

(1998) 12 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 4642 of 1986

R.S. Sharma

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-12-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 232, 506(2)

Citation : (1998) 12 GUJ CK 0037

Hon'ble Judges : B.C. Patel, J

Bench : Single Bench

Advocate : N.D. Nanavati, for the Appellant; B.Y. Mankad and M.G. Doshit and Co. for Respondent Nos. 1, 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, J.—Both these petitions are disposed of by this common order as the facts are common. Both the petitioners were suspended by Director General of Police by orders (Annexure "A") dated 28.8.1986 in the first case and 20/28.8.1986 in the later case. They have preferred these petitions challenging the said suspension orders.

SPECIAL CIVIL APPLICATION NO. 4642 OF 1986:

2. The petitioner was working as an Armed Reserved Police Sub-Inspector at Bhuj in the office of District Superintendent of Police, Kutch District at Bhuj.

2.1 The petitioner has stated in the petition that in the month of July 1986, riotous situation arose on account of communal tension in the city of Bhuj and surrounding areas, and he was instructed by D.S.P. Bhuj, respondent No. 3 herein, to take precautionary measures and preventive actions. The petitioner has claimed that in discharge of his duties, he went to the residence of one Darshansinh against whom even on an earlier occasion criminal cases were filed as a .303 rifle was recovered from him and he was in the list of suspect persons. The said Darshansinh was produced before the Police Inspector on 11.7.1986

with a report dated 11/7/1986. He has further averred in the petition that the said Darshansinh filed a criminal complaint against the petitioner and others on 11.7.1986 before the Taluka Police Station, Bhuj for offences punishable under sections 143, 147, 148, 232 and 506(2) of the Indian Penal Code, interalia alleging that he was manhandled by the police officers and was threatened. The said complaint was registered as Crime Register No. 143/86. A copy of the same is produced at Annexure "B". The petitioner has averred that he was transferred from Reserved Police Sub-Inspector to GRD Police Sub-Inspector, Bhuj by order dated 3.8.1986. The petitioner has made a grievance that the order of suspension dated 20.8.1986 soon after the transfer order, is nothing but an illegal action. According to the petitioner, as an officer of the Department, he raided the premises of said Darshansinh, and, therefore, on allegations made by Darshansinh, he could not have been suspended. He further submitted that the order of suspension is in utter violation of Regulation No. 372 of the Gujarat Police Manual as well as section 25 of the Bombay Police Act, and the same is against the declared policy of the Government.

SPECIAL CIVIL APPLICATION NO. 4659 OF 1986:

3. The petitioner was working as Armed Police Sub-Inspector at Police Training School, Baroda. He was earlier working as an Armed Police Sub-Inspector at Bhuj and he was transferred to Baroda by transfer order dated 28.8.1985.

3.1 The petitioner has averred in paragraph 4.6. of the petition that there were several Court cases where the petitioner was required to be examined as a witness either as an Investigating Officer or as a Police Officer and he was required to attend the concerned Courts at Bhuj and accordingly on 11.7.1986 he went to Bhuj for appearing as a witness before the Court at Bhuj. [It is pertinent to observe here that the petitioner has not given any details of case number and the Court before which he was required to attend on that date]. It is further contended in the petition that taking undue advantage of the presence of the petitioner at Bhuj, Darshansinh has filed a complaint against the petitioner as well as PSI Sharma and other police constables involving them in an offence punishable under sections 143, 147, 148, 323, 452 and 506(2) of the Indian Penal Code.

4. The petitioners have annexed a copy of the complaint filed by Darshansinh on 11.7.1986. Reading the same it appears that the said Darshansinh is aged about 70 years and was engaged in the activity of cultivation. It appears that he was residing in a farm house situated on a way leading to village Kori from village Sumraser; At about 9.00 pm. the said Darshansinh and his wife were present and at that time PSI Bishnoi [SCA No. 4659/82], PSI Sharma [SCA No. 4642/86] and four other police personnel arrived at the residence and he was informed that DSP is calling. He refused to accompany and thereafter, all these persons dragged him and he was beaten by means of stick when he came near the police vehicle. Sharma and Bishnoi were carrying revolvers with them. The complainant has further pointed out that he was having bleeding injuries. He was asked to

leave the place failing which he will have to face serious consequences including the highest penalty of death. He has not given description of other persons accompanying the officers and he was not knowing them by name. He has pointed out the reason why he was selected. He has pointed out that before about one year, a prosecution was filed with regard to a rifle. He appeared before the police station officer with the revolver and licence and Bishnoi replaced the revolver for which complaint is filed against him.

5. Learned advocate for the petitioners submitted that it is because of the incident of the replacement of revolver, the complainant is naming the petitioners and other police personnels.

6. Referring to the story put forth by Sharma, it is required to be noted that the incident of riot is alleged to have taken place in Bhuj city. The house of Darshansinh is neither situated in Bhuj City nor in the vicinity of Bhuj City, but it is situated on the road leading to village Kori from Sumraser. From the complaint it appears that the distance is about 16 kms. from the Bhuj City police station.

