

Subramoniam Vs. Deputy Inspector-general of Police and ors.

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Court : Kerala

Decided On : Jun-27-1963

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Judge : C.A. Vaidialingam, J.

Appellant : Subramoniam

Respondent : Deputy Inspector-general of Police and ors.

Advocate for Pet/Ap. : Sri. K. Chandrasekharan, Sri. Chandrasekharan

Judgement :

C.A. Vaidialingam, J.

1. In this writ petition Sri K. Chandrasekharan, learned Counsel for the petitioner, challenges the order passed by respondent 1, namely, the Deputy Inspector-General of Police, Northern Range, Calicut, under Ex. P. 1, as also the order of respondent 2, namely, the Inspector-General of Police, Kerala State, under Ex. P. 2. It is enough to note at the moment that under Ex. P. 1, which takes In also the punishment roll issued as against the petitioner by the Superintendent of Police, the punishing authority, namely, respondent 1, holds the petitioner guilty of the charge for which he was tried, and ultimately inflicts a punishment by directing that the next increment which the officer is eligible for, will be withheld for one year, without having the effect of postponing the future increments. An appeal taken, as

against this order by the petitioner, was disposed of by the appellate authority, namely, respondent 2, under Ex P. 2. Ultimately, the appellate authority also confirmed the order passed by respondent 1 under Ex. P. 1.

2. The circumstances under which these two orders came to be passed, may be briefly Indicated. The petitioner was the circle inspector of police at Taliparamba in December 1960. According to the prosecution, one Sri Skaria Joseph, approached the petitioner on 5 December 1960 and complained of theft of jewels worth about Rs. 1,500 which appears to have taken place in his house on 8 September 1960. The said Sri Skaria Joseph also appears to have mentioned the person whom he suspects to be responsible for the theft. It is also seen that the said complainant appears to have informed the petitioner, that the sub-inspector of police at Taliparamba has not taken any action on the complaint presented by him on 8 September 1960. But ultimately it is seen that the complainant appears to have given a written complaint, dated 5 December 1960, but actually given to the petitioner on 6 December 1960.

3. According to the prosecution, the offences made out on the basis of the allegations contained in the complaint, had to be registered under Sections 380, 411 and 461 of the Indian Penal Code, whereas it is the case of the prosecution that the petitioner gave a wrong direction to the sub-inspector of police, Taliparamba, to register the case only under Section 411, Indian Penal Code, Instead of under Sections 380 and 461 also.

4. There are certain other matters which have no doubt been adverted to by the learned Counsel for the petitioner, namely, that the complainant, Sri Skaria Joseph, appears to have sent a petition to the Government and the Government also, in consequence gave certain directions on 6 January 1961 under Ex. P. 4 and it is really on the basis of these directions given by the Government in that order, that ultimately proceedings have been taken as against the petitioner and he has been found guilty. I do not think it necessary, for a disposal of this writ petition, to consider those aspects. But even otherwise, I am satisfied, having gone into the endorsement made by Government under Ex. P. 4, that no particular officer, against whom action is to be taken has been indicated in the said order.

5. No doubt, it is seen that a petition appears to have been sent to Government by the complainant, Skaria Joseph. According to the Government, the said petition will indicate that due to negligence of the police, detection has not been made properly. That the complaint-petition has been only forwarded to the Inspector-General of Police, with a direction to arrange for the case being investigated by the Crime Branch and with a further request to take proper action against any negligent police officers. Therefore, there is more or less only a general direction given by the Government, when a particular grievance was placed before them; and, in my view, there is absolutely nothing wrong in the Government directing their subordinate officers to investigate the complaint that has been made and find out whether any particular officer of the department is guilty of negligence, and, if so, to take such action that may be necessary. Therefore, the fact that the Government issued the communication, evidenced by Ex. P. 4, in my view, apart from its being justified, has absolutely nothing to do with the question that this Court has to consider, namely, whether the allegations as against the petitioner have been properly considered under the provisions of the material rules, to which I will immediately refer.

