

(1971) 01 AHC CK 0005
In the Allahabad High Court

Ram Dulare Yadav

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Police Act, 1861 — Section 7
Constitution of India, 1950 — Article 226
Police Act, 1861 — Section 7

Citation : (1971) CriLJ 983

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Judgement

D.D. Seth, J.—This is a plaintiff's appeal arising out of a suit for declaration that the order dated 20th September, 1958 passed by the Superintendent of Police, Basti, dismissing the plaintiff from the post of a police constable, as illegal and without any force; and that the plaintiff is entitled to be re-employed at his original post and to receive his salary at the rate of Rs. 72/- per month from 20th September, 1958. It was further prayed that the defendants be directed to pay the plaintiffs salary till his reinstatement at his original post.

2. The plaintiff's case was that in the year 1958 he was posted as a police constable at the out-post Purani Basti, Police Station Kotwali, district Basti. It was alleged that on 21st May, 1958 while the plaintiff was having his cycle repaired, another police constable by the name of Mohitram approached him and told him that he, Mohit Ram, has been directed by the Head Constable to make enquiries into a matter of a theft and requested the plaintiff to accompany him and to help him in the enquiry. According to the plaintiff, he, in good faith, accompanied Mohitram to Niramali Kund where the two constables were informed by a boy named Asharfi, that some articles had been stolen and were in the possession of Sukhram Teli. Asharfi is alleged to have taken the two constables to the house of Sukhram Teli and on enquiry. Sukhram denied that he had received any article from Asharfi.

Thereupon, it was alleged that Sukhram Teli and Asharfi were taken to the Police out-post by the plaintiff and the other constable and were asked to sit at the out-post. Thereafter, the plaintiff alleged that he started preparing his food and could not say how Asharfi and Sukhram Teli left the out-Dost. On 22nd May, 1958 Sukhram Teli lodged a complaint against the two constables before the Deputy Superintendent of Police Basti and on 25th July, 1958 the Deputy Superintendent of Police served a charge-sheet on the plaintiff. The charge was as follows:

I, Shree Narain Roy, Dy. S. P Basti. charge you CP/334 Mohit Ram and CP/388 Ram Dularey Ram u/s 7 Police Act with remissness and negligence of duties and unfitness for the same in that on 21-5-1958 when you were attached to O. P. Purani Basti, P. S. Kotwali, Basti, you were deputed for execution of papers and patrolling etc. You went to the house of Sukhram of Nirmali Kund and brought him to O. P, Purani Basti on a false charge of receiving stolen property from Asharfi. After some threats, you settled Rs. 27/- from Sukhram who managed the said amount from his wife through Budhoo and gave it to you in the presence of Asharfi, Jahdai, Nohar and others of Nirmal Kund, where after he was released.

This showed your dishonest conduct and utter disregard for Police rules and discipline.

3. Thereafter, the plaintiff submitted his explanation on 4th August, 1958. The two charges mentioned in the charge-sheet were, however, held to be proved against the plaintiff and the Deputy Superintendent of Police Basti recommended the dismissal of the plaintiff from the State Police Force. Thereupon, the Superintendent of Police Basti on 30th August, 1958 served a show cause notice on the plaintiff and the plaintiff submitted his explanation but the Superintendent of Police Basti found the plaintiff guilty of the second charge i. e. having obtained Rs. 27/- from Sukhram Teli and dismissed him from police force by his order dated 20th September, 1958. Against the order of dismissal the plaintiff preferred an appeal, which was dismissed by the D. I. G. (Police) and thereafter the plaintiff's appeal was dismissed by the I. G. (Police) and then the plaintiff preferred a petition under Article 226 of the Constitution in this Court but he was directed to seek his remedy in civil court and then the plaintiff filed the suit, giving rise to the present second appeal.

4. The defendants contested the suit and pleaded that the plaintiff was tried departmentally and had been given full and reasonable opportunity to defend himself and that no breach of any police regulations took place in the trial of the plaintiff. It was pleaded that Since the plaintiff was found guilty, action was taken against him u/s 7 of the Police Act. It was further pleaded that there was no violation of principles of natural justice.

5. The trial court held that there was no breach of any rules of Police Regulations in the trial of the plaintiff and, hence, the plaintiff's case that the order of dismissal dated 20th September, 1958 was illegal, had not been established. On this finding the trial court dismissed the plaintiffs' suit.

6. In appeal the learned Additional Civil Judge, Basti held that there was no report of theft lodged at police station Kotwali on 21st May, 1958 and the head constable of the out-post Purani Basti had never directed the plaintiff and Mohit Ram to make any enquiry. The appellate court further held that during the departmental enquiry, rules of natural justice were not violated and the enquiry was not vitiated on that ground. The lower appellate court further held that the offence against the plaintiff amounted to extortion of money from Sukhram Teli, which was not cognisable and Para 486 (1) of the Police Regulations was not at all attracted, and, hence, there was no breach of Para 486 of the Police Regulations during the enquiry conducted by the Superintendent of Police u/s 7 of the Police Act, On these findings, the lower appellate court dismissed the plaintiff's appeal.

