

(2003) 09 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13173 of 2002

Ashok Kumar

APPELLANT

Vs

Senior Superintendent of Police and Others

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 8(2)

Citation : (2003) 3 UPLBEC 2836

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : V. Sahai, B. Dayal, Sant Saran Upadhyaya, Manish Shukla and Sadhna Upadhyaya, for the Appellant; G.S. Misra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambawani, J.—Heard Counsel for petitioner and learned Standing Counsel.

2. Brief facts giving rise to this writ petition are that petitioner was appointed as Constable in Civil Police on 31.8.1981. In the year 1995 he was transferred to Mathura. On 13.6.2000 petitioner was assigned duties to take two accused namely Babloo son of Odal, and Rakesh alias Manoj son of Allo, before Additional Chief Judicial Magistrate, Mathura. Another accused Prakash, who was also to be taken to the Court was in custody of Constable Karan Singh. The said accused Prakash escaped from custody. A case crime No. 91/2000 was registered against petitioner on 13.6.2000, under Sections 223/224 IPC at P.S. Sadar Bazar, Mathura. On 27.7.2000 accused Prakash alias Vijay Prakash was arrested by Police personnel of P.S. Kotwali, Mathura. The said accused Prakash has long history in crime, and has been implicated in about fifteen crime cases detailed in the report, out of which case crime No. 161/1994 is under Sections 302/307 IPC, crime No. 148/1994 u/s 302 IPC, crime No. 80/1989 u/s 356 IPC, crime No. 1004/1992 u/s 302/201/392/411 IPC, and crime No. 94/1998 u/s 307 IPC amongst other cases, which are registered against him. In pursuance of the

directions of Senior Superintendent of Police, Mathura dated 14.6.2000 and 5.8.2000 an enquiry report was submitted by Cycle Officer, Sadar, Mathura, on 21.9.2000, on which petitioner and Shivdan Singh were suspended and the departmental enquiry was stayed up to the decision of the criminal case.

3. The Circle Officer, Sadar, Mathura, took statements of Sri D.D. Sharma, Senior Prosecuting Officer, Head Constable Nagendra Pal Singh Chauhan, Constable Karan Singh, and Constable Rakesh Jain. It was found by him that on the date of incident accused Prakash was taken out from judicial lock up at 9.20 AM and was produced in the Court at 10.30 AM. He went back to the lock up at about 11.25 AM. The Head Constable who was incharge of said lock up namely Sri Ramesh Chandra had gone to case himself. At that time petitioner inspite of warning by Constable Shivdan Singh, after recording his name and time, took the said accused Prakash to a place in the Court campus where his wife was waiting for him, Later on at about 1.15 PM Constable Shivdan Singh informed that the accused Prakash has escaped. At that time about 30 male and 2 female accused and undertrials, were confined in the lock up. Constable Ashok Kumar and Constable Shivdan were assigned duties to take them out from the lock up, for their production in Courts. Constable Ashok Kumar was looking after duties of preparing rojnamcha, Prakash was arrested on 27.7.2000 and on investigation he gave a statement that on 13.6.2000 Constable Ashok Kumar was on lock up duty when the accused desired to meet his wife, on which Ashok Kumar told him to spend some money. He agreed to pay, upon which Constable Ashok Kumar took him out of lock up, on the pretext of taking him to Court, and later allowed him to talk to his wife. During this period .between 12.00 AM to 1.00 PM he escaped. The Enquiry Officer reported in his conclusion that petitioner and Constable Shivdan Singh are hand in glove with criminals and allowed a hardened criminal to escape after accepting bribe from him. None of witnesses are ready to depose against him, and thus, it may not be possible to impose any departmental punishment on them. He came to a conclusion that in these circumstances, action was required to be taken to dismiss them under Rule 8 (2) (b) of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 (in short Rules of 1991). Consequently petitioner was dismissed by the Senior Superintendent of Police by his order dated 24.9.2000 passed under Rule 8 (2) (b) of the Rules of 1991. Petitioner filed an appeal which has been dismissed by Deputy Inspector General of Police, Agra region, Agra. A revision petition has also been dismissed by Inspector General of Police, Kanpur. Aggrieved petitioner has filed this writ petition.

4. It is contended that false allegations have been made against petitioner. He was not incharge of lock up and that the conclusions recorded by the Enquiry Officer, are incorrect and have been arrived at without any material on record. He submits that the complicity on the petitioner was not proved and that findings that petitioner is in conspiracy with hardened criminals is not based upon any evidence. The opinion recorded by S.S.P. that no one is prepared to give evidence is incorrect on record. According to Counsel for petitioner, the

satisfaction that it is not reasonably practical to hold an enquiry is not based on any relevant material on record. He relies upon the judgment in Union of India and Another Vs. Tulsiram Patel and Others, , in support of submission that the satisfaction, that it is not reasonably practical to hold an enquiry must be judged in the context of the case. He submitted that none of ingredients for recording satisfaction as laid down in the leading case of Tulsi Ram Patel were present. The enquiry report of Sri R.P. Gautam, Deputy Superintendent of Police, Mathura dated 21.9.2000 did not satisfy the ingredients of recording such satisfaction. Petitioner could not be dismissed only on the statement of the accused, who made his statement before the Jail Superintendent, District Jail, Mathura on 28.7.2000 that Shivdan Singh and Ashok Kumar had asked him to pay for Rs. 20,000.00 and had allowed him to escape on payment of Rs. 3,200.00 only.

