
(1980) 12 SHI CK 0008
In the High Court Of Himachal Pradesh

Beli Ram and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 23-12-1980

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1981) CriLJ 776 : (1981) ShimLC 178

Hon'ble Judges : T.R. Handa, J

Bench : Single Bench

Judgement

T.R. Handa, J.—This petition under Article 227 of the Constitution read with Sections 482/397 of the Code of Criminal Procedure has been filed on behalf of five petitioners all of whom are presently facing their trial on charges u/s 302/34, I.P.C. in Sessions Trial No. 22 of 1980 pending against them in the Court of Sessions Judge, Mandi. The prayer made in this petition is for quashing of the charges and the trial aforesaid.

2. The facts necessary for a proper appreciation of the contentions raised in this petition may in the first instance be noted in brief.

Shri Daya Nand, petitioner No. 2, was posted as Head Constable in charge Police Post Pangna, Police Station Karsog when on 14-6-1980 one Jawahar lodged a report at that police post to the effect that a theft had been committed in his house situate in village Bagi. Accompanied by two constables Rattan Singh petitioner No. 3 and another named Dameshwar Ram, Head Constable Daya Nand reached village Bagi in the evening of 15-6-1980 at about 6 p.m. in connection with the investigation of the report lodged by Jawahar.

3. Now Sudama Ram (deceased) had been named as suspect in the report lodged by Jawahar at police post Pangna. This Sudama Ram was employed by one Lala Ram, Forest Ranger, Tor his orchard in village Bagi. Sarvshri Prakash Chand and Satya Nand were also employed for the same orchard by the

aforesaid Lala Ram and all the three of them used to work in that orchard. On reaching village Bagi in the evening of 15-6-1980, Head Constable Daya Nand called Sudama Ram to the house of Jawahar and after interrogating him for some time he sent him back. Sudama Ram accompanied by Satya Nand and Shri Behari Lal son of Lala Ram returned to the house of Lala Ram where Behari Lal slept in the upper storey of the house while Satya Nand and Sudama Ram slept in the lower storey. At about 11.30 p.m. when these persons were fast asleep, there was a knock at the door on which Sudama Ram deceased opened the door. Head constable Daya Nand, petitioner No. 2, and Rattan Singh, petitioner No. 3 along with other three petitioners and Sarvshri Jawahar and Dhari were found standing outside the door of the house of Lala Ram and all of them entered into the house when the door was opened by Sudama Ram. Head constable Daya Nand and constable Rattan Singh again started interrogating Sudama Ram and in the course thereof all the five petitioners started beating Sudama Ram with Dandas which they were carrying with them. The other two persons Jawahar and Dhari however, kept standing without taking any part in the occurrence. The five petitioners continued beating Sudama Ram till about 2.30 a.m. when Sudama Ram succumbed to his injuries. After the death of Sudama Ram constable Rattan and two other petitioners slept in the same room by the side of the dead body of Sudama Ram while the other petitioners accompanied by Jawahar and Dhari went to the house of Jawahar.

4 On the next day, that is, 17-6-1980 Shri Satya Nand who was sleeping in the same room with the deceased on the night of occurrence, after informing his employer Lala Ram about the incident, went to police station Karsog where he lodged a report on the basis of which the present case u/s 302 read with Section 34 of the Indian Penal Code was registered against all the five petitioners. After investigation a prima facie case having been found to exist against all the five petitioners a charge-sheet against them was filed in the Court of the Chief Judicial Magistrate, Mandi who committed the petitioners to the Court of the Sessions Judge for facing their trial for the offences aforesaid.

5. Relying upon Rule 16.38 of the Punjab Police Rules as applicable to Himachal Pradesh, an objection against their prosecution was raised before the learned Sessions Judge on behalf of the petitioners that in the absence of any reference to the District Magistrate and in the absence of his orders directing prosecution, neither the case against the petitioners could be investigated by the police nor was it open to the committing Magistrate to order commitment of the petitioners to the Court of Session nor was the learned Sessions Judge competent to take cognizance of the trial. It is not in controversy that no reference within the contemplation of Rule 16.31 had been made to the District Magistrate before the case against the petitioners was investigated or even subsequently before the prosecution against them was lodged. This objection, however, did not find favour with the learned Sessions Judge, who vide his order dated 26-11-1980 overruled the same, and after framing charges u/s 302 read with Section 34, I.P.C. against all the accused adjourned the case to 12-1-1981 for production of

prosecution evidence.

