

ALLAHABAD HIGH COURT

Mahendra Singh

Vs.

State of U. P

Appeal No. 76 of 1955. from Judgment of Chaturvedi, J. reported in AIR 1955 Allahabad 400
(Mootham, C.J., Agarwala and Desai, JJ.)

07.09.1955

JUDGMENT

Agarwala, J.

1. This special appeal arises out of a writ petition under Article 226 of the Constitution. The applicant Sri Mahendra Singh was posted as a head constable at police outpost, George Town, Police Station Colonelgani, Allahabad, in August 1952. Shortly thereafter the petitioner was suspended by an order of the Senior Superintendent of Police on a report that he was exerting money from persons who grazed their cattle on road patris.

An enquiry was made by the Deputy Superintendent of Police who submitted his report on 3-1-1953 to the Senior Superintendent of Police with a recommendation that the petitioner be dismissed from service. On 8-1-1953, the Senior Superintendent of Police issued a notice to the appellant to show cause why he should not be dismissed from service. The appellant submitted his explanation on 16-1-1953. The Senior Superintendent of Police did not accept his explanation, but instead of dismissing him, he reduced him to the post of a constable for a period of three years by his order dated 3-2-1953. The appellant appealed to the Deputy Inspector-General of Police who was of opinion that the charge against the appellant had been fully established but that the punishment awarded to him was inadequate, and he therefore, called upon the appellant to show cause why he should not be dismissed. After considering his representation and hearing the appellant in person, the Deputy Inspector General of Police on 6-7-1953, passed an order dismissing the appellant. A further appeal by the appellant to the Inspector-General of Police was dismissed. The appellant then moved this Court under Art 226 of the Constitution praying for a Writ of Certiorari calling for the record of the case and for quashing the order dated 6-7-1953, passed by the Deputy Inspector General of Police.

2. Two points were raised before the learned Single Judge hearing the writ petition : first, that the Superintendent of Police not being vested with the powers of a Magistrate had no power to make in enquiry, inasmuch as under Section 35, Police Act, only a police officer exercising the powers of a Magistrate could enquire into a charge against the appellant, the appellant, being above the rank of a constable; and second that the appellant was not given opportunity by the Inspector-

General of Police to state his case before he was dismissed. Both the points were rejected by the learned Single Judge, who, as regards the first point, was of opinion that Sections 7 and 35 were in conflict and that the provisions of the former must prevail.

3. In this special appeal the first point alone has been urged before us, and we proceed to consider it.

4. Section 35 of the Police Act runs as follows :

"Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate."

It is conceded that the appellant was a head constable and therefore a police-officer above the rank of a constable, and that the enquiry was made by an officer not possessed of the powers of a Magistrate. The whole question is whether that enquiry was an enquiry into a 'charge' within the meaning of Section 35 of the Police Act.

On behalf of the State, it is urged that the charge contemplated in Section 35 is a charge in a judicial enquiry and not a charge in a departmental enquiry such as was held in the present case. Having examined the various provisions of the Police Act, we are of opinion that the contention urged on behalf of the State is correct.

5. The Police Act deals both with departmental punishments to be inflicted upon the police officers and judicial trials of police officers. Section 7 provides for the departmental punishment of inferior police officers and runs as follows :

"Section 7. Subject to such rules as the State Government may from time to time make under this Act, the Inspector-General, Deputy Inspector-General, Assistant 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 may award any one or more of the following punishments to any police-officer of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely :

- (a) fine to any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;
- (c) deprivation of good-conduct pay;
- (d) removal from any office of distinction or special emolument."

Under this section the Inspector-General of Police, Deputy Inspector-General of Police, Assistant Inspector-General of Police and District Superintendents of Police are empowered to dismiss,

suspend or reduce any police officer of subordinate rank on the ground that such police officer is remiss or negligent in the discharge of his duty, or unfit for the same. The second paragraph of this section empowers such officers to award other punishments to a police officer of subordinate rank. A 'police officer of subordinate rank' is defined in Section 1 of the Act as 'a member of the police force below the rank of Deputy Superintendent'. The appellant was, therefore, a police officer of subordinate rank who could be dealt with under Section 7 of the Act by the officers designated in that section.

6. Section 7 does not in terms make provision for any enquiry; it merely provides that the exercise of disciplinary powers shall be subject to rules framed by the State Government, Chapter 32 of the Police Regulations lays down these rules. It provides for a departmental trial for punishment to be inflicted under Section 7 of the Police Act. This may be held either (a) after the police officer has been tried judicially, or (b) after a magisterial inquiry under the Criminal Procedure Code has been made; or (c) after a police investigation under Criminal P.C. or a departmental inquiry under paragraph 486 III has been made.

7. Under Section 6 of the Act, before its repeal by the Criminal Procedure Code (Act X of 1882), the Local Government was empowered to vest the Inspector-General of Police, Deputy Inspector-General of Police, Assistant Inspector-General of Police, District Superintendents of Police or Assistant Superintendents of Police with all or any powers of a Magistrate, but for the purposes of Section 7, the Act did not make it necessary for the superior officers named therein to possess magisterial powers before they could take action against; police officers of subordinate rank.

