

(1980) 01 DEL CK 0029
In the Delhi High Court
Case No : C.W. No. 255/74

Raghubir Singh

APPELLANT

Vs

The Delhi Administration and Others

RESPONDENT

Date of Decision : 25-01-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1980) 17 DLT 539

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : D.R. Sehgal, for the Appellant; K.K. Sud and V.K. Agnihotri, for the Respondent

Final Decision : Allowed

Judgement

S.S. Chadha, J.—This petition under Articles 226 and 227 of the Constitution of India seeks a writ of certiorari for quashing the proceedings of the departmental enquiry instituted against the petitioner and pending before Shri N.N. Chopra, Deputy Superintendent of Police, Headquarters, Central District, Delhi.

2. The petitioner, after graduating from the Punjab University, joined the Delhi Police directly as Sub Inspector on 17th October, 1969. The petitioner was attached to Patel Nagar Police Station with effect from 19th December, 1971. The allegations against the petitioner are contained in the affidavit of Shri Nikhil Kumar, Superintendent of Police in opposition to the writ petition and I may do it well to reproduce the same :

(i) "The petitioner Sub-Inspector Raghubir Singh No. D. 849 (under suspension) while posted at Police Station Patel Nagar on the relevant day was entrusted with the investigation of a case F. I. R. No. 538/72 u/s 379 I. P. C. registered against M/s Gurmukh Singh and Company on the complaint of Raghunath Chowkidar of the Higher Secondary School authorities on the allegations that the said contractor M/s Gurmukh Singh & Company had unauthorisedly and illegally used

the water for the work of the construction on the site. One Shri Raghunath Munshi and watchman of the said school picked up a quarrel over the complaint of theft of water regarding which Shri Raghbir Singh, Chowkidar of the school lodged a complaint with the Police Station Patel Nagar vide D. D. No. 34/B on 21.8.1972 alleging that he apprehended danger and breach of peace at the hands of Munshi Raghunath, an employee of the Contractor. Sub-Inspector Raghubir Singh, the petitioner, who was entrusted with the enquiry into the matter took Shri Raghunath to the Police Station on 21.8.1972 and recovered from his personal search an amount of about Rs. 76/- under a threat of putting him under arrest and plantation of a knife on him and thereby secured a promise from the said Shri Raghunath - Munshi that he would pay another amount of Rs. 75/- towards illegal gratification as a reward for not putting him under arrest. The bargain had been settled at Rs. 150/- against which he recovered amount of about Rs. 76/- and odd paise was retained by way of adjustment and remaining balance of Rs. 75/- was agreed to be paid to the petitioner on 22.8.1972 and the place where the petitioner was to receive the said balance of illegal gratification was fixed at Tis Hazari. The petitioner in consideration of the said promise of payment of illegal gratification abused his position and instead of taking legal action enjoined upon him, he got a compromise effected between Raghunath and Raghbir Singh.

(ii) On 22.8.1972, Raghunath lodged a complaint to the Anti-Corruption Branch against the illegal gratification of the petitioner, Sub-Inspector, on the basis of which a raid was organized consisting of two punch witnesses and officials of the Anti-Corruption Branch of Delhi Police on 22.8.1972. The members of the Raiding Party located the petitioner Raghubir Singh, Sub-Inspector at the main porch of Tis Hazari Along with Shri Amrik Singh and Hari Singh. The complainant joined the party of the petitioner and went to Sethi Restaurant near Tis Hazari when the members of the raiding party followed them. The petitioner Raghbir Singh Along with Amrik Singh, Hari Singh and the complainant took some Purees and Tea in the said restaurant for which the payment was made by Amrik Singh, Shri Raghunath, Munshi was expected to pay the balance amount of illegal gratification of Rs. 75/- to the petitioner there keeping in view the instructions given to him. Some talks took place between them in the Restaurant and the gist and substance of the conversation pointed towards conclusion that the petitioner was to accept the amount of Rs. 75/- as illegal gratification from the complainant and that he had also accepted the amount earlier by adjusting the same recovered from the personal search of the complainant. The petitioner is reported to have stated that during the talks that the remaining "balance of Rs. 75/- would be accepted by him outside the hotel.

(iii) That Raghubir Singh petitioner, having got suspicious did not accept the amount of illegal gratification and instead rushed towards Old Police Lines and the raid was frustrated."

3. The case of the petitioner is that M/s Gurmukh Singh and Company wanted to

involve him in the false case as they did not expect any favor from him in the investigation of the theft case registered against them on the complaint of Principal, Higher Secondary School, Ranjeet Nagar, New Delhi-8.

