
(2010) 05 SHI CK 0198
In the High Court Of Himachal Pradesh

Ashok Rana, Saresth Kumar and Ashish Kumar	APPELLANT
Vs	
State of H.P. and Others	RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 212, 216, 223, 224
Probation of Offenders Act, 1958 — Section 12, 4

Citation : (2010) 3 ShimLC 189

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—These writ petitions are being disposed of by a common judgment as the facts involved and the point of law urged is common.

2. The petitioners were in service of the Himachal Pradesh police. Ashok Rana was serving as Head Constable, Saresth Kumar as HHC and Ashish Kumar as Head Constable. I am not detailing the facts for the order I propose to pass and as an adjudication on this aspect has already been made by the learned Chief Judicial Magistrate, Una, District Una, in case No. 61-1/2006 instituted by the State of Himachal Pradesh against 22 accused out of whom accused 12 to 22 were police officials which included the petitioners herein.

3. Case against the petitioners and the other accused was registered under Sections 212, 216, 223, 224, 225 and 120B of the Indian Penal Code. It resulted in their conviction. What needs to be noticed here is that all the police officials were found guilty of the offences u/s 223 of the Indian Penal Code and were given the benefit of the Probation of Offenders Act, 1958 (hereinafter referred to as the "Act"). The other accused were charged for offences under the different provisions were sentenced to undergo rigorous imprisonment and to pay fine etc. This judgment was delivered on 5.10.2007 and it is the admitted case of the parties to these writ petitions that this judgment has not been challenged. It has, thus, attained finality.

4. First Information Report No. 419 of 2006 (Annexure P-19 in CWP No. 1567 of

2008 dated 6.9.2006 was registered under Sections 212, 216, 223, 224, 225 and 120B of the Indian Penal Code against 22 accused therein including the petitioners who were accused No. 13, 18 and 21 viz Ashok Rana, Ashish Kumar and Sharesht Kumar. In nut shell the case of the prosecution was that on 6.9.2006, one prisoner Amrish Kumar Rana (accused No. 1), who was serving life sentence for having committed offence u/s 302 of the Indian Penal Code, was brought from Dharamshala to Una under police escort of which three of the petitioners herein were also members. The case proceeds that police escort party headed by ASI Krishan Kumar comprising of H.C. Ashok Rana (petitioner in CWP No. 1567 of 2008), H.C. Pawan Kumar, Constable Akash Chand, Constable Bharat Kumar, Constable Dharmender Kumar, Constable Ashish Kumar (petitioner in CWP. No. 1569 of 2008), Constable Harvinder Kumar, Constable Ramesh Kumar, Constable Sharesht Kumar (petitioner in CWP. No. 1568 of 2008) and Constable Satish Kumar were incharge of the accused and they allowed him to escape from their custody. Three points were formulated by the learned Chief Judicial Magistrate for consideration. First was whether the police personnel named above were negligent and it was due to their negligence that accused Amrish Rana escaped from their custody. Second whether there was a criminal conspiracy hatched by accused Gurjant Singh, Gaurav Gandhi, Nitin Mukesh, Rajesh Kumar, Ajay Ahuja, Prince Joshi, Ashwani Kumar, Satwant Singh, Anup Sharda and Ankush Sambar to aid the escape of the accused Amrish Rana from police custody. Third whether the prosecution had established beyond reasonable doubt that accused No. 2 to 11 (i.e. excluding the police officials) had harboured and concealed the accused Amrish Rana after his escape on 6.9.2006. On the first point, the court held that negligence of the police officials was proved and convicted them of offences u/s 223 of the Indian Penal Code. On the second point, the Court ruled that no criminal conspiracy was proved. The third point relating to harbouring of the accused after his escape was also decided against the prosecution. While imposing sentence, the learned Court convicted accused Amrish Rana to undergo rigorous imprisonment for two years and fine of Rs. 5,000/- and in default of payment of fine to undergo simple imprisonment of six months.

5. The police officials including the petitioners herein were released on probation after report of the Probation Officer. Report under the Probation of Offenders Act, 1958 was called for each of the police personnel and on going through the same and considering the nature of the offences committed by them, the learned court directed that they be released on their furnishing personal bonds in the sum of Rs. 10,000/- with one surety of the same amount for a period of one year undertaking to receive the sentence as and when called for and to further keep good behavior and piece for this period. This judgment attained finality. It is undisputed before me that neither the accused nor the State have preferred any appeal challenging this judgment. The operative part of the judgment reads:

In view of my findings on the foregoing points, accused Amrish Rana is convicted for an offence u/s 224 I.P.C whereas he is convicted for an offence u/s 224 I.P.C.

whereas he is acquitted u/s 120B I.P.C. The accused Nos. 12 to 22 i.e. Krishan Kumar, Ashok Rana, Pawan Kumar, Akash Chand, Bharat Kumar, Dharmender Kumar, Ashish Kumar, Harvinder Kumar, Ramesh Kumar, Sharesht Kumar and Satish Kumar are convicted u/s 223 Indian Penal Code, but accused Nos. 2 to 11 i.e. Gurjant Singh, Gaurav Gandhi, Nitin Mukesh, Rajesh Kumar @ Seth, Ajay Ahuja, Prince Joshi alias Bani, Ashwani Kumar, Satwant Singh, Anup Sharda @ Durmat and Ankush Kumar Sambar are acquitted for the offences with which they were charged....