7. Aggrieved by the judgment and decree of the courts below, the plaintiff has come up in second appeal to this Court.

8. I have heard Sri J. K. Chaturvedi, learned Counsel holding the brief Sri V.K.S. Chaudhari appearing for the plaintiff- appellant and Sri V.D. Singh, appearing for the defendants respondents.

9. The first contention of the learned Counsel for the appellant as that the procedure under para 486 of the Police Regulations having not been followed, the proceedings u/s 7 of the Police Act against the plaintiff were without jurisdiction and were illegal. In this connection, sub-para (1) of paragraph 486 of the Police Regulations is relevant and reads as follows:--

1. 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 Criminal Procedure Code, according to law, a case under the appropriate section being registered in the police station concerned provided that....

Paragraph 486 of the Police Regulations could apply only if some information had been received by the plaintiff. The finding recorded in the departmental enquiry was that no information was given to the plaintiff by Asharfi and, hence. para 486 of the Police Regulations is not at all attracted to the facts of the pre-sent case. The officer conducting the departmental enquiry was the sole judge of facts and his findings cannot be interfered with by this Court.

10. The next submission of the learned Counsel for the appellant is that Sukhram Teli was under the custody of the plaintiff and it was only after the plaintiff had received Rs. 27/- from Sukhram Teli that he allowed Sukhram Teli to leave the police out post and, hence, the plaintiff acted in the discharge of his official duty and, therefore, Section 5 (1) (d) of the Prevention of Corruption Act, 1947 is attracted, and hence, the Procedure laid down in para 486 of the Police Regulations must have been complied with.

11. Section 5 of the Prevention of Corruption Act, 1947 deals with criminal

misconduct in discharge of official duty and the relevant portions of Section 5 are as follows:

(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty

(a)

(b)

(c)

(d) If he, by corrupt or illegal means or by otherwise, abusing his position as public servant, obtains for him self or for any other person, any valuable thing or pecuniary advantage, or

12. According to the learned Counsel for the appellant, was guilty of a cognisable offence and he was Punishable under subsection (2) of Section 5 of the Prevention of Corruption Act, 1947. The learned Counsel alleged that the plaintiff could act on his own authority u/s 54 of the criminal Procedure Code and had ample power to arrest Sukhram Teli.

13. There is no force in this contention

14. No case of criminal nature had been registered at the police out post puram Basti against Sukhram Teli. plaintiff had not been deputed by the Head Constable of the Police out post to make any enquiry into the affairs of the alleged theft and the plaintiff had no right to bring Sukhram Teli to the police out post and the act of having taken Rs. 27/- from Sukhram Teli could only amount to extortion of that amount which was a non-cognisable offence and was not covered by Section 5 of the Prevention of Corruption Act, 1947. In order to apply Section 5 of the Prevention of Corruption Act, it was necessary that the plaintiff should have acted in discharge of his official duty. The words "official duty" also occur in Section 197 of the Code of Criminal Procedure and while considering Section 197 of the Code of Criminal Procedure, the Supreme Court in Bhagwan Prasad Srivastava Vs. N.P. Mishra, held as follows:

Section 197 is neither to be too narrowly construed nor too widely. It is not the "duty" which requires examination so much as the "act" because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. There must be a reasonable connection between the act and the discharge of official duty. The act must fall within the scope and range of the official duties of the public servant concerned....."

Where a Civil Assistant Surgeon had filed a complaint against the Civil Surgeon, that while in operation theatre the Civil Surgeon abused the complainant before patients and hospital staff and ordered the hospital cook to "turn out this badmash", meaning the complainant and the cook actually pushed out the complainant:

Held, that there was nothing to show that this act was a part of the official duty of the Civil Surgeon and that no sanction was required u/s 197 for prosecution of the Civil Surgeon.

15. The facts of the present case before me clearly show that the plaintiff, while taking Sukhram Teli to the police out post Purani Basti, was not acting in discharge of "official duty" and, hence, Section 5 of the Prevention of Corruption Act is not applicable to the facts of the instant case. In my opinion courts below have rightly held that on the facts alleged, the offence against the plaintiff was one of extortion of Rs. 27/- from Sukhram Teli, which was a non-cognisable offence and. hence, Para 486 (1) of the Police Regulations was rightly held not to apply to the facts of the case by the court below.

16. I, therefore find no force in the second submission of the learned Counsel for the appellant.

17. No other contention was raised by the learned Counsel. The result, therefore, is that there is no force in this appeal, which is dismissed with costs.