6. The objection of the petitioners that their presecutibn was bad in. law for want of non-compliance of the mandatory provisions of Rule 16.38 of the Punjab Police Rules as raised on their behalf before the learned Sessions Judge was once again pressed into service in this Court as well. It was contended on their behalf that at least in so far as petitioners Nos. 2 and 3 are concerned who are police officials, the offence which is alleged to have been committed by them was committed in connection with their official relations with the puD-lic as they are alleged to have beaten the suspect Sudama Ram in the course of investigation of the first information report lodged with Petitioner No. 2 at Police Post Pangna by Shri Jawahar. According to the learned Counsel for the petitioners whenever the commission of an offence by a police officer in connection with his official relations with the public was reported to the Superintendent of Police, he was under a legal obligation to pass on that information to the District Magistrate who alone was competent to decide whether the investigation thereof should be conducted by a police officer or made over to a selected Magistrate having 1st class powers. It was after applying his mind to the result of such investigation that the District Magistrate was to pass orders whether the police officer concerned was to be dealt with departmentally or prosecuted judicially. The requirement of referring all informations received by the Superintendent of Police indicating the commission by a police officer of a criminal offence in connection with his official relations with the public, was mandatory and no proceedings, departmental or judicial could be initiated against the concerned police officer unless the District Magistrate after getting the matter investigated in accordance with the provisions of Rule 16.38 had passed orders to that effect.

7. In order to appreciate the met its of this contention it is considered desirable to extract the provisions of Rule 16.38 so far as they are relevant in the present case:

16.38. (1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates The commission by a police officer of a Criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having Ist Class powers,

(2) When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in Rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.

(3) Ordinarily, a magistrate before whom a complaint against a police officer is laid proceeds at once to judicial inquiry. He is, however, required to report details

of the case to the District Magistrate, who will forward a copy of this report to the Superintendent of Police. The District Magistrate himself will similarly send a report to the Superintendent of Police in cases of which he himself takes cognizance". This rule finds place in Chapter XVI of the Punjab Police Rules, Vol. II which Chapter falls under the caption "Punishments". The very first rule under This Chapter being Rule 16.1 (1) says down that "no police official shall be departmentally punished otherwise than as provided in these rules" (emphasis supplied). Sub-rule (2) of Rule 16.1 then mentions the various types of punishments which can be inflicted upon the police officers of different ranks as also the authorities competent to inflict such punishments. The subsequent rules which find place in this Chapter XVI lay down the guidelines as also the procedure to be followed for awarding various types of punishments (departmentally) on members of the police force and as enumerated in Sub-rule (2) of Rule 16.1. Rule 16.11 is important for our purpose and may be reproduced:

16.11. When a disciplinary offence on the part of a police officer can be "adequately punished departmentally, such, officer shall not be prosecuted u/s 29 of the Police Act, and no upper subordinate shall be prosecuted under that section without the sanction of the Deputy Inspector-General.

This rule does suggest that there is no bar for the prosecution of a lower subordinate member of the police force for an offence u/s 29 of the Police Act though in the case of upper subordinate members of the police force, they can be prosecuted for such an offence only after obtaining sanction of the Deputy Inspector-General of Police. Now Section 29 of the Police Act reads as under:

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 month, 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.

8. An offence committed by a police officer within the meaning of Section 29 of the Police Act may under certain circumstances amount to a criminal offence committed by him in connection with his official relations with the public as contemplated by Rule 16.38. In view of the language of Rule 16.11 no sanction of the District Magistrate is required for prosecuting a police officer found guilty of such an offence though as already stated this offence can be said to have been committed by him in connection with his official relations with the public. Whereas no sanction whatever is required in the case of members of the police force of lower subordinate ranks, in the case of members of upper subordinate

ranks the Deputy Inspector General of Police could accord the necessary sanction for the prosecution of a police officer for such an offence. What I mean to impress upon is that the District Magistrate does not come in the picture and his sanction or orders are not required before launching prosecution against a police officer for an offence u/s 29 of the Police Act which might have been committed by him in the public.