6. Exhibit P. 5 is more or less the charge-sheet that has been issued by the Deputy Superintendent of Police, Kasaragod; and that is dated 30 May 1961. The charge itself is stated to be the giving by the petitioner of wrong direction to the sub-inspector of police, Taliparamba, on the complaint of Skaria Joseph dated 5 December 1960. In particular it is stated that the wrong direction seems to be to register the case under Section 411, Indian Penal Code, though offences under Sections 380 and 461, Indian Penal Code, were also disclosed. Then the facts in evidence are stated, which relate to the claim made by Skaria Joseph, to have met the petitioner along with an advocate on 5 December 1960 and his giving a complaint-petition. The chargesheet also refers to Borne allegation that appears to have been made by Skaria Joseph of having made a complaint to the petitioner even on 8 September 1960. Then the Deputy Superintendent of Police finally says that on the basis of the fact referred to therein, the petitioner has given a wrong direction to the sub-inspector of police, Taliparamba, to register a case under Section 411, Indian Penal Code, instead of under Sections 380 and 461, Indian Penal Code. There is a further statement to the effect that the petition of Skaria

Joseph, and the petitioner's endorsement on the said petition, will prove the charge against the petitioner. Exhibit P. 5 winds up with a direction to the petitioner to show cause in writing, within the period mentioned therein, as to why his increment should not be postponed for a period of two years. It also states that if no explanation is received within the time stipulated, it will be presumed that he has no explanation to offer.

7. Pausing here for a minute, one of the questions that arises for consideration in these proceedings, will be as to whether the conditions prescribed under Sub-rule (a) of Rule 2 of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958, can be said to have been complied with at the time when the chargesheet, Ex, P. 5, was issued to the petitioner.

8. The petitioner, no doubt, states that he has sent an explanation under Ex. P. 6 dated 5 September 1961. But it is seen that the inquiring authority, namely, the Superintendent of Police, by Ex. P. 7, dated 7 September 1961, has passed orders holding the petitioner guilty of the charge. There is no controversy that at the time when the order, . Ex. P. 7, was passed, the punishing authority had not before him the explanation, dated 5 September 1961, namely, Ex. P. 6, sent by the petitioner. In fact, it is seen that in Ex. P. 7. the Deputy Superintendent of Police again refers to the charge that has been framed as against the petitioner and it practically repeats the facts in evidence mentioned in the chargesheet, Ex. P. 5. There is one other additional aspect that has been referred to in Ex. P. 7, namely, that according to the officer concerned, the petition presented by the complainant--referring to Skaria Joseph--to the Government on 29 December 1960, and the first information reports, marked Exs. P. 1 and P. 2, before the authority concerned, will bear testimony to this, namely, to the earlier view expressed by the authority concerned that the petitioner directed the sub-inspector of police, Taliparamba, to register a case under Section 411, Indian Penal Code, even though the complaint disclosed offences under Sections 380, 411 and 461, Indian Penal Code. That the report of the Crime Branch also confirms this, is what the Deputy Superintendent of Police also states. The Deputy Superintendent of Police also states that a charge was therefore framed against the delinquent, why his increment should not be postponed for two years and his explanation required.

Then the authority refers to the fact that though the petitioner has acknowledged receipt of the charge on 20 August 1961, he has not submitted his explanation and therefore he is of the view that the petitioner has no explanation to offer. On this basis, the authority ultimately comes to the conclusion that the petitioner must be found guilty of the charge that has been framed against him.

9. Here again, it will be seen that there is no indication in the order, Ex. P, 7, that the Deputy Superintendent of Police has independently applied his mind and come to the conclusion whether, in his opinion, as the inquiring authority, the charge, framed as against the petitioner has been made out. That must certainly be arrived at by that authority, having due regard to the allegations contained in the complaint-petition filed by Skaria Joseph. But, on the contrary, support is sought to be obtained by that officer, not by independently applying his mind and coming to a conclusion, but really on the complaint-petition presented by Skaria Joseph, to the Government, and the report of the Special Crime Branch Police.

10. I am only advert to these aspects to show the infirmities that are inherent in the inquiry proceedings. I will have to advert to certain other aspects, also, a little later in this judgment.

11. On the basis of this report of the Deputy Superintendent of Police, dated 7 September 1961, Ex. P. 7, the punishing authority, namely, the Deputy Inspector-General of Police, appears to have issued a show-cause notice on 26 September 1961, The petitioner again sent a fairly lengthy explanation, evidenced by Ex. P. 8, dated 11 October 1961, in which he also refers to the fact that in respect of the chargesheet, Ex. P. 5, he has already sent an explanation, evidenced by Ex. P. 6, which does not appear to have been taken into account by the punishing authority. In Ex. P. 8, among various other aspects, that have been dealt with by the petitioner, there is one particular matter, which requires to be noted. In Para. 8 he refers to the fact that closed receptacle is an ingredient of Section 461, Indian Penal Code. Then the petitioner deals with this aspect, and ultimately says that on the basis of the allegations contained in the complaint given to him by Skaria Joseph, there is absolutely no scope for invoking the provisions of Section 481, Indian Penal Code.

