

(1958) 01 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 115 of 1955

Babu Ram Upadhya

APPELLANT

Vs

Uttar Pradesh Government

RESPONDENT

Date of Decision : 09-01-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 310
Criminal Procedure Code, 1898 (CrPC) — Section 157, 173
Penal Code, 1860 (IPC) — Section 403, 409

Citation : AIR 1958 All 584 : (1958) 28 AWR 549 : (1958) CriLJ 994

Hon'ble Judges : V.D. Bhargava, J; Randhir Singh, J

Bench : Division Bench

Advocate : Niamatullah and Harish Chandra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Randhir Singh, J.—This is a petition under Article 226 of the Constitution of India for the quashing of an order of dismissal passed by opposite-party No. 2 and subsequently confirmed by opposite parties Nos. 3 and 1.

2. It appears that the applicant was a Sub-Inspector of Police appointed in December, 1948. In June, 1953, he happened to be posted at Sitapur. On 6-9-1953 the applicant was returning from a village known as Madhwapur where he had gone in connection with the investigation of a theft case when he saw a person who was subsequently found to be Tika Ram coming from, the side of a canal and going hurriedly towards a field. The movements of Tika Ram roused some suspicion in the mind of the applicant. One Lalji, an ex-patwari also happened to be with the Sub-Inspector at that time.

Tika Ram was called and it was found that he was carrying something in the folds of his Dhoti which he was trying to hide with his hand. The applicant asked him to produce the Potli which Tika Ram had and on examination it was found to contain currency notes. They were examined by the applicant and were counted

by him and Lalji the ex-patwari. The notes were subsequently returned by Lalji to Tika Ram. Tika Ram went away and when he counted the currency notes at his house he found that they were short by Rs. 250/-. He then made a complaint to the Superintendent of Police on 9-9-1953 in which he narrated the above facts. An inquiry was then made by the Superintendent of Police and ultimately departmental proceedings u/s 7 of the Police Act were taken against the applicant. These proceedings resulted in the dismissal of the applicant and he has, therefore, come up to this Court with this petition for the issue of a writ.

3. The first point on which the order of dismissal has been attacked by the applicant is that the provisions of paragraph 486 of the Police Regulations had not been observed and as such the proceedings taken u/s 7 of the Police Act were invalid and illegal. Paragraph 486 lays down the procedure and the conditions for departmental trial u/s 7 of the Police Act. It is expressly provided that every information received by the Police relating to the commission of a cognizable offence by a police officer shall be dealt with in the first place under Chapter XIV, Cr. P. C., according to law, and a case under the appropriate section will be registered in the police station concerned.

There is a proviso attached to Sub-paragraph I of Para. 486 which lays down certain exceptions. One of the exceptions is that no case will be registered by the police if the information is received, in the first instance, by a Magistrate and forwarded by the District Magistrate to the Police. The proviso, however, does not apply to the facts of the present case inasmuch, as there is no allegation that the information which was conveyed to the Superintendent of Police by means of the application made by Tika Ram was given to a Magistrate in the first instance.

The other point which is material is whether the information was in respect of a cognizable offence. Tika Ram had in his application made to the Superintendent of Police clearly mentioned that he had in his possession currency notes of the value of Rs. 650/- and the Potli containing these notes was given to the Sub-Inspector when he wanted to search and that the currency notes were returned to him after examination. The Sub-Inspector evidently never meant to take away the money but he wanted to examine the contents of the Potli as Tika Ram was found to behaving in a Suspicious manner.

4. It has been contended on behalf of the opposite-parties that the misappropriation of a part of the money amounted in the present case, if at all, to an offence u/s 403 of the Indian Penal Code which is not a cognizable offence. The contention on behalf of the applicant, however, is that the misappropriation of the money under the circumstances mentioned above amounted to an offence u/s 409, I. P. C. The main ground on which it has been contended on behalf of the opposite parties that the case fell u/s 403, I. P. C. is that there was no entrustment made by Tika Ram in favour of the applicant.

Some reported cases have also been cited on behalf of the opposite parties but it is not necessary to refer to all those cases as in everyone of those cases the

property in the moveables made over or taken away by the accused ceased to vest in the person who parted with the property. In Chelloor Mankkal Narayan Ittiravi Nambudiri Vs. State of Travancore-Cochin, a person gave a certain sum of money as illegal gratification to another person. As soon as the money was given it ceased to remain the property of the person who gave it and therefore, there was no question of an entrustment.

In Emperor v. Ghanshamdas AIR 1928 Sind 106 (B) a certain sum of money was given to a contractor for doing a certain act. In this case also the movable property ceased to be the property of the person who parted with it. There can be no doubt that there should be some entrustment of property or dominion over property in order to constitute an offence u/s 409, I. P. C. but it is not necessary that this entrustment should be attended by all legal formalities required for the creation of a trust. If the parties or at least the person who takes away the property does not intend to take away the property as his own or for his own benefit but takes it away with the intention that it will continue to be the property of the person from whose possession it has been taken this conduct will evidently create an entrustment and if the person so taking away the property subsequently converts it to his own use it will be a case of criminal breach of trust and not of criminal misappropriation.