9. There is then Rule 16.12 which is also important. This rule runs like this:

16.12. When a police officer is departmentally punished for an offence committed in his public capacity for which he is liable to be prosecuted criminally, the Deputy Inspector-General is required to satisfy himself that the course adopted was expedient in the interests of the administration, and may order a criminal prosecution if he considers it desirable.

This rule empowers the Deputy Inspector General of Police to order criminal prosecution of a police officer for an offence committed by him in his public capacity for which such police officer was liable for criminal prosecution though he had been dealt with and punished departmentally for the same. Under this rule also a police officer can be prosecuted for a criminal offence committed by him in his public capacity without the sanction of the District Magistrate.

10. If we bear in mind the fact that Rule 16.38 finds place in Chapter XVI which deals with punishments and departmental proceedings and the provisions as found in other rules in this Chapter and in particular in Rules 16.11 and 16.12, there would be no difficulty in rejecting the contention of the learned Counsel for the petitioners. The only logical construction which can be placed on this rule is that when any complaint is received by the Superintendent of Police which we must assume would be with a view to his taking departmental action and which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public, the Superintendent of Police must pass on immediate information of that complaint to the District Magistrate so that the latter could decide whether the investigation of that complaint should be conducted by a police officer or made over to a selected Magistrate having First Class powers. Whenever the result of such investigation discloses the existence of a prima facie case, judicial prosecution has normally to follow. The matter is to be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. The only object of this rule is that no offence alleged to have been committed by a police officer in connection with his official relations with the public and brought to the notice of the Superintendent of Police should be disposed of departmentally in accordance with the provisions of the rules found in Chapter XVI without obtaining the prior approval of the District Magistrate for that purpose. Judicial prosecution for such an offence is the normal rule and departmental action is an exception and it is only to bring the case within that exception that prior direction or order of a District Magistrate is required. In case the normal procedure of launching judicial prosecution is to be followed, there should be no necessity of obtaining the prior approval of the District Magistrate

and certainly it was not the intention of Rule 16.38 to obtain such a sanction in derogation of the relevant provisions of the Code of Criminal Procedure. If the construction as sought to be placed by the learned Counsel for the petitioners for Rule 16.38 is acceded to, it would be difficult to reconcile the provisions of Rules 16.11 and 16.12 with those of Rule 16.38.

11. The view that I have taken finds full support from a Division Bench judgment of the Punjab High Court in the case *Hoshiar Singh Vs. The State*, . After considering the provisions of the rules and the Police Act as also the relevant, case law on the point their Lordships in para 10 of the judgment observed as under:

After devoting my most earnest attention to the arguments addressed at the bar, as at present advised. I do not think Rule 16.38 was intended or could have the effect of imposing as a condition precedent to the trial of a police officer in a Court of law, a sanction or an order by the District Magistrate, as contemplated therein. The language appears to me to be confined only to departmental enquiries. The investigation for establishing a prima facie case is merely meant to guide the District Magistrate, uncontrolled by the opinion of the Superintendent of Police, whether or not a departmental proceeding should be initiated against the guilty party, and it is the procedure and the punishment controlling the departmental proceedings alone, which appear to have been prescribed by this rule. This view also seems to find support from the opening part of Chapter 16 of the Punjab Police Rules headed "Punishment." which begin with Rule 16.1. Sub-rule (1) of Rule 16.1 gives us a clear clue as to the scope of the other rules contained in this Chapter. It says:

No police officer shall be depart-mentally punished otherwise than as provided in these rules." Sub-rule (2) then gives the details of the various punishments permissible and the punishing authorities. Keeping in view the purpose and object of these rules as also of the parent Act (Act No. V of 1861) empowering the framing of these rules, I find it somewhat difficult to construe them in a manner which would add to the provisions of the Code of Criminal Procedure or the Prevention of Corruption Act or any other statute dealing with or regulating the prosecution of offences in the ordinary Courts of law so to make the sanction or order by the District Magistrate under the rule in question to be a mandatory condition precedent for such a prosecution. The Police Act enacted for the Regulation of Police, it may incidentally be observed, is designed to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime. Our attention has not been invited to any provision of the Act which deals with the subject of trial of the Police officers in the ordinary criminal Courts for the offences of corruption alleged to have been committed by them.