12. In Ex. P. 7, the Deputy Superintendent of Police, no doubt, deals with the first information report and the report of the Special Crime Branch Police, in support of the charge. Here again, it will be noted that the officer has not accepted even this part of the plea raised by the petitioner. But it is seen from Ex. P. 2, that the appellate authority, at any rate, has chosen to accept the case of the petitioner; and that will clearly show that the petitioner was perfectly justified in not registering a case under Section 461, Indian Penal Code, at any rate, under Ex. P. 2, the appellate authority who decided the appeal of the petitioner, considers the grievance of the petitioner that he had justification for not registering a case under Sections 380 and 461, Indian Penal Code. The appellate authority in Ex. P. 2 categorically states that Section 461, Indian Penal Code, may not be appropriate, because it is not stated anywhere in the complaint that the drawer of the table or the small box in which the jewels were kept was locked. But, no doubt, ultimately the appellate authority also agrees with the punishing authority that an offence under Section 380, Indian Penal Code, has been disclosed and therefore the petitioner committed an error in registering a case only under Section 411, Indian Penal Code. I am only adverting to these aspects because at any rate one of the authorities, namely, the appellate authority, has accepted one of the pleas of the petitioner contained in his explanation, Ex. P. 8. Further in this case no mala fides or corrupt motive is alleged against the petitioner.

13. On receipt of this further explanation, viz., Ex. P. 8, dated 11 October 1961, it is stated in the counter-affidavit filed on behalf of the respondents, that the punishing authority forwarded the entire records to the Superintendent of Police, by his order, dated 29 December 1961, with a direction to the said authority to send a revised punishment report, after taking into account the explanations that have been furnished by the petitioner. That order of respondent 1, is, as I mentioned earlier, dated 29 December 1961. And, by that time, that authority had before him not only the explanation of the petitioner, Ex. P. 6, dated 5 September 1961, but also his further explanation, Ex. P. 8, dated 11 October 1961. Therefore, the direction contained in the order of 29 December 1961 to the Superintendent of Police to issue a revised punishment roll, after having due consideration of the explanations furnished by the petitioner, must relate not only to the explanation, Ex. P. 6, but also to the further explanation, Ex. P. 8.

14. On the basis of the records sent to the Superintendent of Police, it is seen that the said authority has finally passed the order, Ex. P. 1, which is called a punishment roll in these proceedings. It is really on the basis of the said punishment roll that the punishing authority, viz., respondent 1, has inflicted the punishment referred to above.

15. In Ex. P. 1 the Superintendent of Police again refers to the charge framed as against the petitioner, then to the endorsement that appears to have been made by the petitioner on the complaint registered in the station concerned and then ultimately he refers also to the complaint that was made by Skaria Joseph to Government, as well as to the Government memorandum dated 6 January 1981. After advertng to all these aspects, as also to the report of the Special Police, Crime Branch, the Superintendent of Police refers to the explanation that has been sent by the petitioner on 5 September 1961. After advertng to this explanation of 5 September 1961, which is Ex. P. 6, the Superintendent is not prepared to accept the plea of the petitioner that he was justified in registering a complaint only under Section 411, Indian Penal Code. Ultimately the Superintendent of Police states that the petitioner's contention that he has given his reasons for registering a case under Section 411, Indian Penal Code, is not also born out by the records. Therefore, he holds the petitioner guilty of the charge that has been framed as against him, namely, that he directed the sub-inspector of police, Taliparamba, to register a case under Section 411, Indian Penal Code, though the offences were under Sections 380 and 461, Indian Penal Code, also,

16. On the basis of this punishment roll, respondent 1, the punishing authority, proceeds to state in Ex. P. 1 itself, that the plea of the petitioner that he was justified in registering a complaint only under Section 411, Indian Penal Code, cannot be accepted. Respondent 1 refers also to reasonable opportunities having been given to the petitioner to make out his defense. It is also the view of respondent 1 that the offence disclosed by the charge has been adequately established in the inquiry. It is really on that basis that the authority inflicts the punishment on the petitioner by withholding his increment for one year.