4. The Contractor Shri Gurmukh Singh & Company, the employer of Shri Raghu Nath Munshi, also made a complaint against the petitioner to the Executive Engineer, Delhi Administration Div. No. V on 23rd August, 1972 copy whereof was also sent to Superintendent of Police, (Central), District, Delhi, in which allegations similar to the one reproduced above were made. The Superintendent of Police Central District, Delhi in consequence of the receipt of the said complaint forwarded the same to the District Magistrate, Delhi on the 25th August, 1972 for the purposes of necessary action. The acts of the petitioner fell within the mischief of P.P.R. 16.38(1) and as such the District Magistrate marked the complaint to the Sub-Divisional Magistrate, Patel Nagar for holding an enquiry. The Sub-Divisional Magistrate after holding the enquiry came to the conclusion that the allegations before him were not substantiated and submitted his findings on 30th March, 1973. The District Magistrate on the receipt of the report of the Sub-Divisional Magistrate took a decision that neither any prosecution is to be launched against the petitioner nor any departmental proceedings are to be taken against the petitioner on the aforesaid allegations as those remained un-substantiated. The District Magistrate informed the Superintendent of Police (Central District), Delhi accordingly and stated that no further action was called for.

5. The Anti-Corruption Branch of the Delhi Administration independently registered a preliminary enquiry against the petitioner delinquent under PPR 16.40. The preliminary enquiry was based on the same allegations as are reproduced above. The preliminary enquiry by the Anti-Corruption Branch was entrusted to Shri R.P. Singh, Deputy Superintendent of Police, Anti-Corruption Branch, Delhi. A final report of preliminary enquiry No. 38 of 1972 was submitted and forwarded to the Secretary (Vigilance), Delhi Administration, Delhi with letter dated 16th May, 1973. The petitioner was placed under suspension with immediate effect for allegedly accepting Rs. 75/- as illegal gratification from one Shri Raghu Nath Munshi, an employee of M/s Gurmukh Singh & Company, Gole Market, New Delhi, by the order of the Superintendent of Police, Central District, Delhi date 13th June, 1973. On 15th December, 1973, the summary of allegations was served on the petitioner by Shri N.N. Chopra, Deputy Superintendent of Police Headquarters, Central who was appointed as an Enquiry Officer. By representation dated 24th December, 1973 the petitioner stated that the summary of allegations which was given to him, are the same, on which Shri H.A. Argi, Sub Divisional Magistrate, Patel Nagar, Delhi had conducted the enquiry under PPR 16.38(1) had exonerated the petitioner from the enquiry and the District Magistrate filed the same on 31st March, 1973. The petitioner claimed that two enquiries could not be conducted on the same allegations and the departmental enquiry against him was illegal. It appears that no action was taken with the result that the petitioner filed the present writ petition on 23rd

February, 1974. Rule NISI was issued on 26th February, 1974 and the proceedings of the departmental enquiry were stayed.

6. Mr. D.R. Sehgal, the learned counsel for the petitioner pointed out the law with regard to the statutory provision of PPR 16.38(1) & (2) was settled by the decisions of this Court and the Supreme Court of India. He contends that in compliance with the provision of PPR 16.38(1) the aforesaid complaint was referred by the Superintendent of Police to the District Magistrate who directed the Sub-Divisional Magistrate to investigate into it. In other words the information was placed immediately before the District Magistrate who directed the Sub-Divisional Magistrate, to investigate into it. The Sub-Divisional Magistrate investigated into the complaint and held that the allegations have not been substantiated. The findings of the Sub-Divisional Magistrate were submitted to the District Magistrate who was called upon to take a decision under PPR 16.38(2). The counsel urges that the District Magistrate is the sole authority to decide whether the petitioner be proceeded against departmentally or he be prosecuted judicially. In fact of the clear and definite order of the District Magistrate that no departmental action was to be taken against the petitioner on the said complaint, the submission is that the Superintendent of Police has no jurisdiction to initiate the departmental enquiry. If the fact had remained at that, then the submission of the learned counsel had great force. In exercise of the powers conferred by Sub-section 3 of Section 46 of the Police Act, 1861 the Lt. Governor was pleased to order the following amendment being made in the existing rule 16.40 of the Punjab Police Rules, 1934. This was notified in the notification dated 22nd August, 1969. The substituted rule is as under :

