

Mohammad Umar Vs. Inspector General of Police and ors.

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Court : Allahabad

Decided On : May-09-1957

Reported in : AIR1957All767; (1957)IILLJ470All

Judge : Mootham, C.J. and ;Srivastava, J.

Acts : [Constitution of India](#) - Articles 14 and 311(2); Uttar Pradesh Police Regulation; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 2(1), 157(1) and 173; Police Act - Sections 7

Appeal No. : Special Appeal No. 78 of 1957

Appellant : Mohammad Umar

Respondent : inspector General of Police and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : A.P. Pandey and ;M.H. Beg, Advs.

Disposition : Appeal dismissed

Judgement :

Srivastava, J.

1. This is a petitioner's special appeal against an order of Mehrotra, J., dismissing his petition under Article 226 of the Constitution.

2. In 1954, the appellant was posted as a Second Officer, at Nagina police station in the district of BiJnor. One Sri Ram Murti Singh was the Station Officer there. On 29-11-1954 Sri Rani Murti Singh made a report In which he alleged; against the appellant that when the appellant had visited village Kiratpur in Nagina Police Station on 27-11-1954 he had attempted to extort money from one Hari Sweeper and his wife Smt. Harro. The two persons had been brought at his, instance to the thana and kept wrongfully confined there in a barrack till they were discovered on 28-11-1954 in the evening by Sri Ram Murti Singh.

On this report being made the Superintendent of Police directed the Circle Inspector, Sri Sardar Singh, to check the report of Sri Ram Murti Singh, and report for further action. He also directed the Station Officer, Nagina, to register a case Under Section 342, I. P. C., but under para 104 of the Police Regulations he directed him not to investigate the same. Sardar Singh submitted his report on 3-12-1954 and reported that the allegations against the appellant were correct. The Superintendent of Police then consulted the District Magistrate on the question whether criminal proceedings should be instituted against the appellant or whether departmental action should be taken against him.

It was decided that the appellant should be dealt with departmentally. The Superintendent of Police then started the trial of the appellant Under Section 7, Police Act and charged him with 'negligence and remissness in the discharge of your duty and unfitness for the same in that while posted to P. S. Nagina you visited village Kiratput in Nagina circle on 27-11-54 and there you acted in a high handed manner in an attempt to extort money from Hari Sweeper and his wife Srimati Harro on the threat that Hari's wife Srimati Harro would otherwise be put under arrest, and that she was actually brought over by you to P. S. Nagina and there wrongfully confined in a barrack till discovered on 28-11-1954 in the evening by S. I. Ram Murti Singh, S. O. Nagina.'

3. The appellant denied the allegations made against him in the charge. He admitted that he had gone to Kiratpur and that Srimati Harroo and her husband Hari had been brought to him at the gher of Nathho chaukidar. He however, said that he found that there was nothing against them and he allowed them to go

away. He denied that he wanted to extort any illegal gratification from them or that he got them brought to the thana and kept confined in any barrack.

He suggested that his relations with the Station Officer. Sri Ram Murti Singh had been very bad for sometime and he had made complaints against Sri Ram Murti Singh to various persons. There were other complaints also against that officer and he was in the habit of concocting cases against persons. On account of the ill-will that existed between Sri Ram Murti Singh and the appellant the former had somehow arranged for Srimati Harro and Hari Sweeper to be brought to the thana and had made a false report against them.

4. The Superintendent of Police, Bijnor. Sri N. K. Varma, held the trial under S. 7, Police Act and recorded evidence that was produced for and against the appellant. At one stage of the trial the appellant moved the Inspector General of Police to transfer the case to some district other than Bijnor, but the request was refused. During the trial the appellant also filed a list containing the names of 17 witnesses whom he wanted to produce in his defence. Four of these witnesses were Sri Hafiz Mohammad Ibrahim, Minister for Finance and Power, the District Magistrate of Bijnor, Sri N. K. Varma, Superintendent of Police, Bijnor. who was himself holding the trial and Sri Hori Singh.

These witnesses were, however, not allowed to be called as it was considered that their evidence was irrelevant. After producing some witnesses the appellant gave up the others. As a result of the trial the Superintendent of Police held the charge against the appellant to be established, and made a recommendation to the Inspector General of Police that the appellant should be dismissed from service. The Inspector General of Police then called upon the appellant to show cause why the punishment of dismissal should not be inflicted on him. The appellant filed a written statement and appeared personally before the Inspector General. Ultimately the Inspector General of Police accepted the recommendation of the Superintendent of Police and ordered the dismissal of the appellant from service. The appellant made a representation to the Governor, but it was rejected.