17. To complete the narration, I have already stated that challenge was made by the petitioner by taking the matter before the appellate authority. Though the appellate authority under Ex. P. 2 was prepared to accept the plea of the petitioner that he was Justified in not registering a case under Section 461, Indian Penal Code, also, nevertheless that authority was of the view that the petitioner committed an irregularity or illegality in not registering the complaint under Section 380; and, in this view, the appellate authority confirmed the order withholding the increment of the petitioner for one year, as directed by respondent 1.

18. Before I consider the contentions of Sri K. Chandrasekharan, learned Counsel for the petitioner, as also the contentions of the learned Government Pleader for the respondents, it is desirable to refer to come of the Rules governing inquiry proceedings in such matters.

19. There is no controversy that the petitioner's case was inquired into under the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958. Rule 6 makes general provisions regarding the procedure to be adopted in the matter of inquiry. These general provisions include--and there is no controversy about it--a preliminary inquiry being conducted, then definite charge or charges being framed and communicated to the member of the service charged, and the member of the service being required to put in a written statement of his defence and also to state whether he desires to have an oral inquiry to be held or to be heard in person. Then the further procedure to be adopted in the inquiry is also indicated in the several Sub-rules in Rule 6. Rule 6 (10)(6) provides that the provisions of this rule shall not apply in relation to the imposition on any member of the service of any of the penalties specified in Clause (g) of Sub-rule (1) of Rule 5. No doubt Sub-clause (1) of Clause (b) of Sub-rule (10) of Rule 6 refers to several other punishments, but in this writ petition we are concerned only with the imposition of the punishment under Clause (g) of Sub-rule (1) of Rule 15.

20. Rule 12 provides for summary procedure being adopted in the award of certain penalties. Here again, the same punishments that are referred to in Rule 6 (10)(6)(1), are again taken in. In particular, we are concerned with the punishment specified in 01. (g) of Sub-rule (1) of Rule 15, in this case. In respect of such

punishments, Rule 12 (a) provides that

on receipt of the complaint or information of the allegation, the inquiry officer shall make such inquiry as he deems necessary and demand an explanation on the basis of the allegations found true.

This provision is contained in Clause (a) of Rule 12. The next procedure is also indicated in Clause (6) of Rule 12 to the effect that

on receipt of the explanation and on making further inquiries, in the light of the explanation if necessary, final orders shall be passed in the matter.

Thus it will be seen that provision is made to the effect that on receipt of the explanation and after making further Inquiry in the light of the explanation, if necessary, final orders are to be passed in the matter. There is a proviso to Sub-rule (b) of Rule 12 to the effect that when any of the punishments mentioned in Clauses (d), (e), (f), (g), (h) and (i) of Sub-rule (1) of Rule 15 is to be imposed, a punishment roll shall be prepared. In this case, inasmuch as the punishment is under 01. (g) of Sub-rule (1) of Rule 15, a punishment roll has to be prepared ; and there is no controversy that a punishment roll has no doubt been prepared.

21. The rule relating to award of penalties is Rule 15. Clause (g) of Sub-rule (1) of Rule 15 refers to penalty being imposed by way of withholding of increments or promotion including stoppage at an efficiency bar. Therefore, it will be seen that when a punishment is proposed to be inflicted under 01. (g) of Sub-rule (1) of Rule 15, by way of withholding of increments, as has been done in this case, it is open to the authorities concerned to follow the summary procedure indicated in Rule 12. It will also be seen that with respect to those punishments mentioned in Sub-clause (k) of Clause (6) of Sub-rule (10) of Rule 6, it is not necessary to follow the various general provisions indicated in Rule 6 regarding inquiries to be conducted in respect of other punishments.

22. Under Rule 22, it is provided that when the authority imposes any penalty other than those mentioned in Clauses (a), (b) and (c) of Sub-rule (1) of Rule 15, he shall maintain a record, which is to contain the matters specified in the various

clauses of Sub-rule (1) of Rule 22. In particular, it will be seen that under Clause (iii) of Sub-rule (1) of Rule 22, provision is made for maintaining a record of the persons' representations, if any, and the evidence taken, if any.

23. This is broadly the scheme of the Kerala Police Department Inquiries, Punishment and Appeal Rules, 1958, with which we are now concerned.

