (Pb) 608). It was in that backdrop of conflicting decisions, the petition filed by the respondent herein under Section 561-A for quashing of the proceedings against him before the Special Judge came to be referred to a Full Bench.

8. The reasoning of the Full Bench for allowing the respondent's petition can be summarised thus :

The Police Act vests the right of superintendence of the police force in a State on the State Government. Section 7 of the Police Act empowers the State Government to frame rules regarding disciplinary matters and Section 12 empowers the Inspector General of Police, subject to the approval of the State Government, to frame orders and rules relating to the organisation, classification and distribution of the police force, the services to be performed by them etc.

Hence the rules framed in exercise of powers conferred under Section 7 and 12 have the force of law and they constitute a special legislation which takes precedence over the provisions of the Criminal Procedure Code. Section 4 of the Police Act *inter alia* lays down that the administration of the police, within the jurisdiction of a District Magistrate, shall under his general control and direction, be vested in a District Superintendent and Assistant District Superintendents as the government may appoint. Consequently, the District Magistrate has statutory authority to exercise control over the administration of the police force in his district including the launching of criminal prosecutions or holding of departmental enquiries against a member of the police force. Rule 16.38 contains a mandatory provision regarding the procedure to be followed when any complaint is received by the Superintendent of Police against a member of the police force regarding the commission of an offence by him in connection with his official relations with the public. The said rule will apply with equal force to investigations relating to criminal offences for which a prosecution is to be launched as it would to enquiries for taking departmental action through disciplinary proceedings. On the basis of such reasoning, the Full Bench overruled the decision in *Hoshiar Singh v. State of Punjab* (1965 PLR 438 (Pun)).

9. We will now refer to the decision in *Hoshiar Singh* (1965 PLR 438 (Pun)), since it has been approved by this Court in *State of Punjab v. Charan Singh* ((1981) 2 SCC 197 : 1981 SCC (Cri) 407), and then advert to some decisions of this Court relevant for consideration. In that case a Sub-Inspector of Police was challenged under Section 5(2) of the Prevention of Corruption Act and Section 161, Indian Penal Code and was suspended from service and charge-sheeted and thereafter a departmental enquiry followed. When a show cause notice was served on him on the conclusion of the enquiry intimating him the proposed punishment, he objected to the legality of the enquiry on the ground that no permission of the District Magistrate in accordance with Rule 16.38 of the Punjab Police Rules had been obtained. The objection was sustained and the departmental enquiry was quashed. Thereafter, the challan was put into court and once again an objection was raised that in the absence of a reference to the District Magistrate and his orders thereon directing prosecution, the Special Judge could not take cognizance of the case. The Special Judge overruled the objection holding that his powers under the Criminal Law (Amendment) Act were not trammelled by the Punjab Police Rules. A criminal revision was filed before the High Court against the order of the Special Judge and the High Court dismissed the criminal revision holding thus :

I do not think Rule 16.38 was intended or could have the effect of imposing as a condition precedent to the trial of a police officer in a court of law, a sanction or an order by the District Magistrate, as contemplated therein. The language appears to me to be confined only to departmental enquiries. The investigation for establishing a prima facie case is merely meant to guide the District Magistrate, uncontrolled by the opinion of the Superintendent of Police, whether or not a departmental proceeding should be initiated against the guilty party, and it is the procedure and the punishment controlling the departmental proceedings alone, which appear to have been prescribed by this rule.