5. He then filed the writ petition out of which the present appeal had arisen, and prayed that the order of his dismissal be quashed by a writ of certiorari. He also

prayed that a writ of mandamus or an order or direction be issued to the authorities ordering them to treat the appellant as still in service of the State.

6. A number of points were urged on behalf of the appellant in support Of his petition, but all of them were rejected and the petition was dismissed.

7. Some of the points which were not accepted by the learned Judge have been given up.

The main points urged on behalf of the appellant by his learned counsel are these:
:

(i) That the inquiry as contemplated by para 486 of the Police Regulations was held in the present case by Sri Sardar Singh, Circle Inspector. He held the inquiry in the absence of the appellant and did not allow him to participate in it. The inquiry was intended to be judicial or quasi-judicial and depriving the appellant of an opportunity to take part in it amounted to the violation of elementary principles of natural justice.

(ii) That the act with which the appellant was charged really amounted to a cognizable offence. The proper course for the authorities was to get it registered as an offence, to have it investigated under the Criminal Procedure Code and then to prosecute the appellant in the ordinary course. In that case the appellant would have got an opportunity of proving his innocence in a Court of justice. Instead of following that course the Superintendent of Police left the case uninvestigated and decided to deal with the appellant departmentally. This was not justified and prejudiced the appellant.

(iii) If it be said that under the rules the Superintendent of Police had a discretion either to prosecute the appellant in a criminal court or to deal with him departmentally, the rule giving that discretion must be held to be invalid as it gives an unfettered discretion to the Superintendent of Police which may result in discrimination and thus violates Article 14 of the Constitution.

(iv) That the trial of the appellant Under Section 7. Police Act, was vitiated because the appellant was not allowed to produce his defence witnesses or the

important documents on which he relied.

(v) That in holding that the charge against the appellant was proved the Superintendent of Police referred to and relied upon the report of the Inspector which he had submitted as a result of the inquiry held by him. This was expressly prohibited by the Police Regulations. The finding of the Superintendent of Police on that account stood vitiated.

(vi) That Article 311 of the Constitution was violated in this case as the Inspector General of Police also before passing the order dismissing the appellant did not allow him to produce the witnesses whom he wanted to examine or the documents which he wanted to rely on.

(vii) That the dismissing authority was the Inspector General of Police. The trial Under Section .Police Act, should have been held by him and not by the Superintendent of Police.

8. These points shall be dealt with in the order in which they have been stated.

9. The inquiry contemplated by sub-para III of Para 486 of the Police Regulation is in the nature of a preliminary investigation. The purpose is that before the Superintendent of Police decides whether any further action is necessary in respect of any complaint brought to his notice he should be in a position to see whether there is any truth in the charge. The inquiry is therefore meant only for the personal satisfaction of the Superintendent of Police to enable him to come to a decision on the question whether the matter was to be dropped or whether any further action was necessary and if so what.

From its very nature the inquiry cannot be expected to be an elaborate inquiry of a judicial or Quasi-judicial kind. No punishment can be imposed as a result of the inquiry itself. If further action is found necessary as a result of it either a judicial trial contemplated by para 488 must be held or the 'District Magistrate will be required to take cognizance of the case; In the circumstances it is not possible to accept the contention that this inquiry should be held in the Presence of the police officer concerned or that he should be given an opportunity of participating in it.

For that the occasion will arise when the trial under para 488 is held or the case is tried in a criminal Court.

It could not be the intention of sub-para III of para 486 that if a Superintendent of Police received an anonymous complaint against one of his subordinates- and wanted to find out before dropping out the matter whether it had any vestige of truth in it he was bound to hold an inquiry in the presence of the officer concerned with all the paraphernalia of a trial. Such a procedure may in many cases do much mischief to the prestige of the subordinate concerned and cause him unnecessary embarrassment. Belying on the use of the term 'inquiry' in the sub-para the learned counsel for the appellant urged that the inquiry must be a judicial one and referred to *Baroness Wenlock v. River Co.*, (1887) 19 QBD 155 (A).

This case, however, has no application. It deals with the interpretation of the word 'inquiry'

as used in the Judicature Act of 1873. The word 'inquiry' does not always mean a judicial inquiry. Whether it does or not depends on the context in which it is used. The appellant cannot therefore make a grievance of the fact that he was not allowed to be present or to participate in the inquiry held by Sri Sardar Singh, Circle I Inspector, and the subsequent proceedings cannot be held to be vitiated on account of that omission.