24. The question debated in this Court by Sri K. Chandrasekharan, learned Counsel for the petitioner, as well as by the learned Government Pleader for the respondents, is regarding compliance with the conditions mentioned in Sub-rules (a) and (b) of Rule 12 of the said rules. According to the learned Counsel for the petitioner, even from the very initial stage of framing of the charge, evidenced by Ex. P 5, till the infliction of the punishment under Ex. P. 1, there has been violation at every stage of the provisions contained in Sub-rules (a) and (b) of Rule 12; whereas, according to the learned Government Pleader there is absolutely no violation of any of the provisions and the inquiry has been conducted strictly in accordance with the rules and there has been no violation even of any principles of natural justice. After having due regard to the various aspects that have been presented before me by Sri K. Chandrasekharan, learned Counsel for the petitioner, and by the learned Government Pleader for the State, I am satisfied that in this case the proceedings under attack will have to be set aside, and I will indicate the reasons immediately below.

25. I have already referred to the provisions of Rule 12, which specifically deals with the nature of the summary procedure to be adopted by the authority when he desires to inflict one of the punishments specified in CIS. (a) to (i) of Sub-Rule (1) of Rule 15. And in this case, I have also indicated that the punishment is under Clause (g) of Sub-rule (1) of Rule 15, i.e., withholding of increments or promotion including stoppage at an efficiency bar. Therefore, the authority would be prima facie entitled to proceed in the manner indicated in Rule 12. But the question does arise whether even having regard to the limited nature of the inquiry which is contemplated under: Rule 12, there has been compliance in that regard by the authorities concerned.

26. Under Sub-rule (a) of Rule 12, emphasis is laid on the fact that the inquiry officer has to make such inquiry as he deems necessary and demand an explanation on the basis of the allegations found true. In my view, that Sub-rule clearly contemplates that after a complaint or information of the allegation is received, the inquiry officer will have to apply his mind independently and make some inquiry at least, though the nature of the inquiry may be very limited. But the inquiry officer is bound to make an enquiry and satisfy himself, regarding the particular allegations which have been made in the complaint.

27. The second aspect to be noted in Sub-rule (a) of Rule 12 is that an explanation is to be demanded of the delinquent officer, only on the basis of the allegations found true ; that is the first stage. Now the question is whether, in issuing the chargesheet, Ex. P. 5, the authority, who Issued it, can be said to have considered the matter independently by himself and given any indication in the said charge memorandum that he has prima facie at least satisfied himself that the allegations are true. The second question that arises with respect of Ex.P. 5 is whether the inquiry officer has asked the petitioner to offer an explanation on the allegations made in the charge, found to be true.

28. According to Sri Chandrasekharan, learned Counsel for the petitioner, there has been a very gross violation of the various provisions mentioned in Clause (a) of Rule 12, According to the learned Counsel, there is absolutely nothing in Ex. P. 5 which will Indicate that the Deputy Superintendent of Police, prior to issuing Ex. P. 5, has in any manner considered for himself independently the allegations on the basis of which the charge, Ex. P. 5, has been issued. The further contention of the learned Counsel for the petitioner is that even going by what is stated in Ex. P. 5 the petitioner has not been asked to give any explanation in regard to any complaint or allegation about which the officer has at any jate prima facie satisfied himself that the allegations aye true. On the other hand, the learned Counsel urges that the only opportunity that has been given to the petitioner under Ex. P. 5, is, not to answer any allegation or complaint, but only to show cause as to why the punishment mentioned therein should not be inflicted. No doubt, the punishment that is suggested In Ex. P. 5 appears to be that his increment is to be postponed for a period of two years.

29. The learned Government Pleader, on the other hand, quite naturally urged that the facts in evidence adverted to in Ex. P. 5, will clearly show that the Superintendent of Police had all those allegations before him when he issued the chargesheet, Ex. P. 5. The learned Government Pleader also pointed out that after referring to the facts in evidence, the authority has categorically stated that the petitioner has given a wrong direction to the sub-inspector of police, Taliparamba, to register a case under Section 411, Indian Penal Code, instead of under Sections 380 and 461 of the Indian Penal Code. This averment or allegation, according to the learned Government Pleader, will clearly show that the Deputy Superintendent has independently considered the matter, having due regard to the offence, which according to him, is made out on the basis of the complaint filed by Skaria Joseph and communicated to the petitioner and that the officer has satisfied himself about the truth of the allegations. In particular, the learned Government Pleader also urged that whether or not there is any indication in the earlier part of Ex. P. 5 regarding compliance with Sub-rule (a) of Rule 12 by the officer, at any rate it is clear from the further statement in Ex. P. 5 to the effect that the petitioner's endorsement on the petition of Skaria Joseph and the petition of Skaria Joseph will prove the charge against the petitioner, that the officer has accepted the truth of the allegations as against the petitioner and it is on the basis of that acceptance that the charge was framed as against the petitioner.