"Notwithstanding anything contained in Rule 16.38 any complaint received by the Superintendent of Police, Anti-Corruption which indicates that commission by a Police Officer of a criminal offence punishable under the Prevention of Corruption Act 1947 or u/s 161 I.P.C. whether in connection with his official relations with the public or not, and such other cases as may be referred to him by the Delhi Administration, necessary enquiries or investigation into the allegations contained in the complaint may be made either by the Superintendent of Police, Anti-Corruption himself or by any other officer now below the rank of Sub-inspector authorised by him, provided that further action in each case shall be taken after obtaining orders of the Administration on completion of such enquiries/investigation. Charges of specific acts of corruption shall be thoroughly investigated by a competent officer, the provisions of the 16.27 being utilised, if necessary and the preliminary investigation shall be followed by a judicial prosecution or a departmental charge according to the circumstances of each case. Departmental charges based on a general record of dishonesty may also be entertained in accordance with rule 16.25(2)."

7. The amended PPR 16.40 starts with the words "notwithstanding Rule 16.38". The submission of Mr. K.K. Sud, the learned counsel for the respondents is that it was open to the Superintendent of Police, And Corruption to hold an independent

inquiry into the allegations contained in the complaint made to the Superintendent of Police, Anti Corruption Branch According to the counsel any enquiry or investigation under PPR 16.38(1) and the findings recorded by the District Magistrate under PPR 16.38(2) do not restrict the jurisdiction of the Superintendent of Police, Anti Corruption to proceed under PPR 16.40, I am not inclined to express my considered opinion on this submission. The Punjab Police Rules do contain provisions in PPR 16.38 and PPR 16.40 for investigations of the complaints and for taking further action in pursuance of the enquiry. The question whether it gives an option to the respondents to proceed under either of the provisions or whether it is competent to proceed simultaneously under the two provisions is a question which requires serious thought and determination.

8. The present proceedings against the petitioner are however clearly vitiated for two reasons PPR 16.40 empowers the Superintendent of Police Anti Corruption either himself or by any officer not below the rank of Sub-Inspector authorised by him to make necessary enquiries or investigations into the allegations contained in the complaint. The preliminary enquiry No. 38 of 1972 was made by Shri R.P. Singh, Deputy Superintendent of Police, Anti Corruption Branch and the report was forwarded by the Superintendent of Police to the Secretary, Vigilance. He pointed out that no prosecution could be launched for want of sufficient evidence and recommended the departmental action against the petitioner being ordered to be taken. The requirements of PPR 16.40 is that further action in each case is to be taken after obtaining orders of the Administration on completion of enquiries/investigations made by the Superintendent of Police, Anti Corruption. I desired the production of the original file in which the permission of the Lt. Governor under PPR 16.40 for taking departmental action against the petitioner was obtained. The original file produced shows that permission for departmental action under PPR 16.40 was granted by the Lt. Governor on 19th December, 1974. The action of instituting a departmental enquiry on 15-12-73 against the petitioner was thus void ab initio being without the requisite permission under PPR 16.40.

9. Another reason for quashing the subsequent permission granted on 19th December, 1974 is this. It is the admitted case of the parties that the two complaints, the one investigated by Shri H. A. Argi, Sub Divisional Magistrate, Delhi and the other forming the subject matter of preliminary enquiry No. 38 of 1972 by Shri R.P. Singh, Deputy Superintendent of Police Anti Corruption Branch contained identical allegations. The Sub Divisional Magistrate after holding the enquiry came to the conclusion that the allegations before him were not substantiated. The District Magistrate on the report of Sub-Divisional Magistrate took a decision that neither departmental proceedings nor the judicial prosecution was called for. I called upon the counsel for the respondents to produce the enquiry report of the Sub-Divisional Magistrate as well as the decision of the District Magistrate. And I have been informed that those have been destroyed. The copy of the report of the Sub-Divisional Magistrate and the decision of the District Magistrate was not brought to the notice of the Lt.

Governor when permission of the Lt. Governor under PPR 16.40 was obtained. The Lt. Governor was not even informed of the fact that a complaint containing identical allegations against the petitioner was enquired into by a Sub-Divisional Magistrate under PPR 16.38(1). The Lt. Governor was also not apprised of the fact that the District Magistrate, had taken a decision that no departmental proceedings be taken against the petitioner on the aforesaid allegations as those remained unsubstantiated. The obtaining of the permission from the Lt. Governor is thus clearly vitiated as it violates the principles of fair play and natural justice.

10. In the result the writ petition succeeds, the impugned departmental enquiry against the petitioner is quashed.

On the facts and circumstances of the case I make no order as to costs.