12. This Division Bench judgment in *Hoshiar Singh's* case was of course subsequently overruled by a Full Bench of the same Court in the case *Raj Kumar A. S. I, v. State of Punjab* reported in 1976 Ch LR (Cri) 39 (Punj) and which has been relied upon by the learned Counsel for the petitioners in support of his

contention. I have carefully gone through the judgment of the full Bench in Raj Kumar's case but with utmost respect to the learned Judges I find myself unable to agree with the view expressed by the Full Bench in preference to the view expressed by the Division Bench in Hoshiar Singh's case. The main judgment of the Full Bench in Raj Kumar's case was delivered by M. R. Sharma, J. It appears that the learned Judge took it for granted as if Rule 16.38 was intended or had the effect of imposing as a condition precedent to the trial of a police officer in a Court of law, a sanction, or an order by the District Magistrate, as contemplated therein. It was perhaps for this reason that the learned Judge in para 6 of the judgment observed as under:

The controversy raised at the Bar centred round the following two issues:

(1) Whether Rule 16.38 appearing in the Chapter relating to departmental punishment could be promulgated under the Police Act, 1861 (hereinafter called the Act), in derogation of the procedure laid down in the Code of Criminal Procedure for investigation of offences or not.

(2) If so, whether Sub-rule (1) of this rule was mandatory or not.

Thus, according to the learned Judge the main controversy centred round the issue whether Rule 16.38 was intra vires of the Act and whether it was mandatory in nature. Supporting judgment in this case was recorded by A.D. Koshal, J., who formulated the points canvassed before him in the following words:

(1) Whether the words "criminal offence" occurring in Sub-rule (1) of Rule 16.38 of the Rules mean only an offence created by the Act or envisage any offence of the type described in the sub-rule irrespective of the source of its creation?

(2) If point No. 1 be decided against the contention raised on behalf of the State, would an investigation held in contravention of the provisions of sub-Rule (1) affect the legality of a prosecution instituted in consequence of such investigation?

(3) Whether the provisions of Sub-rule (1) are mandatory in so far as prosecutions for offences specified therein are concerned?

After answering point No. 1 and rightly so against the State the learned Judge discussed the other two points together. In the course of discussion his Lordship observed as under:

The object of the rule, as already stated, is to have the investigation of offences of the type mentioned therein conducted by a non-partisan agency which in the circumstances of a particular case, may be the police itself or a Magistrate; and the choice has to be made by the District Magistrate who, as laid down in Section 4 of the Act, is the head of the police administration in the district. Now if the rule is to be applied to determine the legality of departmental action only, then it will be open to the police investigating agency to render such action impossible

by withholding complaints envisaged by the rule from the notice of the District Magistrate and launching a prosecution after conducting the investigation themselves without a reference to him for, once investigation is held by the police without reference to the District Magistrate, he is debarred (as is conceded by counsel on both sides) from exercising the option of ordering a departmental enquiry. The rule thus becomes self-defeating and on interpretation which has such a result will not be accepted if another interpretation which is clearly possible does not result in such an anomaly. It must be held, therefore, that the rule would apply equally to departmental proceedings and criminal prosecutions and has to be followed in either case, or, in other words, it is mandatory in both the situations." With great respect to the learned Judge I am unable to subscribe to the view that the object of Rule 16.38 is to have the investigation of the offence of the types mentioned therein conducted by a non-partisan agency of the choice of the District Magistrate. The object of the rule as earlier pointed out by me is that no offence of the type referred to in this rule should be disposed of departmentally without obtaining the prior approval of the District Magistrate for that purpose. It is inherent in the very language of Rule 16.38 that the normal rule in such like cases should be to launch judicial prosecution and it is only when a departure from this rule is to be made and the matter is intended to be disposed of departmentally that the requisite sanction of the District Magistrate must be obtained. If as already observed, the judicial prosecution for similar offences can be launched under Rules 16.11 and 16.12 without the sanction of the District Magistrate there is no reason why the framers of the rules should have required such prior sanction of the District Magistrate in respect of a case which could attract the provisions of Rule 16.38. I would accordingly find that Rule 16.38 is not intended nor has the effect of imposing a condition precedent to the prosecution of a police officer in a Court of law, a sanction or order of the District Magistrate as contemplated therein. The language of this rule confines only to departmental proceedings. The investigation for establishing a prima facie case as mentioned in this rule is merely to guide the District Magistrate, uncontrolled by the opinion of the Superintendent of Police, whether or not a departmental proceeding should be initiated against the concerned police officer. It may again be remarked that it is only the procedure and punishment controlling the departmental proceedings alone, which has been prescribed by this rule. It may further be observed that the relevant rules framed for the guidance of the police officers pertaining to investigation of criminal offences are found in Chapter XXV of the Punjab Police Rules, Vol. III, A per of these rule would show that they are not in derogation of any of the provisions found in Chapter XII of the Code of Criminal Procedure which deals with "Information to the police and their powers to investigate." These rules are intended only to supplement the relevant provisions of the Code of Criminal Procedure. In case the intention of the framers of Rule, was to make any provision in derogation of the provisions of the Code of Criminal Procedure dealing with investigation, the proper place for such a provision would have been in Chapter XXV of the Punjab Police Rules which deals with investigation and not in Chapter XVI which deals