30. I am not inclined to accept this contention of the learned Government Pleader in this regard. So far as I could see, in Ex. P. 6 there is absolutely no indication given by the Deputy Superintendent that he has in any manner conducted an inquiry--much less satisfied himself--that the allegations are true, because it is only when those conditions are satisfied that he is entitled to demand an explanation of the petitioner, and that can only be in respect of the allegations he has found true, under Sub-rule (a) of Rule 12. Exhibit P. 5 only consists of a very lengthy repetition of the facts in evidence. It is also seen that there is absolutely no indication given by the officer as to why exactly, from a reading of the complaint given by Skaria Joseph, he has, at any rate prima facie, come to the conclusion that the direction given by the petitioner to the sub-inspector of police, Taliparamba, to register a case under Section 411, Indian Penal Code, is wrong. It will also be seen that under Ex. P. 5, the Deputy Superintendent does not demand

an explanation of the petitioner regarding any allegations that he has found true. On the other hand, the only requirement in Ex. P. 5, made of the petitioner is that he should show cause in writing within the period mentioned therein, as to why his increments should not be postponed for a period of two years, i.e., the petitioner has not been called upon to offer his explanation regarding any allegations about which, the authority who issued Ex. P. 5 can be considered to have been prima facie satisfied. The requirement is only that of calling upon the petitioner to show cause regarding the particular punishment that has been indicated in Ex. P. 5 itself. Therefore, I am satisfied that the learned Counsel for the petitioner is well-founded in his contention that the issue of the charge memorandum, Ex. P. 5, does not in any manner comply with the requirement of Sub-rule (a) of Rule 12. I will call it even a limited requirement in the summary procedure indicated under Sub-rule (a) of Rule 12 of the rules.

31. It will be seen that respondent 1, after receipt of the further explanation of the petitioner, namely, Ex. P. 8, has forwarded the punishment roll to be revised, to the Superintendent of Police of the district; and it is the latter officer who has ultimately issued the punishment roll, Ex. P. 1. I do not think it necessary to consider in any great detail the order of the Deputy Superintendent of Police passed on 7 September 1961 under Ex. P. 7. No doubt, the learned Government Pleader urged that from the fact that respondent 1 was probably inclined to give a further opportunity to the petitioner, because the petitioner's explanation of 5 September 1961 has not been considered by the authority who passed the order, Ex. P. 7, it cannot be certainly considered that the proceedings which resulted in the order, Ex. P. 7, have been given the go-by. Here again, I am not inclined to accept the contention of the learned Government Pleader. The Deputy Inspector-General of Police was satisfied with the petitioner's grievance, that the Deputy Superintendent of Police passed the punishment roll, Ex. P. 7, without considering his explanation, Ex. P. 6. Further, he felt that, in view of the matters mentioned in the further representation, Ex. P. 8, the original punishment roll requires reconsideration. That is why he did not pursue his show-cause notice, issued on 26 September 1961. Instead, he forwarded the proceedings to the Superintendent of Police, to revise the original punishment roll, after considering the explanation furnished by the petitioner. Therefore, after the Deputy, Inspector-General of

Police sent the papers to the Superintendent of Police for reconsideration, Ex. P. 7 ceases to have any force. Therefore, for all purposes, this Court must proceed on the basis that it must be considered that there was no punishment roll issued by the Deputy Superintendent of Police under Ex. P. 7.

