

Shyamdev Vs. Union of India and Others

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Court : Delhi

Decided On : Oct-22-1982

Reported in : (1983)IILLJ208Del

Judge : S.B. Wad, J.

Acts : Punjab Police Rules, 1934 - Rules 16.24, 16.27, 16.38, 16.39, 16.40 and 16.42; C.C.S. (CCA) Rules, 1965; [Constitution of India](#) - Article 47

Appeal No. : Civil W.P. No. 1160 of 1981

Appellant : Shyamdev

Respondent : Union of India and Others

Judgement :

ORDER

1. In these petitions, the petitioners are challenging the legality of the order of Delhi Administration passed on 30th July, 1979 (Annexure 'J') and the order of the Additional Commissioner of Police, Delhi passed on 22nd August, 1979 (Annexure K). The order of the Delhi Administration directed holding of departmental enquiry against the petitioners (and some other police officers) and the officers of the excise department under R. 16.42 of the Punjab Police Rules, 1934. The enquiry was to be conducted in accordance with the procedure laid down by the C.C.S. (CCA) Rules, 1965. The order of the Additional Commissioner of Police purports to cancel the departmental proceedings held under R. 16.38(ii) ordered by him on

31st January, 1979. The main contention of the petitioners is that in the departmental proceedings held under R. 16.38(ii) of the Punjab Police Rules orders exonerating them were passed by the Additional Deputy Commissioner on 12th July, 1979, and the second enquiry ordered by Delhi Administration arising out of the same transaction and on the same allegations, is bad in law.

2. On 13/14th July, 1977, a tragedy took place within the limits of the police post Tank Road, Karol Bagh, in which 24 people died by consuming spurious liquor. The petitioner Sham Dev (Civil Writ Petition No. 1160/81) was working as an S.H.O., Karol Bagh police station under which the police post Tank Road falls. Gyan Prakash, petitioner (Civil Writ Petition No. 1159 of 1981) was working as Sub-Inspector but was not working in the Tank Road, post area. He was under the transfer orders to join Janak Puri area. From 5th July, 1977 till 14th July, 1977, he was on the casual leave. He reported for duty on 15th July, 1977 and proceed on transfer to police station, Janakpuri on the same day. Sham Dev Inspector, Gyan Chand Sub-Inspector, Gyan Prakash Sub-Inspector and some other police officers were suspected of being responsible to the tragedy. Sham Dev and Gyan Chand were suspended on 14th July, 1977 and Gyan Prakash was suspended on 20th July, 1977. There was a great uproar in the city on the liquor tragedy and the questions were also asked in the Parliament. Shri V. K. Buggal, Additional District Magistrate, was appointed to enquire into the liquor tragedy. He submitted his report on 15th October, 1977. The A.D.M. found involvement of the said police officers in the tragedy. The A.D.M. has also referred to the earlier tragedy and suggested some steps to avoid recurrence of it in future. Thereafter, on 16th November, 1978, the petitioners were reinstated in the service.

3. After their reinstatement the Additional Commissioner of Police decided to hold a departmental enquiry against the said police officials and passed an order on 3rd January, 1979 unD R. 16.38 of the Punjab Police Rules. Additional Deputy Commissioner of Police Om Prakash was appointed as an Enquiry Officer. In the statement of allegations the charge against Sham Dev was that as S.H.O. he failed to exert effective control over his subordinates as well as proper control over the persons who had been dealing in purchase and sale of illicit liquor in the area of police station Karol Bagh. He failed to take action when Sub-Inspector Gyan

Chand requested him to supply additional force, so that steps could be taken to prevent the illicit liquor sale. He was thus negligent and remiss in the discharge of his official duties. The charge against petitioner Gyan Prakash was that the sale of spurious liquor was being done with the connivance of S. I. Gyan Prakash who was posted at P. S. Karol Bagh in those days. The conduct of S. I. Gyan Prakash made the subordinate staff also not to discharge their duties properly in stopping the sale of illicit liquor in the area and to check the occurrence of such crime. As against Sub-Inspector Gyan Chand, the charge was that he was posted as in charge Police post Tank Road in the jurisdiction of which police post 17 persons died due to the consumption of spurious liquor. The Sub-Inspector failed to stop the sale of spurious liquor in the jurisdiction of the police post where he was posted as in charge. Thus, he was negligent and remiss in the discharge of his official duties.

