

Sahib Ram Vs. Delhi Administration

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Court : Delhi

Decided On : Jan-04-1984

Reported in : 1984RLR286; 1984(1)SLJ506(Delhi)

Judge : N.N. Goswamy, J.

Acts : Punjab Police Rules - Rule 16.3(1)

Appeal No. : Civil Writ Appeal No. 284 of 1980

Appellant : Sahib Ram

Respondent : Delhi Administration

Advocate for Pet/Ap. : H.R. Bhutani and; O.P. Sharma, Advs

Judgement :

N.N. Goswamy, J.

(1) The main question which calls for consideration in this writ petition is whether the petitioner having been acquitted by a competent criminal Court could be proceeded against departmentally on the same allegations which were the subject matter of the F.I.R.

(2) The relevant facts are that the petitioner was appointed as a Constable on 10.12.1962. Thereafter he was promoted as Asstt. Sub-Inspector. In 1976 he was

posted in the Establishment Branch of the Police Hqrs. Delhi and was selected for posting as a Senior Technician Road Accident Service on the Ambulance Van of the South District, New Delhi. On 24.4.1977 a F.I.R. No. 160/77 u/Ss. 457/354, Indian Penal Code was filed in police Station, Najafgarh on the complaint lodged by Smt. Vidya Wati daughter of Ram Mehar. The allegations were that on 24.4.1977 at about mid-night intervening 24/25th April 1977, the petitioner was found present on the roof of house of Ram Mehar where his two daughters namely Vidya Vati and his younger sister were sleeping, without any just cause or reason and Realizing that the women awoke, and the petitioner thereafter escaped by jumping over the roof of the house. The petitioner was sent up for trial before the Met. Mgte. Delhi. After recording some evidence; the M.M. came to the conclusion that the facts narrated by Smt. Vidya Vati did not show assault or use of criminal force to her with intention to outrage her modesty and the accused/petitioner could not be charged u/s. 354 Indian Penal Code . The learned Magistrate further found that from the evidence of the witnesses namely Smt. Chhaya, Smt. Sardare, Chandgi Ram and Smt. Mukhtiari, it is clear that the person who jumped from the roof of the complainant and was running in the street below on the night of occurrence was not the petitioner. In view of these findings, the learned M.M. discharged the petitioner on 17.3.1978.

(3) The petitioner having been discharged, a departmental enquiry was sought to be initiated against him by order dated 2.2.1979. The order is (.....)

(4) In pursuance of this order the inquiry was conducted and on receipt of the inquiry report, a show cause notice was issued to the petitioner. The relevant portion is :

'ON the night of 24/ 5.4.77 he was found present on the roof of Shri Ram Mehar where women were sleeping without any just cause or reason with an ulterior motive. He also got his hand into the hair of Smt. Vidya Devi and she woke up and raised an alarm. Thereupon he ran away from there, jumped down and disappeared.'

(5) The order initiating the inquiry as also the show cause notice clearly indicate that the petitioner is being proceeded against exactly on the same charges which

were contained in the F.I.R. and he was discharged. The relevant rule which admittedly is applicable in Delhi is rule 16.3 of the Punjab Police Rules. The said rule reads, as under :--

'16.3.(1) When a Police Officer has been tried and acquitted by a criminal Court he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in criminal case, whether actually led or not, unless- [1] (a) the criminal charge has failed on technical grounds or (b) in the opinion of Court or the S.P., Public Witness s. have been won over or (c) Court held that offence was actually committed and suspicion rests on police officer concerned; or (d) the evidence cited in criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge ; or (e) additional evidence admissible u/r 16.25 (I) in departmental proceedings is available. (2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Sub-ordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector General of of police, and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Vol. I, part I'.

(6) This rule has been interpreted by this Court in various authorities but, in my opinion, it is not necessary to refer to any of the judgments in view of clear wording of the rule. However, I refer to only Kundan Lal Delhi Adm. 1976(1) Slr 133.

(7) The learned counsel for the respondent contends that u/r 16.3(1)(d), the department could proceed with the departmental inquiry and in this case they were acting under the said sub-rule. A mere reading of the order and the show cause reproduced above, would show that this argument is untenable and cannot be accepted. The department is not proceeding on the facts unconnected with the charge before the court which justified the departmental proceedings on a different charge but is proceeding exactly on the same charges which were subject matter of the trial before the competent criminal Court.

(8) There is yet another grievance of the petitioner which has been brought in by the amendment of the writ petition. During the pendency of this petition, the

petitioner filed an application for stay of the departmental proceedings. This Court on 4.3.1981 granted the stay of proceedings. Before such an application was filed, the deptt. itself had quashed the original proceedings and had directed a fresh inquiry on the same charges. Shri Jagmal Singh, Acp, had been appointed as the Enquiry Officer. The petitioner filed an application before the D.C.P. (South) wherein he requested for change of the Enquiry Officer. It was alleged in the application that the initial case on the basis of Fir 160/77 the investigation was conducted under the supervision of the said Jagmal Singh, Acp, who had found a prima facie case against the petitioner. It is further alleged that on the very first date of enquiry the said Jagmal Singh made certain remarks against the petitioner through his Reader and those remarks have been reproduced in the application which are:-

'YEH Bada Harfan Maula Hai Yeh Sedhe Hathon Kabu Nahin Ayeega Bhot Acha Hua Ki Yeh Phir Mere Pass Aagya Hai Aab Ishe Dekh Bhal Ke Bandhega.'

(9) On this application Jagmal Singh was asked to submit his comments. In his comments Shri Jagmal Singh admitted that the investigation in the criminal case was supervised by him but he denied having made the remarks against the petitioner in court. He also suggested that for attributing such remarks a departmental inquiry should be held against the petitioner. It appears that on the basis of the said comments and recommendation of the Acp, the departmental inquiry was directed to be held. By amendment of the writ petition, the petitioner has prayed for quashing of the said inquiry also. I have given my careful consideration to the application for change of the inquiry officer which contained the allegations on the basis of which the inquiry has been ordered and a summary of allegations has also been served on the petitioner. I am of the opinion that Shri Jagmal Singh who had admittedly conducted the investigation in the criminal case, should never have been appointed as inquiry officer by the respondent. He having been appointed, the petitioner was well within his right to ask for change of the inquiry officer and the words used by him are not such which call for any such departmental inquiry as has been directed. In any case such an order was passed on 5.3.1981 when the proceedings in the inquiry had already been stayed by this Court. No further order in the inquiry could be passed after 4.3.1981 when

admittedly the order in question staying the proceedings was passed in presence of both parties. The department would have been well advised to stay its hands from passing any further orders on the file of the inquiry. In this view of the matter, the second inquiry initiated has also to be quashed.

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