The convicts Krishan Kumar, Ashok Rana, Pawan Kumar, Akash Chand, Bharat Kumar, Dharmender Kumar, Ashish Kumar, Harvinder Kumar, Ramesh Kumar, Suresht Kumar and Satish Kumar with Sh. M.L. Sehajpal Advocate.

Reports of the Probation Officers have been received in respect of all the convicts. The Probation Officers have recommended that keeping in view, behaviour, character of the offenders being good, they have been recommended for their release under Probation of Offenders Act. Taking into consideration report of the Probation Officers and having regard to the facts of the present case, the convicts are directed to be released on their entering into personal bond in the sum of Rs. 10,000/- with one surety of the same amount for a period of one year undertaking to appear and receive sentence as and when called and further directed to be of good behaviour and to keep peace. The bonds have been furnished accordingly which are attested and accepted, hence all these convicts are ordered to be released after giving them benefit of Section 4 of Probation of Offenders Act....

6. It is undisputed before me that this judgment has attained finality.

7. Learned Counsel appearing for the petitioners has urged a number of grounds on the question of the legality in the manner in which the inquiry was conducted. He has urged a number of grounds in support of his contention that the defects as pleaded in the petition were of a fundamental nature and go to the very root of the case. In these circumstances, he submits it was but natural that the inquiry be quashed and set aside. I am not inclined to go into this aspect of the matter for the reason that if at this stage the inquiry is set aside, the petitioners would not be in a better position as the case would be taken up afresh against them and with the judgment of the criminal Court having attained finality, there would possibly be very little room for them to urge for their innocence. I am alive to the principle that the proceedings in a criminal proceeding do not determine the outcome of the departmental proceedings. But none the less, they can be used to corroborate and substantiate the charges against the delinquent. I am not inclined to put the clock back by 14 years.

8. Learned Counsel appearing on behalf of the petitioners then submits that the learned Chief Judicial Magistrate in the criminal case has thoroughly appreciated the evidence and has also considered the degree of involvement of each and every police official granting all of them the benefit of the Probation of Offenders

Act and subsequently the State also granted them (except the petitioners) benefit u/s 12 of the "Act".

9. Learned Counsel submits that accepting the guilt and involvement of the petitioners, they could not have been subjected to a harsher punishment than that imposed upon other officials who were granted the benefit of probation and in particular Section 12 of the "Act" and then taken back into service by the respondents but the petitioners were dismissed from service. He places reliance on the judgment of the Supreme Court in *State of U.P. and Ors. v. Raj Pal Singh* 2001 (4) SLR 637 . In this case, the Supreme Court was adjudicating on the legality of the judgment of the High Court of Allahabad which had interfered with the punishment imposed in disciplinary proceedings. The respondents before the Supreme Court had been dismissed from service while others delinquents had been inflicted the punishment of stoppage of five increments etc. They had assailed the order by approaching the Public Service Tribunal which dismissed their petitions which order was challenged before the High Court. On consideration of the entire facts and circumstances of the case, the High Court set aside their dismissal and directed stoppage of five increments as was done in the case of other delinquents restricting the payment of back wages to 50%. The order was upheld by the Supreme Court. It was urged that the High Court could not interfere in the quantum of punishment awarded for which purpose the decision of the Court in *B.C. Chaturvedi Vs. Union of India and others*, and *Secretary to Government, Home Deptt. and Others Vs. Srivaikundathan*, the court ruled that there was no dispute with this principle of law but considering the facts that the High Court had considered the gravity of the involvement of the delinquents, the order called for no interference. Learned Counsel has also placed reliance on the decision of the Supreme Court in *Sengara Singh and Others Vs. State of Punjab and Others*, to urge that there cannot be discrimination in imposition of penalty. In this case, the appellants had been dismissed from service while others have been reinstated.

10. I have been taken through the orders passed by respondent No. 2 rejecting the revision petitions instituted by each of them praying for leniency and reinstatement in service. I do not find from a bare reading of these orders that they can be sustained more especially when a criminal Court has come to the conclusion that the apportionment of blame is not greater in the case of the petitioners than the other officials' involvement.

11. I am alive to and aware of the principle of law that the police is a disciplined uniformed force which requires a strict degree of discipline and devotion to duty dereliction of which cannot ordinarily call for any interference from the Court. At the same time, this Court cannot shut its eyes to the fact that out of 11 police personnel involved, it is only the petitioners have been dismissed from service. The inquiry report also indicates that it was the joint contributory negligence of all the officials and not of the petitioners alone.

12. In these circumstances, these writ petitions are allowed and the order of

dismissal of the petitioners in each of the cases is quashed and set aside. A direction is issued to the Director General of Police, Himachal Pradesh to reconsider the case of the petitioners afresh in accordance with law only so far as the quantum of punishment is concerned. Needless to say that he will keep in mind the judgment passed by learned Chief Judicial Magistrate, Una, convicting all the twelve police personnel, all were given benefit of the Probation of Offenders Act and out of whom nine have been re-instated in service by giving them the benefit of Section 12 of the "Act".

13. Since the incident relates to the year, 2006 and the petitioners have already suffered for a considerable period of time, it is but expected that the entire proceedings shall be disposed of within a period of four months from the date when the petitioners first present this order before the Director General. The petitioners be granted personal hearing in the matter, if they so desire in order to substantiate their claims. This order shall not be construed as reinstating the petitioners in service nor an opinion of this Court on the quantum of punishment to be inflicted on the petitioners. The writ petitions are disposed of. There shall be no order as to costs. Let a copy of this judgment be placed on the file of each writ petition.