10. In *Delhi Administration v. Chanan Shah* ((1969) 3 SCR 653 : (1969) 1 SCC 737 : AIR 1969 SC 1108) an Asstt. Sub-Inspector was censured, after summary enquiry for having received illegal gratification in a case he was investigating. The Deputy Inspector General of Police revoked the order of censure and directed departmental action being taken. The departmental enquiry culminated in an order of dismissal against Chanan Shah. An appeal and revision to the higher authorities having failed, Chanan Shah filed a writ petition which was dismissed by a Single Judge but allowed in writ appeal by a Division Bench and the order of dismissal was quashed. The Delhi administration came in appeal to this Court and this Court held that irrespective of whether Rule 16.38 is mandatory or directory, the authorities had failed to substantially comply with the provision of the rule and, therefore, the laches vitiated the departmental enquiry. The same view was taken in a later case *Union of India v. Ram Kishan* ((1971) 2 SCC 349) which related to the dismissal of a constable from service pursuant to a disciplinary enquiry being set aside in a civil suit filed by the dismissed constable. The decree of the trial court was affirmed by the appellate court and the High Court and in further appeal to this Court, it was held that as no immediate information was given to the District Magistrate in respect of the complaint received against the plaintiff (constable) and secondly since the District Magistrate had also not decided whether the investigating agency should be a police officer or a magistrate, as prescribed by Rule 16.38, the departmental enquiry was vitiated and, therefore, the plaintiff's suit had been rightly decreed. In *State of Uttar Pradesh v. Babu Ram Upadhyaya* ((1961) 2 SCR 679 : AIR 1961 SC 751) the view taken by the majority of the Bench was that paragraph 486 Rule 1 of U.P. Police Regulations was mandatory in character and hence the departmental action taken against the respondent police officer in disregard of the rule was invalid.

11. It may be noticed that the three decisions of this Court which have been referred to above related to departmental enquiries and not criminal prosecutions for offences committed by the delinquent police officers. The pronouncements in these cases will therefore govern only cases where departmental enquiries are held in contravention of the procedure prescribed by the Police Rules. The reason for a special procedure being prescribed in the Rules for investigations before departmental enquiries are held against delinquent police officers is not far off to see. In the very nature of their duties, the members of the police force would often stand exposed to criticism and complaints by not only the members of the public but also by the members of the force themselves and consequently they stand placed more vulnerable than members of other government services, of being implicated in false or exaggerated charges. In order to protect them from false implications and resultant proceedings, the government had thought it necessary to have an initial screening of the complaints received against members of the police force by the District Magistrate. Such screening would however extend only to matters which fall within the zone of departmental action and it could never extend to cases where the offences alleged to have been committed would attract investigation under the Criminal Procedure Code, in the same manner the investigation would be attracted if the offences complained of had been committed by any member of the public. That the procedure prescribed in Rule 16.38 has only a limited field of operation i.e. applicable only to

departmental enquiries and punishments could be seen from the fact that clauses (3) of the rule enjoins every Magistrate to whom a complaint against a police officer is referred by the District Magistrate for judicial enquiry to report the details of the case to the District Magistrate in order to enable the District Magistrate to forward the report to the Superintendent of Police. The clause further says that if the District Magistrate himself takes cognizance of a case, he should of his own accord send a report to the Superintendent of Police. Clause (4) of Rule 16.38 also throws light on the matter and brings out the objective in greater clarity. This clause sets out that in order to protect the interests of police officers serving in districts where petition-mongering activities are notorious, the District Magistrate can direct that all petitions complaining about police officers shall be presented to him personally so that he can scrutinize them to find out whether the petitions are of a frivolous nature or they have been engineered by factious groups in the districts etc. In fact, the words used in the clause are of a tell-tale nature viz. "complaints against police officers in those district where abuses of law with the object of victimising such officers or hampering investigation is rife".

12. All these features make it clear that the purpose of underlying the rule is to enable the District Magistrate and the District Superintendent of Police to exercise personal control and supervision over the complaints received against members of the police force in the performance of their duties and enable the District Magistrate to ensure that the complaint is not a baseless or mala fide one and secondly to determine whether the complaint requires investigation by a police officer or by a selected magistrate. The procedure envisaged by the rule is for effective check being exercised against victimisation of efficient and honest police officers on the one hand and favouritism being shown to the delinquent police officers on the other. These rules were not intended to replace and certainly cannot override the provisions of the Criminal Procedure Code. The Full Bench was therefore in error in taking the view that the rules lay down a special procedure for investigation of all offences committed by the members of the police force and, that they have overriding effect over the provisions of the Criminal Procedure Code in terms of Sections 4 and 5 of the Code.