32. I am not able to find any indication even in Ex. P. 1 as to why the officer has come to the conclusion that the petitioner should be 'found guilty of the charge that' has been levelled as against him. I do not also find any indication as to whether the officer has considered the averments made in the complaint of Skaria Joseph; nor do I find any indication therein as to how exactly the officer has come to the conclusion that the offences to be registered are really under Sg. 380 and 461, Indian Penal Code,

33. Exhibit P. 1 was issued, as I mentioned earlier, by the Superintendent of Police, Cannanore. In my view, this is the only material on record, wherein it can be said that the authority has adverted to the complaint or allegations made as against the petitioner and has, prima facie at any rate, come to a conclusion that there is truth in the allegations made as against the petitioner. Therefore, in my view, on the basis of this finding recorded in Ex. P. 1, the petitioner should have been given an opportunity to offer his explanation, as is mandatory under Sub-rule (b) of Rule 12. Admittedly, the Deputy Inspector-General of Police did not either ask the petitioner to offer his explanation to the findings recorded in the punishment roll, Ex. P. 1; nor was a show-cause notice issued to the petitioner on the basis of this punishment roll. This punishment roll was submitted by the Superintendent of Police to the Deputy Inspector-General of Police, and the latter straightaway imposed the punishment, as per the endorsement on Ex. P. 1. In short, the petitioner had no opportunity of contesting the findings recorded in the punishment roll, on the basis of which findings the punishment has been imposed. In Ex. P. 1, the Superintendent of Police again adverts to the petition of Skaria Joseph, as well as to the application that Skaria Joseph appears to have filed before Government, and also to the report of the Special Police, Crime Branch. But the officer refers only to the explanation of the petitioner, dated 5 September 1961, and stated to have been received on 12 September 1961, Ex. P. 6. Here again, it will be noted that the direction given by respondent 1 on 29 December

1961 was to the effect, that a revised punishment roll is to be Issued by the Superintendent of Police, after having due regard to the explanations furnished by the petitioner. That explanation, in my view, must also include the further explanation that had been furnished by the petitioner on 11 October 1961, under Ex. P. 8. So far as I could see, there is absolutely no Indication in the order, Ex. P. 1, to show that the Superintendent of Police has in any manner adverted to the various aspects dealt with by the petitioner in the further explanation submitted by him on 11 October 1961 under Ex. P. 8; nor is there any other indication to show as to how exactly the officer has dealt with the various points mentioned by the petitioner in the said further explanation. The authority has practically confined himself only to the earlier explanation of the petitioner, Ex, P. 6, dated 5 September 1961. Ultimately the authority no doubt comes to the conclusion that the petitioner was not Justified In registering the complaint under Section 411, Indian Penal Code, alone, when complaint should have been registered under Sections 380 and 461, Indian Penal Code, also.

34. Notwithstanding the fact that the Deputy Inspector-General of Police, namely, respondent 1, had before him the various aspects that were presented by the petitioner not only in his earlier explanation, Ex. P. 6, but also in the latter explanation, Ex. P. 8, here again, it is regrettable to note that there is no indication in the very brief order of the said punishing authority that any attention was given to the matters referred to by the petitioner. But the punishing authority holds that the delinquent, namely, the petitioner, has been given reasonable opportunity to make out his defence, and the offence as disclosed by the charge has been adequately made out by the charge. That is the only order of the punishing authority. Here again it will be seen that under Sub-rule (a) of Rule 12, after the inquiry authority has conducted such inquiry as he deems necessary, he is to demand an explanation on the basis of the allegations found true. As I mentioned earlier, that stage had reached, if at all--notwithstanding the other infirmities already pointed out--only when the proceedings evidenced by Ex. P. 1, were issued by the Superintendent; in which case, in my view, there is a further obligation on the part of the authorities concerned to demand an explanation of the petitioner under Sub-rule (b) of Rule 12. And it is only after receipt of that explanation, and after making any further inquiries, in the light of the explanation

that may be found necessary, that final orders are to be passed in the matter.

35. Now, in this case, the position is that after the issue of the punishment roll by the Superintendent of Police under Ex. P. 1, straightaway the punishing authority, namely, respondent 1, has made an endorsement inflicting the punishment by way of postponing the increment of the petitioner for two years. Therefore the petitioner in this case was not given any opportunity to offer his explanation, nor was any explanation demanded of the petitioner as is obligatory under Sub-rule (a) of Rule 12. I have already indicated that under Sub-rule (b) of Rule 12, after receipt of the explanation, there is a further obligation on the part of the punishing authority to consider the matter in the light of the explanation that is furnished. In this case, the question of making and farther inquiry did not arise, because the petitioner was not given an opportunity to offer his explanation with regard to the punishment roll, Ex. P. 1, on the basis of which the punishing authority has passed the final orders.

36. In view of the infirmities pointed out, in my opinion, the disciplinary proceedings as against the petitioner and the orders which are under attack in these proceedings, will have to be set aside. The writ petition is accordingly allowed, and parties will bear their costs.