with "punishments."

13. Looking from yet another aspect, the interpretation and construction of Rule 16.38 as suggested by the Full Bench of the Punjab & Haryana High Court in the case of Raj Kumar 1976 Ch LR (Cri) Pun 39 (supra) would not only render infructuous the provisions found in Chapter XII of the Code of Criminal Procedure dealing with investigation but also defeat the very purpose for which the Police Act was enacted and under which Act these rules, have been promulgated. The avowed object of the Police Act as mentioned in its preamble is to reorganize the police force, and to make it a more efficient instrument for the prevention and detection of crime. Section 157(1) of the Code of Criminal Procedure enjoins that " If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender." This section thus requires of the police officer to immediately commence investigation when he has reason to suspect the commission of a cognizable offence within the jurisdiction of his police station. It need hardly be emphasised that it is of utmost importance that the police must be prompt in the investigation of cognizable offences as delay therein is likely to cause serious prejudice either to the accused or to the prosecution. Such delay would certainly not be conducive for either the prevention or the detection of the crime which as already stated are the avowed objects of the Police Act. In case the construction to Rule 16.38 as suggested by the Full Bench in Raj Kumar's case is accepted it would mean that a police officer in charge of a police station even though he receives information about the commission of a serious cognizable offence and has no reason to doubt the veracity thereof, he would be helpless in proceeding with the investigation in accordance with the provisions of the Code of Criminal Procedure. He shall have to wait for the orders of the District Magistrate to be passed in accordance with the provisions of Rule 16.38 which ordinarily should be a time consuming process in the sense that the District Magistrate has to pass such an order only after getting the case investigated either through some police officer or a Magistrate of the First Class of his choice. The result will be only to cause unreasonable and avoidable delay in the process of investigation which delay must stand in the way of detection of the crime and thus defeat the very object for which the Police Act was enacted. Thus from whatever angle we may look it is difficult to subscribe to the view that Rule 16.38 is applicable alike to departmental proceedings and criminal prosecution. The objection of the learned Counsel for the petitioners that the investigation of the case followed by prosecution of the petitioners is bad for want of compliance with the provisions of Rule 16.38 of the Punjab Police Rules,

must be overruled.

14. The alternative prayer of the petitioners is that the charges u/s 302/34 I.P.C. as framed against them be quashed and instead they be charged for the offences under Sections 330/348, I.P.C. as, according to them, no prima facie case u/s 302 I.P.C. is made out against them from the police report. The allegations against the petitioners as given in the first information report and as supported by the investigation conducted in the case are that the petitioners started beating the deceased at about 11.30 p.m. and continued doing so till 2.30 a. m. when the victim actually expired. In other words the petitioners are alleged to have beaten the deceased to his death. If upon these facts the learned Sessions Judge has framed charges u/s 302/34 I.P.C. against the petitioners I am unable to And any infirmity with his order so as to interfere in the exercise of my inherent or re-visional jurisdiction.

15. This petition is thus without merit and is dismissed.