5. The record was summoned. I have gone through the statements of Sri D.D. Sharma, Head Constable Nagendra Pal Singh Chauhan, Constable Karan Singh, Constable Ramesh Chandra and the statement of accused Prakash before the Superintendent of District Jail, Mathura. I have also perused statement of Ashok Kumar. He made a statement, signed by him on 5.7.2000 before the Enquiry Officer stating that on 13.6.2000 he was on lock up duties. He was handed over custody of accused Babloo to be produced by him alongwith Constable Shivdan Singh and to report to the Court of Chief Judicial Magistrate, Mathura at 10.00 AM at 9.20 AM accused Babloo was produced in Court. At 10.00 AM accused Rakesh was handed over to him to be produced before the Court of District Judge at 10.00 AM. He was duly produced at 11.15 AM, and was brought back and lodged in lock up. Thereafter accused Prakash was handed over to him by Constable Shivdan Singh at 11.30 AM to be produced in the Court of A.C.J.M.-II. He made enquiries as to why, the accused was required to be produced before the Court when he has already been produced at 9.20 AM, on which he was informed that an intimation has been received from the Court, and that Constable Shivdan Singh will also go alongwith him. Petitioner told Shivdan Singh that accused is a hardened criminal and may escape, on which Constable Shivdan Singh told him that in such case he will recover him within 24 hours. Petitioner believed Shivdan Singh and took Prakash out to be taken to the Court alongwith Constable Shivdan Singh. Before reaching the Court accused Prakash tried to run away. Both of them tried to catch him, but he could not be apprehended. Constable Shivdan Singh told petitioner, that he may continue to search for accused Rakesh. Petitioner searched for long time, without any success. Constable Shivdan Singh did not return from the lock up when petitioner informed Head Constable Ramesh Chandra. He was told that Constable Shivdan Singh was sent to search out accused Prakash.

6. Learned Standing Counsel submits that accused was a hardened criminal and that petitioner had not taken special care of his custody. The entire facts and circumstances on record go to show that there was no reason for accused Prakash to be produced in Court all over again. Constable Shivdan Singh and petitioner conspired with the accused, and after taking bribe allowed him to

escape. This is further proved by fact that both of them tried to find the accused and that neither of them met with any success. Learned Standing Counsel submits that the fact whether it is reasonably practicable to hold an enquiry is a matter of assessment to be made by the Disciplinary Authority. Such authority is generally on the spot and knows what is happening. He is the best judged to take such decision. In the present case, a hardened criminal was allowed to escape without any excuse. Even under the Rules of 1991, the punishment for such a negligence is dismissal from service. He has relied upon Rule 8 (4) (a) of the Rules of 1991, for the purpose which is reproduced as below :-

"8. Dismissal and removal :-

4. (a) Punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall be dismissal unless the punishing authority for reason to be recorded in writing awards lesser punishment."

7. In *Union of India and Another Vs. Tulsiram Patel and Others*, , the Supreme Court has exhaustively considered the provisions of Article 311(2), and held as follows (Paras 130, 131 and 137):

"Thus, whether it was practicable to hold the enquiry or not must be judged in the context if whether it was reasonably practicable to do so. It is not a total or absolute impracticability, which is required by clause (b). What is requisite is that the holding of inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given, it would not be reasonable practicable to hold an inquiry where the Governments servant, practicably through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear or reprisal as to prevent them from doing so or where the Government servant by himself or together with or through others threatens, intimates and terrorizes the officer who is the Disciplinary Authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and in subordination prevails, and it is immaterial whether the concerned Government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the Disciplinary Authority. Such authority is generally on the spot and knows what is happening. It is because the Disciplinary Authority is the best Judge of this that clause (3) of Article 311 makes the decision of the Disciplinary Authority on this question final. A Disciplinary Authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of the ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the Government servant is weak and must fail. The finality given to the decision of the

Disciplinary Authority by Article 311(3) is not binding upon the Court so far as its power of judicial review is concerned and in such a case the Court will strike down the order dispensing with the inquiry as also the order imposing penalty."

8. I have heard the submissions and perused the record. I find that the circumstances in which Prakash escaped have not been adequately explained. He is a hardened criminal facing three trials for murder and one attempt to murder and several other heinous crimes. He is an accused in about fifteen cases. The petitioner did not take special care for his custody. Petitioner and other police officers were grossly negligent in performance of their duties. There was absolutely no justification for petitioner to have taken him out again for being produced in Court, Petitioner's statement before Enquiry Officer shows gross negligence in performance of duties on account of which the accused escaped. The satisfaction of the Senior Superintendent of Police, which was upheld by Director General of Police and Inspector General of Police, records the fact that the petitioner was in conspiracy with criminals and on account of his daring act, the department may not find witnesses to depose against him, is based on sufficient material. A police personnel, who is required to maintain law and order, and to protect general public from crime allows criminals to escape by either direct complicity or gross negligence, should not be allowed to serve in police force. The Senior Superintendent of Police found that petitioner was in complicity with the criminal who made good his escape. He was subsequently apprehended and deposed that he had given bribe to petitioner. Such a satisfaction was based on material available on record which included statement of the witnesses and is a satisfaction of the Disciplinary Authority who was on the spot and was the best Judge to assess the matter. I find in the prevailing situation, Senior Superintendent of Police acted reasonably and that his decision to dispense with enquiry and to dismiss petitioner was not arbitrary or suffers from any ultra motives or malafides.

9. For the aforesaid reason I do not propose to interfere with the impugned orders. The writ petition is accordingly dismissed.