

Pramod Kumar Sharma Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-27-2010

Judge : Ferdino I. Rebello; A.P. Sahi, JJ.

Appeal No. : Special Appeal No. 1453 of 2010

Appellant : Pramod Kumar Sharma

Respondent : State of U.P. and Others

Judgement :

1. This is an appeal against the judgment of a learned Single Judge dismissing a writ petition filed by the appellant.
2. The petitioner is a Sub Inspector of Police who has questioned the correctness of the order dated 3rd February, 2010 passed by the learned Chief Judicial Magistrate in compliance whereof the Office of the Deputy Inspector General of Police, Meerut has proceeded to command the concerned authority to deduct salary of two months that has been imposed as a pecuniary punishment by the learned Magistrate, in the purported exercise of powers of Section 29 of the U.P. Police Act, 1861.
3. The punishment has been imposed on an allegation that the petitioner has wilfully committed breach of duty by not complying with the order of the Magistrate in a criminal case which involved the abduction and custody of a minor girl.

4. An F.I.R. was lodged under Section 363/364 I.P.C. being case crime No. 311 of 2009. The alleged minor Km. Rukhsar along with the accused Saleem filed Writ Petition No. 10884 of 2009 for staying their arrest and consequently this Court vide order dated 16th June 2009 directed that the arrest of the petitioners therein namely Rukhsar and Saleem shall remain stayed provided they cooperate with the investigation. The other co-accused also filed a writ petition challenging the same F.I. R. in which an order was passed that the victim Km. Rukhsar shall appear before the learned Chief Judicial Magistrate within 30 days for recording of her statement under Section 164 Cr.P.C. whereupon the Magistrate shall proceed to record the same in the presence of the Officer-in-charge of the Police Station for identification and thereafter she shall be medically examined. This was to be attended to by the Investigating Officer.

5. The other co-accused who appear to be the family members of Saleem, were given a protection of a stay from arrest till the submission of police report under Section 173(2) Cr.P.C.

6. As a consequence of the said order dated 24th June 2009 passed in Writ Petition No. 11624 of 2009 the statement of the accused was recorded on 13th August 2009 and the victim did not support the case of the prosecution. On the contrary, she said that she had voluntarily accompanied the co-accused Saleem and had also married him. The medical report also indicated that she was above 18 years of age.

7. The then Investigating Officer who had conducted the investigation filed an application before the Chief Judicial Magistrate to pass an appropriate order with regard to her custody. Another application was filed by the mother of the victim that she may be given custody, upon which the learned Magistrate passed an order dated 24th August 2009 indicating that since the date of birth of the victim was 15th January 1995 and no document or evidence to the contrary had been produced, the victim appears to be a minor. The custody was therefore ordered in favour of the mother.

8. It is to be noted that after the statement under Section 164 Cr.P.C. recorded before the Court on 13th August 2009 the victim was not in the custody of the

police and she had a protection of arrest from this Court. The then Investigating Officer Malkhan Singh was transferred and the petitioner is stated to have taken charge of the investigation of the case on 24th September 2009 when he filed a charge-sheet.

9. The learned Magistrate on 2nd January, 2010 issued a notice to the petitioner calling upon him to explain as to why salary be not deducted by taking action under Section 29 of the Police Act 1861 as there was a non-compliance of the order dated 24.8.2009. The petitioner submitted his reply. The Superintendent of Police had also made an enquiry into this and a report was submitted on 8th January 2010 indicating that in view of the orders passed by this Court and the statement of the victim, it was evident that the order dated 24.8.2009 could not have been complied with as Km. Rukhsar had gone away with Saleem.

10. The Magistrate proceeded to pass the impugned order on 3rd February 2009 treating the explanation afforded by the petitioner to be insufficient and that the petitioner had not complied with the orders of the Court. The Magistrate also commented that the petitioner has not performed his duties diligently which amounts to a wilful breach resulting in violation of duty, hence, the punishment was imposed for deducting salary of two months. A direction was issued to the Deputy Inspector General of Police and other officials to carry out the said sentence and report accordingly. The petitioner assailed the said order on the ground that the learned Magistrate had no jurisdiction to pass the order and the consequential directions issued are equally untenable, hence the impugned orders deserve to be set aside.

11. The learned Single Judge proceeded to conclude that the Magistrate exercising his power under Section 29 of the Police Regulation read with Regulation 219 of the Police Regulations was a judicial order by a competent court. The learned Single Judge, therefore, was of the opinion that if the order was without jurisdiction, the said order could have been challenged by way of revision or appeal before the competent court of law.

12. The consequential order passed by the Office of the Deputy Inspector General of Police was held to be in compliance of the order of the Chief Judicial Magistrate

and, therefore discretion was refused to be exercised as the petitioner had a remedy of approaching the appropriate forum/judicial authority having jurisdiction to entertain any petition in this regard.