4. Om Prakash, Additional Deputy Commissioner of Police examined 17 witness, which were examined earlier by the A.D.M. and also collected other evidence during the proceedings. On the evidence he found that the sale or purchase of spurious liquor in the area was not established. He further found that none of the 17 witnesses supported the allegations made against the said police officials. The Additional Deputy Commissioner found that the assessment of the superior police officers of S.H.O. Sham Dev did not show that he had no proper control. There was also no evidence to show that he failed to control the situation within the area of Karol Bagh Police Station. Gyan Chand Sub-Inspector, who was in charge of police post Tank Road, on the date of the occurrence had stated before the A.D.M. that although he had asked for additional police force, the same was not supplied by S.H.O. Sham Dev which prevented him from effectively controlling the spurious liquor sale. The Additional Deputy Commissioner, on examination of the letter dated 2nd June, 1977, found that the additional police force was requested in view of the then forth-coming elections and not for any other specific purpose. Considering the evidence on record, the Inquiry Officer came to the conclusion that there was no evidence against Sham Dev and recommended his exoneration.

5. As regards S. I. Gyan Prakash, petitioner, the Enquiry Officer recorded the following findings :

'It has been alleged that spurious liquor was being sold with connivance of S. I. Gyan Prakash but I find no evidence, whatsoever, against this fact during my D.M. nor is there any evidence to the effect that he was deterring his subordinates staff in stopping the sale of spurious liquor. He was previously at the police post Tank Road from where he was transferred to the police station on the complaint of local leaders, hence the allegations against him may be vociferous. If the person in charge police post Tank Road, felt his interference in his administration, he could have complained against him to his superior officers. I also do not propose to frame any charge against him and recommend for his exoneration.'

6. Shri Gyan Chand S.I. was also exonerated by the Enquiry Officer. It may be noted that S.I. Gyan Chand who was a co-accused with the two petitioners, had given evidence against them before the A.D.M. Although he was in charge of the police post within which the tragedy took place, he was trying to put blame on the two petitioners. Against Sham Dev S.H.O. he complained that sufficient police force was not made available to him by the S.H.O. although the request was made in writing. Against Gyan Prakash S.I. he complained that although Gyan Prakash was not working in the PP Tank Road, he was interfering in the working of subordinates police officers in his area. It should also be noted that both the allegations made by S.I. Gyan Chand, the co-accused, were found without substance by the Enquiry Officer. These facts have a relevance because in the subsequent enquiry ordered by the Delhi Administration it is found that enquiry against Gyan Chand S.I. is dropped. In fact, he has been subsequently promoted to the post of Inspector.

7. On 30th July, 1979 Delhi Administration directed that disciplinary proceedings should be held against the petitioners under CCS (CCA) Rules, 1965 along with some other police officers and some excise officers in regard to the said tragedy. This enquiry was ordered in exercise of the powers under R. 16.42 of the Punjab Police Rules. On 4th August, 1979 Shri T. R. Kakkar, the Deputy Commissioner of Police, recommended to the Additional Commissioner of Police that notwithstanding the enquiry report of Additional D.C. P. Om Prakash, exonerating the petitioners they should be put on the list of persons of doubtful integrity at least for a period of five years and that the period of suspension should not be treated

as one spent on duty and that they should not be paid anything more than the subsistence allowance for that period. The Additional D.C.P. further stated 'all the material prosecution witnesses turned hostile or to say that they did not corroborate the facts on the summary of allegations.'

This definitely has been, to my mind, the result of winning over the witnesses either by offering them pecuniary benefits or due to other pressures or influences; otherwise there can be no other reason why all the material witnesses retracted from their earlier statements made during the course of magisterial enquiry. But the procedure as it stands in the departmental enquiries and the legal requirements of awarding punishments in such enquiries, this disciplinary authority is not in a position to hold the defaulter responsible under these circumstances. Thereafter, on 22nd August, 1979 the Additional Commissioner of Police Range Delhi ordered cancellation of the departmental enquiry ordered by him under R. 16.38(ii) on 31st January, 1979. In the said order it has claimed that the enquiry ordered by Delhi Administration under CCS (CCA) Rules, 1965 supersedes the enquiry ordered by him under the Punjab Police Rules. Feeling aggrieved by the second departmental enquiry ordered by the Delhi Administration, the petitioners made representations challenging the same. The representations were, however, rejected. The writ petition was filed thereafter.