10. It is true that what the appellant was alleged to have done to Srimati Harro and her husband Hari amounted to an offence punishable under Section 342, Penal Code. As soon as the matter was brought to the notice of the Superintendent of Police he directed the Station Officer, Nagina, to register a case under the appropriate section, but as permitted by para 104 of the Police Regulations not to investigate it because the two persons concerned had already been released. It was in these circumstances that the offence was not investigated under the Criminal Procedure Code.

Sri Sardar Singh was then deputed to make an inquiry into the allegations and after receiving his report the Superintendent of Police decided to take further action and addressed himself the Question whether the appellant was to be dealt

with departmentally or whether a criminal pro-secution was to be lodged against him. Before deciding this question the Superintendent of Police consulted the District Magistrate and with his agreement he decided that the applicant should be dealt with departmentally (vide annexure 'C' to the counter-affidavit).

The trial of the appellant Under Section 7, Police Act, was then started as required by para. 488 of the Police Regulation. This contention is that the three sub-paragraphs of paragraph 486 of the Police Regulations are independent of each other. Sub-para 1. It is argued, applies to cognizable cases, sub-para, n to non-cognizable cases and sub-para III to cases which do not fall under the first two sub-paragraphs. The report against the appellant being in respect of a cognizable offence his case should have been dealt with under sub-para. I and not under sub-para. III.

Had there been a regular investigation under Chapter XIV of the Criminal Procedure Code followed by a trial in Court the appellant would have got an opportunity of establishing his innocence in a Court of law. By acting under sub-para III the Superintendent of police deprived him of that right.

11. We do not think that this contention is correct. Sub-para. I lays down that subject to the provisos thereto, every report received by the police of a cognisable offence shall be dealt with under Chapter XIV of the Code of Criminal Procedure, and that a case under the appropriate section shall be registered in the police station concerned. Sub-para. II refers to. non-cognizable offences, and provides that if the Superintendent of Police sees reason to take action he may either -- proceed departmentally under sub-para. III or forward a report to the District Magistrate With the request that he takes cognizance of the offence Under Section 190(1) (b) of the Code. Sub-para. III then empowers a Superintendent of Police who has reason to think that a police officer subordinate to him has committed an offence under, Section 7, or a non-cognizable offence with regard, to which he considers it unnecessary to forward a report to the District Magistrate, to proceed against that officer departmentally.

12 Now the facts which constitute an of fence Under Section 7, may also constitute a cognizable offence. In that event (unless the first proviso to sub-para I

applies) a case under the appropriate section must be registered in a police station under that sub-para and dealt with under Chapter XIV of the Code. The offender may not, however, be brought to trial, for investigation may be refused Under Section 157(1) (b) of the Code or a prosecution may not be instituted on the ground that the evidence is insufficient. In either of these cases we see no reason why the Superintendent of Police cannot proceed departmentally against the officer concerned under sub-para. III provided Of course that in a case in which a criminal prosecution is not instituted owing to lack of evidence the final report Under Section 173 of the Code has been accepted by the District Magistrate.

1. In the present case the requirements of sub-para I have been complied with and there was accordingly no bar to a departmental trial of the appellant Under Section 7.

14. It is, however, contended that para 486 invests the Superintendent of Police with unfettered discretion. It is left to his sweet will whether to deal with the person departmentally or to prosecute him ' in a criminal Court. This amounts to a contravention of Article 14 of the Constitution.

15. It is true that the Superintendent Of Police has certain amount of discretion under para 486 but it is difficult to accept the contention that the discretion is so unfettered that it contravenes Article 14 of the Constitution. If the Superintendent of Police refuses investigation Under Section 157(1)(b), Criminal P. C., it can be ordered by the District Magistrate Under Section 159. He can even order a Magisterial inquiry. After the conclusion of the investigation Under Section 157 and before the report required by Section 173 of the Criminal Procedure Code is prepared the Superintendent of Police has to decide the question whether the Police Officer concerned should or should not be sent for trial.

At that stage before taking of final decision he has to consult the Deputy Inspector General in case his concurrence is necessary for the dismissal of the officer. He has also to send a note to the District Magistrate giving his reasons if he decides not to prosecute the man. The final report Under Section 173, Criminal procedure Code has to be accepted by the District Magistrate. After it has been so accepted the question whether departmental proceedings are necessary has to be taken up.

The nature of the allegations made, the evidence available in support of it, the fact that the police officer is his own subordinate and that the prestige and reputation of the department are likely to be affected by the decision he takes are matters which are likely to regulate the discretion of the Superintendent of Police at that stage. We are therefore unable to accept the submission that sub-para III of Para 486 of the Police Regulations is invalid because it contravenes the fundamental right of the appellant to have equal protection of law.