13. Learned counsel for the appellant submits that the impugned order proceeds on an erroneous application of law and the order of the Chief Judicial Magistrate being not in conformity with the provisions of the Police Act 1861 read with the U.P. Police Regulations and the Criminal Procedure Code, the same deserves to be set aside.

14. Learned Standing Counsel submits that the petitioner having not performed his duty in compliance of the direction of the Magistrate, the punishment was justified and the appellant can avail of his remedies as available to him in law as the writ petition would not be maintainable.

15. Having heard learned counsel for the parties and having perused the records, it is evident that the charge levelled by the learned Magistrate during the course of a judicial proceeding against the petitioner was of breach of duty by not complying with the directions of the Court dated 24.8.2009 relating to the custody of the victim. The learned Magistrate, therefore, proceeded to issue a notice to the petitioner calling for an explanation. This power was exercised by the Magistrate purportedly under Section 29 of the Police Act, 1861 which is gainfully reproduced bellow:-

Section 29. Penalties for neglect of duty, etc.- 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.

16. The said provision indicates that a person has to be found guilty of violation of duty or wilful breach or neglect of any rule or regulation or a lawful order made by competent authority, and if the same results in conviction by a Magistrate, then a penalty shall be imposed not exceeding three months pay or imprisonment in the manner prescribed therein.

17. The charge against the petitioner is of having breached the order dated 24.8.2009 which was a lawful order made by a competent Magistrate. The aforesaid wilful neglect of duty or breach of duty has been made punishable, and from the U.P. Police Regulations, Chapter XXXII, it appears that a procedure has been provided to deal with such situations. The provisions relating to such enquiry if being undertaken under Section 29 of the Police Act 1861 are contained in Regulation 484 and 486 of the Police Regulations. Regulation 484 is quoted below:-

"Regulation 484. The nature of the inquiry in any particular case will vary according to the nature of the offence. If the offence is cognizable or non-cognizable according to Schedule II of the Criminal Procedure Code and information of it is received by the District Magistrate he may in exercise of his powers under the Criminal Procedure Code either-

(1) Make or order a magisterial inquiry; or

(2) Order and investigation by the police.

If the information is received by a Magistrate other than a District Magistrate, and he takes cognizance of the offence, he should report the case at once to the District Magistrate who will withdraw it to his own Court under Section 528 (now Section 410/411), Criminal Procedure Code. The District Magistrate may then act as though the original complaint had been made to him.

This power extends to cases under Section 29 of the Police Act, but magisterial inquiry in cases under this section will be ordered only

in very exceptional circumstances."

18. A perusal of the aforesaid regulation indicates that the power to examine such a complaint has to be exercised by the District Magistrate in case the information has been received by a Magistrate other than a District Magistrate. The powers in the said regulations have been extended to cases under Section 29 of the Police Act.

19. Regulation 486 in relation to neglect of duty under Section 29 is quoted below:

"Regulation 486. When the offence alleged against a police officer amounts to an offence only under Section 7 of the Police Act, there can be no magisterial inquiry under the Criminal Procedure Code. In such cases, and in other cases until and unless a magisterial inquiry is ordered, inquiry will be made under the direction of this Superintendent of Police in accordance with the following rules:-

(I)Every information received by the police relating the commission of a cognizable offence by a police officer shall be dealt with in the first place under Chapter XIV (now Chapter XII), Criminal Procedure Code, according to law, a case under the appropriate section being registered in the police station concerned provided that-

(1)if the information is received, in the first instance, by a Magistrate and forwarded by the District Magistrate to the police, no case will be registered by the police;

(2)if the information is received, in the first instance by the police, the report required by Section 165, Criminal Procedure Code, shall be forwarded to the District Magistrate, and when forwarding it the Superintendent of Police shall note on it with his own hand what steps are being taken as regards investigation or the reasons for refraining from investigation;

(3)unless investigation is refused by the Superintendent of Police under Section 157 (1)(b), Criminal Procedure Code and not ordered by the District Magistrate under Section 159, or unless the District Magistrate orders a magisterial inquiry under Section 159, investigation under Section 159, Criminal Procedure Code, shall be made by a police officer selected : by the Superintendent of Police and higher in rank than the officer charged;

(4)On the conclusion of the investigation and before the report required by Section 173, Criminal Procedure Code, is prepared, the question whether the officer charged should or should not be sent for trial shall be decided by the Superintendent of Police. Provided that before an officer whose dismissal would require the concurrence of the Deputy Inspector General under paragraph 479 is sent for trial by the Superintendent of Police, the concurrence of the Deputy Inspector General must be obtained;

(5)the charge-sheet or final report under Section 173, or Section 169, Criminal Procedure Code, as the case may be, shall be sent to the District Magistrate; if the Superintendent of Police or the Deputy Inspector General had decided against a prosecution, a note by the Superintendent of Police giving the reasons for this decision shall be endorsed on, or attached to the final report;

(6)when the reason for not instituting a prosecution is that the charge is believed to be baseless, no further action will be necessary; if the charge is believed to be true and a prosecution is not undertaken owing to the evidence being considered insufficient or for any other reasons the Superintendent may, when the final report under Section 173, Criminal Procedure Code, has been accepted by the District Magistrate; take departmental action as laid down in paragraph 490.