8. Sections 28 and 29 deal with judicial trials of police officers. Section 28 provides that :

"Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment with or without hard labour, for a period not exceeding six months, or to both."

Section 29 is more important. It provides that :

"Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, (or without having given previous notice for the period of two months) (or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave) or who shall engage without authority in any employment other than his police-duty, or who

shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months'pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both."

The judicial trial mentioned in Section 28 or Section 29 does not end in the dismissal, suspension or reduction in rank of a police officer - it ends in his conviction and punishment according to the penal law of the land. But his dismissal, suspension or reduction in rank is provided for in Section 1. The two sections obviously deal with two different subjects. Now Section 35 as it originally stood before its amendment by Criminal P.C., 1882 ran as follows :

"In all cases of convictions under this Act the Officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict; provided that "any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate."

There can be no doubt that the section as it originally stood referred to judicial trials before a Magistrate and did not refer to departmental enquiries by the police. By the Criminal Procedure Code, 1882, Section 6 was repealed and the words within quotation marks as they appeared in the original Section 35 were deleted from that section.

9. Section 6 was repealed because the power of the State to invest police officers with magisterial powers was covered by Section 14 of the Code of Criminal Procedure of 1882 which ran as follows :

"The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, classes of cases or in regard to cases generally, in any local area outside the Presidency towns.

Such Magistrate shall be called Special Magistrate.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section."

10. The words within quotation marks in Section 35 were deleted because they were also covered by Section 5 of the Code of Criminal Procedure which read thus.

"All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired

into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

There is no reason to think that by the deletion of the words within quotation marks from Section 35 the Legislature intended to change the very basis of the section, that is to say, instead of its applying to a judicial trial before a Magistrate; it should be made to apply not only to judicial trials but also to departmental enquiries and trials. The word 'charge' in Section 35 must retain the meaning which it had before the section was amended.

11. It was, however, urged that unless the word charge were given a wider meaning the section would be redundant, because the trial of a police officer by a Magistrate is already provided for in the preceding sections - Sections 28 and 29. But this argument is fallacious. The trials under Sections 28 and 29 may take place before a magistrate, but a trial of a police officer above the rank of a constable under Section 35 is to take place before "an officer exercising the powers of a Magistrate". Now there is a vital difference between the phrase "a Magistrate" and the phrase "an officer exercising the powers of a Magistrate".

The simple word 'Magistrate's defined in Section 1 of the Police Act as including "all persons within the general police district, exercising 'all or any' of the powers of a Magistrate". The words 'all' or 'any' are important. The bare word 'Magistrate' therefore includes a person who does not enjoy all the powers of a Magistrate, but enjoy some of them; whereas the expression "an officer exercising the powers of a Magistrate" has a technical meaning assigned to it and this would be found in the definition given to the expression in the Criminal Procedure Code of 1861 and the subsequent Criminal Procedure Codes. Section 16 of Act XXV of 1861 says :

"The words 'the powers of a Magistrate' shall imply the full powers of a Magistrate." Reading Sections 15 and 17 along with Section 16, the matter becomes clearer still. Section 15 says :

"The word 'Magistrate' shall include all persons exercising all or any of the powers of a Magistrate." This is the same as the definition of the word 'Magistrate' in the Police Act already quoted. Section 17 says :

"The words "any of the powers of a Magistrate" shall denote powers less than the full powers of a Magistrate;" So also in the Criminal Procedure Code of 1872 (Act X of 1872) in Section 2 it was provided:In every Act passed before this Act, the expressions "Officer exercising the powers of a Magistrate", 'Subordinate Magistrate, First Class' and 'Subordinate Magistrate, Second Class', shall, respectively, be deemed to mean, 'Magistrate of the First Class', 'Magistrate of the Second Class' and 'Magistrate of the Third Class', as defined in this Act." The expressions 'Magistrate of the First Class', 'Magistrate of the Second Class', and 'Magistrate of the Third Class' were, it would appear, introduced for the first time in the Criminal Procedure Code of 1872. The same provisions are found in Section 3 of the Criminal Procedure Code of 1882 and have been

repeated in the present Criminal Procedure Code of 1892 in Section 3(2).

Thus it is clear that under Sections 28 and 29 of the Police Act the word 'Magistrate' means 'a Magistrate either of the First Class, or the Second Class or the Third Class, but the words "an officer exercising the powers of a Magistrate" in Section 35 refer only to Magistrate of the First Class. Thus it is evident that Section 35 is not rendered redundant by the provisions of Sections 28 and 29. This view was also taken by the Calcutta High Court in two cases, - '*Tarapada v. State of West Bengal*', and - '*Shiva Nandan Singh v. State of West Bengal*'²,

12. In our opinion, therefore, a charge may be enquired into, and one or more of the punishments for which provision is made in Section 7 may be imposed by a police officer not possessing the powers of a Magistrate. We agree with the decision of the learned Single Judge, but for other reasons. This appeal therefore fails, and it is dismissed with costs.

Appeal dismissed.

¹ AIR 1951 Cal 179

² AIR 1954 Cal 60