16. In respect of the trial held Under Section 7, Police Act, the main grievance of the appellant appears to be that some of his important witnesses were not examined and some documents on Which he wanted to rely were not accepted. The appellant had given a list of his witnesses on 17-1-1950. The list contained the names of 17 persons, and three files and a copy of a judgment were also mentioned in it as materials on which the appellant wanted to place reliance, Hafiz Sri Mohammad Ibrahim, Finance Minister, U. P., the District Magistrate Bijnor and the Superintendent of Police who was holding the trial himself were among the witnesses mentioned in the list. These witnesses were not allowed to be called as it was held that their evidence could not be relevant to the charge which was being tried What these witnesses were to depose was mentioned in the list against their names.

With the help of these witnesses and documents the appellant apparently wanted to prove that he had made complaints more than once against Sri Bam Murti Singh the Station Officer of the thana. who had made the report against him to the Superintendent of Police and that Sri Ram Murti Singh had been found to have fabricated false evidence in some cases. None of these witnesses could have had any personal knowledge about the incident in respect of which the appei-lant stood charged. The documents sought to be produced also did not relate to that incident. In the circumstances the officer holding the trial cannot be said to have been unjustified in taking the view that this evidence was not relevant to the issue. That Sri Ram Muti Singh had been found to have fabricated evidence in some other cases or that his relations with the appellant had not been good could at the most warn the officer holding the trial that the evidence produced in the case had to be considered with caution and that the report of Sri Ram Murti Singh was not to be

accepted unless the allegations made in it were substantially corroborated.

That the Superintendent Of police had this In mind while holding the trial is clear from the fact that he did not record his findings on the basis of the statement of Sri Ram Murti Singh alone, but accepted the allegations as correct only because the other evidence produced supported the report submitted by that officer. We are Un-able to hold in the circumstances that there to substance in the contention of the appellant that he was prejudiced because he was not allowed to prove affirmatively the allegations against Sri Ram Murti Singh which had no direct connection with the incident in question.

17. It would certainly have been better if. in his report the Superintendent of Police had not referred to the inquiry held by Sri Sardar Singh under Para III of Rule 486. As required by sub-para (7) of Para 490 in recording his findings he should have confined himself strictly to the subject of the charge and to the evidence on the record. But mere reference to the report of Sri Sardar Singh cannot have the effect of vitiating the findings of Sri Varma. His actual findings appear to be based on the evidence that was produced before him at the trial.

18. In the case of the appellant there appears to have been no contravention, of Article 311 of the Constitution. All that clause (2) of the Article requires is that the employee must be Riven a reasonable opportunity of showing cause against the proposed action to be taken with regard to him. In this case such an opportunity was actually given to the appellant (vide annexure 'C' to the petitioner's affidavit). He filed a written statement and appeared personally. We are unable to accept the contention that at the time of this second opportunity to show cause the appellant was entitled to be allowed to cross-examine the witnesses afresh and to examine fresh witnesses. As was pointed out by the Privy Council, in High Commr. for India v. I. M. Lall if the employee has been through a proper! enquiry it is unreasonable that he should ask for a repetition of that stage when he is called upon to show cause against the proposed punishment.

19. The last submission made is that as the punishing authority in the case of the appellant was the Inspector General of Police he should have himself held the trial. This contention too does not appear to be acceptable. There appears to be

nothing in the Police Regulations requiring the Inspector General of Police himself to hold the trial in respect of an offence Under Section 7 of the Police Act committed, by a Sub-Inspector. It provides for the holding of such trials by a Superintendent of Police. Under clause (d) of para 479 the Superintendent may impose any punishment on a Sub-Inspector subordinate to him except dismissal or removal. In case he proposes dismissal or removal of a Sub-Inspector he has to forward the case for orders to the Deputy Inspector General of Police in accordance with, sub-para (8) of paragraph 490.

Under Clause (c) Of para 479 the Deputy Inspector General of Police may punish all officers of and below the rank of Inspectors and under clause (b) the Inspector General may punish Ins-pectors and all the police officers of a lower rank. In the present case the Superintendent of Police, Sri N. K. Varma, submitted his proposal for the dismissal of the appellant to the Deputy Inspector General of the range. He referred the matter to the Inspector General and it was the latter who after giving the appellant an opportunity of showing cause actually passed the order of dismissal.

20. The appellant has, therefore, been unable to satisfy us that he has been dismissed in violation of any of the provisions of the Police Regulations.

21. None of the submissions made on behalf of the appellant can thus be said to have any force. The appeal must fail and is accordingly dismissed.

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