II. When information of the commission by a police officer of a non-cognizable offence (including an offence under Section 29 of the Police Act) is given in the first instance to the police, the Superintendent of Police may, if he sees reason to take action, either (a) proceed departmentally as laid down under head III of this paragraph and in paragraph 490, or (b) as an alternative to, or at any stage of the departmental proceedings, forward a report in writing to the District Magistrate with a request that he will take cognizance of the offence under Section 190(1)(b), Criminal Procedure Code; provided that reports against Police Officers of having committed non-cognizable offences will (when made to the police and unless there are special reasons for desiring a magisterial inquiry or formal police investigation under the Code) ordinarily be inquired into departmentally and will not ordinarily and then only if be referred to the District Magistrate until departmental inquiry is complete, a criminal prosecution is desired.

On receiving information either by means of a report in writing from the Superintendent of Police as laid down above, or otherwise as laid down in Section 190(1)(a) and (c), Criminal Procedure Code, of the commission by a Police Officer of a non-cognizable offence, the District Magistrate may, subject to the general provisions of Chapter XV (now Chapter XIII), Part B, Criminal Procedure Code-

(a) proceed with the case under Chapter XVII (now Chapter XVI) Criminal Procedure Code;

(b) order an inquiry by a Magistrate or an investigation by the police under Section 202, Criminal Procedure Code; or an investigation by the police under Section 155(2);

(c) decline to proceed under Section 203, Criminal Procedure Code.

If an investigation by the police is ordered, it would be made under Section 155(3), Criminal Procedure Code by an officer selected by the Superintendent of Police and higher in rank than the officer charged and all further proceedings will be exactly as laid down for cognizable cases in paragraph 486 (1), (4), (5) and (6) above.

If no investigation by the police is ordered, and the District Magistrate, after or without magisterial inquiry, declined to proceed criminally with the case, the Superintendent of Police will decide, in accordance with the principles set forth in paragraph 486 (1) (6) above and subject to the orders contained in paragraph 494, whether departmental proceedings under paragraph 490 are required.

III.- When a Superintendent of Police sees reasons to take action or information given to him, or on his own knowledge or suspicion, that a Police Officer subordinate to him has committed an offence under Section 7 of the Police Act or non-cognizable offence (including an offence under Section 29 of the Police Act) of which he considers it unnecessary at that stage to forward a report in writing to the District Magistrate under Rule II above he will make or cause to be made by an officer senior in rank to the officer charged, a departmental inquiry sufficient to test the truth of the charge. On the conclusion of this inquiry he will decide whether further action is necessary and if so, whether the officer charged should be departmentally tried, or whether the District Magistrate should be moved to take cognizance of the case under the Criminal Procedure Code; provided that before the District Magistrate is moved by the Superintendent of Police to proceed criminally with a case under Section 29 of the Police Act or other non-cognizable section of the law against an Inspector or sub Inspector, the concurrence of the Deputy Inspector General must be obtained. Prosecution under Section 29 should rarely be instituted and only when the offence cannot be adequately dealt with under Section 7."

20. The aforesaid provision also indicates that the matter shall be taken up by the Superintendent of Police departmentally or by the District Magistrate in manner indicated above. In the event the Magistrate himself takes notice of it then in view of the provisions of Section 190 Criminal procedure Code as referred to therein, the matter will have to be sent to another Magistrate for conducting the enquiry after putting the Officer to notice.

21. The procedure therefore makes it amply clear that the same Magistrate cannot be the witness and the judge himself. The procedure adopted by the learned Magistrate to proceed against the petitioner was therefore not in conformity with the provisions of Section 29 of the Police Act 1861 read with the Regulations referred to hereinabove.

22. The learned Standing Counsel has not been able to point out any contrary provision or conferment of power on the Magistrate so as to allow him to proceed to convict the petitioner in the circumstances indicated above. The observation about Regulation 219 in the impugned judgment appears to be misdirected as the said regulation does not relate to such matters.

23 Accordingly, the orders dated 3rd February 2010 and 5th February 2010 are set aside. The judgment of the learned Single Judge dismissing the writ petition dated 3.8.2010 is also set aside, leaving it open to the competent authority to proceed in accordance with the provisions as indicated above in the event such powers can be invoked on the facts of the present case.

24. The appeal is accordingly allowed.

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