13. We may now refer to some other decisions where it has been laid down that the provisions of the Police Act cannot prevail over the provisions of the Indian Penal Code. In *Maulud Ahmad v. State of U. P.* (1963 Supp 2 SCR 38), the appellant who was a head constable contended that the prosecution launched against him was barred by limitation under Section 42 of the Police Act because the prosecution had been launched beyond the period of three months prescribed by Section 42. The contention was rejected and it was pointed out that the period of three months prescribed under Section 42 for commencing a prosecution would govern only prosecutions of a police officer for something done or intended to be done by him under the provisions of the Police Act or under general police powers given by the Act and Section 42 would not apply to prosecutions against a police officer for anything done under the provisions of any other Act or under police powers conferred under any other Act. It was also brought to focus that Sections 36 of the Police Act explicitly provides that nothing contained in the said Act shall be construed to prevent any person from being prosecuted under any Regulation or Act for any offence made punishable by the Act or for being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by the Police Act. The above ration was followed in *Ajaib Singh v. Joginder Singh* ((1969) 1 SCR 145 : AIR 1968 SC 1422). In yet another case viz. *S. N. Sharma v. Bipen Kumar Tiwari* ((1970) 1 SCC 653 : 1970 SCC (Cri) 258) it was held that the power of the police to investigate a cognizable offence is uncontrolled by the Magistrate and it is only in cases where the police decided not to investigate the case that the Magistrate can intervene and either direct an investigation, or in the alternative himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case and that the powers of the police to investigate have been

made independent of any control by the Magistrate.

14. Lastly, we come to the decision in the State of Punjab v. Charan Singh ((1981) 2 SCC 197 : 1981 SCC (Cri) 407) where the identical question under consideration had come up for determination by this Court. The respondent therein was convicted by the Special Judge, Ludhiana of an offence under Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and sentence to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs. 100. On appeal, a Single Judge of the High Court acquitted the respondent on the ground the prosecution was vitiated by reason of non-compliance with the provisions of Rule 16.38 of the Punjab Police Rules, 1934. In the appeal preferred by the State, this Court allowed the appeal and held as follows : (SCC pp. 198-99, para 2)

A perusal of Chapter XVI of the Punjab Police Rules shows that the provisions of the chapter deal with departmental punishments and the procedure to be followed in imposing such punishments. Guidance is given as to how police officers guilty of misconduct and criminal offences may be dealt with .... It is clear that Rule 16.38 is not designed to be a condition precedent to the launching of a prosecution in a criminal court; it is in the nature of instructions of the department and is not meant to be of the nature of a sanction or permission for a prosecution. Nor can it override the provisions of the Criminal Procedure Code and the Prevention of Corruption Act. We agree with the observations of Dua and Mahajan, JJ. in Hoshiar Singh v. State (1965 PLR 438 (Pun) ....

15. Though the decision of the Full Bench of the Punjab High Court which is now under consideration had not been brought to the notice of the learned Judges when they rendered judgment in State of Punjab v. Charan Singh ((1981) 2 SCC 197 : 1981 SCC (Cri) 407), we are in full agreement with the pronouncement of the Bench as the conclusion therein accords with our own conclusion and the reasons therefor. We therefore hold that the Full Bench was in error in taking the view that the Punjab Police Rules read in conjunction with the Police Act prescribe a different procedure for the investigation and prosecution of offences committed by police officers under the IPC or other Acts in connection with their relations with the public and that the rules constitute a special statute and take precedence over the provisions of the CrPC. The Full Bench had failed to note that Rule 16.38 only mandates the investigation of cases pertaining to departmental enquiries and the holding of departmental enquiries in accordance with the procedure prescribed thereunder. We therefore hold that the decision of the Full Bench under appeal in Raj Kumar, ASI v. State of Punjab ((1976) 4 CLR (P&H) 39) is not in accordance with law and has to be set aside. However, as mentioned at the outset, the State is not interested in reviving the charges against the respondent and pursuing the trial because of the long lapse of time. Therefore, while allowing the appeal and setting aside the judgment of the High Court, we leave undisturbed the quashing of the charges framed against the respondent.

16. Since the respondent did not enter appearance or engage a counsel to contest the appeal in spite of the notice served on him, we requested Mr. Gopal Subramaniam, advocate, to act as amicus curiae and render assistance to the court on behalf of the respondent. Mr. Gopal Subramaniam readily complied with our request and placed all the authorities for our consideration and we thank him for his assistance and place on record our appreciation of the services rendered by him.

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