6.1 The story put forth by Bishnoi is even more interesting. Though he states that he went to Bhuj in connection with appearing before some Court, no particular whatsoever is given. It is too much to believe when he states that Darshansinh, who resides far away, about 16 kms from the police station, on the road leading to village Kori from Sumraser, took undue advantage of his presence and filed a complaint.

7. On issuing notice in this matter, one P.C. Pande, Deputy Inspector General of Police (Administration) has filed an affidavit in this matter, supporting the order of suspension. It is pointed out in the affidavit that a case had been lodged in the police station at Bhuj against Sharma and Bishnoi, Armed Police Sub-Inspectors working at the relevant places referred to hereinabove and some other police personnel under sections 143, 147, 148, 323, 452 and 506(2) of the Indian Penal Code. It is further pointed out in the affidavit that Sharma was an Armed Police Sub-Inspector in the office of the District Superintendent of Police Kutch while Bishnoi was a Sub-Inspector in the Police Training School at Baroda. It is further pointed out in the affidavit that inquiry was entrusted to Sub-Divisional Police Officer, Western Region, Bhuj, who has stated in his report dated 29.7.1986 that the petitioners and the accompanying police personnels indulged in serious criminal activities misusing their position and power with malafide intention, and recommended their suspension. The report dated 29.7.1986, as mentioned in the affidavit, is fairly comprehensive in nature and it reveals that several witnesses were examined and there was a prima facie case to come to the conclusion that the petitioners, and other police constables were involved in serious illegal activities. It is under these circumstances that the Director General of Police came to the conclusion that the petitioners should be suspended from service. In clear terms it has been stated in the affidavit that the petitioners were not assigned any duties in the course of which the incident could have happened and the persons involved in the incident were not discharging any official duty. It is

emphatically stated in the affidavit that the incident in question did not happen in the course of discharge of any duties assigned to them and "they were not acting in the discharge of any duties assigned to them but had acted de hors their duties and misused their power and position". It is further pointed out that the petitioners and others also made unauthorised use of a Government Vehicle for committing this illegal activity. On these facts, the Director General of Police was satisfied that it was necessary in the public interest to suspend the petitioners pending departmental inquiry.

8. A Division Bench of this Court, in the case of J.S. SOLANKI vs. CHIEF CONSERVATOR OF FOREST reported in 27 (1) GLR 41 has held that the powers of suspension and transfer can be exercised after due consideration and not lightly. Thus, it is not correct to say that the officer cannot be suspended when he is transferred. If the authorities are satisfied on the material placed before it that it is a case worth suspending the employee even after transferring the employee, it is open for the authority to suspend such employee.

9. In the case of S. Pratap Singh Vs. The State of Punjab, , the Apex Court pointed out in paragraph 55 that order of suspension can be passed if the authority concerned, on getting a complaint of misconduct considers that the alleged charge does not appear to be groundless and that it requires inquiry and it is necessary to suspend the Government servant pending inquiry.

10. It is required to be noted that while examining an order of suspension, the Courts are not concerned with the sufficiency of satisfaction. These matters are left to the subjective satisfaction of the authorities. It is not within the province of the Court to call for the inquiry papers and to examine the same and thereafter to come to the conclusion that the order is proper or not. It is left to the discretionary powers of the authority deciding the matter. It is required to be noted that the inquiry is conducted by an officer of the same department who is a senior officer. That officer has no personal grudge against the delinquent. He came to the conclusion on the basis of the statement of witnesses that prima facie case is established and thereafter he recommended the suspension of the delinquent. It must be left to the subjective satisfaction of the authority. It is not for the Court to consider with regard to the sufficiency of the satisfaction arrived at by the authority making the order. So far as subjective satisfaction is concerned, it is within the domain of the authority and orders are passed by the authority after satisfying itself. The ground of sufficiency cannot be inquired into by the Court. It would be a dangerous proposition that the Court should consider the papers and record and should substitute its own suggestion for that of the authority. Under Article 226, the Court, while examining the matter, has to see whether extraneous or irrelevant material has been taken into consideration or there has been a total non-application of mind or the action is patently perverse, unfair and unjust or is tainted with mala fides. As pointed out by the Honourable the Chief Justice in the case of R.G. Jadeja Vs. P.K. Bansal, Commissioner of Police and Another, and P.K. BANSAL VS. R.G. JADEJA reported 1993 (2) GLR 983, this

Court is not supposed to examine the formation of the subjective opinion as an appellate Court. This Court is concerned with the sufficiency of the satisfaction and at this juncture we would not straightway characterise the impugned orders of suspension as suffering from any patent infirmity which should oblige this Court to say it. The fact that different formation of opinion or satisfaction is possible for the Court, is no ground to quash the order.

11. Thus, it is very clear that the orders of suspension are passed after considering the material placed before the authority, accepting the situation pointed out hereinabove; Therefore, it would not be proper for this Court to interfere with the suspension orders passed by the authority.

12. In the result, both the petitions are dismissed with cost. Rule in both the petitions are discharged. Interim orders passed by the Court stand vacated forthwith.