We are unable, therefore, to agree with the contention raised on behalf of the opposite parties that the complaint made by Tika Ram to the Superintendent of Police amounted only to an offence u/s 403, I. P. C. and not to an offence u/s 409 I. P. C. An offence u/s 409 I. P. C. is admittedly a cognizable offence and as the complaint made by Tika Ram was in respect of a cognizable offence the provisions of police Regulations, Para 486, Sub-paragraph I applied to it.

It is not disputed that on the information received by the Superintendent of Police no case was registered by the Police nor was any report u/s 157, Cr. P. C. submitted to the District Magistrate or was accepted by him. The procedure provided for in paragraph 486 of the Police Regulations clearly required the Superintendent of Police to register a case in the police station and to follow the procedure laid down in Section 173, Cr. P. C. if there was no sufficient evidence in support of the complaint. Departmental action as laid down in paragraph 490 could be taken only after the final report u/s 173, Cr. P. C. had been accepted by the District Magistrate. No such report as mentioned above was made or accepted by the District Magistrate. Paragraph 493 of the Police Regulations is as follows :

"It will not be permissible for the Superintendent of Police in the course of a departmental proceeding against a police officer who has been tried judicially to re-examine the truth of any facts in issue at his judicial trial and the finding of the court on these facts must be taken as final".

This provision clearly indicates that the Superintendent of Police was bound to accept a finding on facts in issue arrived at a judicial trial. There having been no

judicial trial the applicant was deprived of his right to establish the question of fact in his favour at a judicial trial before a court of law. There is, therefore, no doubt that the express provision laid down in paragraph 486 of the Police Regulations was ignored in the case of the applicant.

5. It has further been contended on behalf of the opposite parties that the Police Regulations are only rules of conduct laid down by the Inspector General of Police with the approval of the State Government and reliance has been placed on certain observations in, *Niranjan Singh Vs. The State of Uttar Pradesh*, . It has been observed by their Lordships of the Supreme Court that the U. P. Police Regulations contain rules which are statutory as also rules which have no force of law and are only for the guidance of the officers and that an indication as to whether a particular rule has been framed under the provisions of some law has been given in the Regulations themselves.

Paragraph 486 finds a place in Chapter XXXII of the Police Regulations and paragraph 477 with which the Chapter starts indicates that the rules in Chapter XXXII have been made u/s 7 of the Police Act and apply only to officers, appointed u/s 2 of the Police Act (Act No. V of 1861). In view of the indication given in paragraph 477 of the Police Regulations the rules embodied in Chapter XXXII have been, framed u/s 7 of the Police Act and have the force of law and are not only directory or administrative.

The Superintendent of Police who conducted the departmental trial did not observe the provisions of paragraph 486 of the Police Regulations which have the force of law and as such a dismissal as a result of such departmental proceedings would be illegal. This view finds support in two Bench cases of this Court. One of them which has not yet been reported and to which one of us was a party was decided only on 23-12-1957. It is *Ayodhia Prasad v. State of Uttar Pradesh*, Civil Misc. Appln. (O. J.) no. 36 of 1954 (All) (D). The other case is *Mohammad Umar Vs. Inspector General of Police and Others*, . In view of the fact that the departmental trial u/s 7 of the Police Act which resulted in the dismissal of the applicant was illegal the order of dismissal cannot stand and must be quashed. In view of this finding it is not necessary to enter into the other grounds taken up in the writ petition.

6. While the judgment was being dictated the learned Standing counsel drew our attention to a very recent case reported in *Union of India (UOI) Vs. T.R. Varma*, in which an observation has been made that a person whose services have been wrongfully terminated is entitled to institute an action to vindicate his rights and this circumstance should be taken into consideration while considering a petition for writ. Though their Lordships of the Supreme Court have made the above observation, yet they felt pressed by the fact that the order dismissing the respondent in that case having been made on 16-9-1954, an action to set aside that order would have been time-barred, and, therefore, they entered into the merits of the case.

In the present case also, the order of dismissal was passed as far back as the 19th of October, 1954 and this petition has been pending for over two years and possibly a suit by the petitioner would be time-barred and, therefore, we do not think that the relief should be refused to the petitioner in the present case and that he should be driven to the necessity of filing a regular suit after his petition has been pending for over two years in this Court.

7. As a result, the petition is allowed and the order of dismissal passed on 19-10-1954 and confirmed by the Inspector General of Police in appeal on 28-2-1955 and against which a revision was dismissed by opposite party No. 1 in September, 1955, is, therefore, quashed. The petitioner shall get his costs from the opposite parties.