8. The order of the Delhi Administration instituting fresh enquiry under the CCS (CCA) Rules, 1965 is challenged by the petitioner on the following grounds :

(1) Once a delinquent government servant is exonerated after a regular enquiry there cannot be a fresh departmental enquiry for the same charges arising out of the same transaction.

(2) Rule 16.42 of the Punjab Police Rules does not empower any fresh enquiry.

(3) The second enquiry ordered by the Delhi Administration was ordered without any application of mind and without considering the fact that the petitioners were already exonerated in the disciplinary enquiry under R. 16.38(ii) of the Punjab Police Rules.

(4) The second enquiry was mala fide inasmuch as S. I. Gyan Chand who was in charge of Tank Road police post, within whose jurisdiction the tragedy took place, was dropped from the second enquiry. The only adverse evidence against the petitioners before the A.D.M. was given by Gyan Chand, who was himself a co-accused in the departmental enquiry.

(5) The second enquiry against petitioner Gyan Prakash was ordered because of the local political pressure.

(6) The order of the Additional Commissioner of Police dated 22nd August, 1979 cancelling the earlier enquiry ordered by him under R. 16.39(ii) was illegal inasmuch as the said order purported to cancel the exoneration of the petitioners. The said order erroneously assumed that order of the Delhi Administration instituting second enquiry supersedes the earlier enquiry held under R. 16.38(ii).

9. The respondents justify the second enquiry on the ground that it was a separate enquiry under CCS (CCA) Rules of 1965. At the time of the arguments the respondents produced the file of the Delhi Administration to demonstrate that Lt. Governor had taken the decision to institute an enquiry under CCS Rules on 24th May, 1979. This was much before the order exonerating the petitioners was passed by the Additional Deputy Commissioner on 12th July, 1979. It is submitted that only the formal order was passed on 30th July, 1979, which was after the said order of the Additional Deputy Commissioner of Police. It is then submitted that the Lt. Governor took a decision on the basis of preliminary enquiry made by the A.D.M. in which the petitioners were found guilty. It is asserted that the enquiry under CCS (CCA) Rules could be legally ordered by the Lt. Governor in exercise of his powers under R. 16.42 of the Punjab Police Rules. It is claimed that Delhi police are also governed by the CCS Rules. Since the Lt. Governor was of the opinion that the excise officers, who are not governed by the Punjab Police Rules, should also be tried, it was necessary to order a departmental enquiry under the CCS Rules.

10. For properly appreciating the respective submissions we must look at the three orders more closely. They read as follows :

First order

'Whereas on an enquiry conducted by Shri V. K. Buggal, Additional District Magistrate, into the tragedy which took place in Karol Bagh area on the 13/14th July, 1977, in which 24 persons dies after having consumed spurious liquor, some of the allegations have been substantiated against the following police officials

1. Insp. Sham Dev No. D-1/194
2. S. I. Gyan Chand No. D/1034
3. S. I. Gyan Prakash No. D/654
4. Const. Amar Singh No. 142/C
5. Const. Fateh Singh No. 1204/C
6. Const. Deep Chand No. 362/C
7. Const. Tota Ram No. 1237/C

And whereas the evidence and material available for prosecuting them may not be sufficient to prove their guilt beyond all reasonable doubts as required in the court of law, but which nevertheless seem sufficient to hold the departmental proceedings

Now, therefore, I. N. K. Singhal, Additional Commissioner of Police (Range), Delhi order under PPR 16.38(ii) that the said police officials be dealt with departmentally. The D.E. be conducted by Deputy Commissioner of Police, Central District, on day to day basis who will submit his findings to the undersigned expeditiously.

Sd/- (N. K. Singhal)

Additional Commissioner of Police (Range), Delhi No. 80/Vig/DA/78 dated 3rd January, 1979.

Copy forwarded for information and necessary action to 1. The Deputy Commissioner of Police, Central District Delhi for information and necessary action, with reference to his memo No. 19639 HAP/C dated 29th November, 1978 with summary of allegations and memo along with related papers for necessary action.'

Second order

'No. P3/5978-Home (P)/District Delhi Administration :

Delhi Home (Police) Establishment Department.

Dated the July, 1979.

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