

(2018) 08 P&H CK 0510

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20000 Of 2012

Sanjeev Jindal

APPELLANT

Vs

Punjab & Haryana High Court & Another

RESPONDENT

Date of Decision : 29-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 302, 498
Code Of Criminal Procedure, 1973 — Section 437, 439
Haryana Civil Service (Punishment & Appeal) Rules, 1987 — Rule 4(viii)

Citation : (2019) 1 SCT 78

Hon'ble Judges : A. B. Chaudhari , J;Kuldip Singh, J

Bench : Division Bench

Advocate : Puneet Bali, Paramveer Singh, Raman B. Garg, Vivek Saini

Final Decision : Allowed

Judgement

1. By the present petition the petitioner Sanjeev Jindal has prayed for writ of certiorari for quashing the charge sheet dated 21.08.2010 (Annexure P-8); enquiry report dated 30.09.2011 (Annexure P-10); show cause notice dated 13.02.2012 (Annexure P-11) and order dated 13.08.2012 by which the petitioner was compulsorily retired from the service. The petitioner entered the service of Haryana Civil Service (Judicial Branch) on 09.10.1987 as Sub-Judge 3rd Class-cum-Judicial Magistrate 2nd Class. He was promoted to the post of Additional District and Sessions Judge on 31.05.2002 but for the year 2010-11 with 'B' average remarks. About integrity he did not earn any adverse remark. He challenged the said remarks along with order dated 12.03.2012 by which his representation was rejected by filing CWP No.6872 of 2012.

On 13.08.2012 the impugned order retiring him compulsorily was passed by way of punishment after holding departmental enquiry.

FACTS:

2. The facts, leading to the Charge Sheet being served on the petitioner, are that

one Ritu Bala died on 19.12.2007. Her father lodged a complaint with the police station that his daughter was harassed by her husband Chandan Kumar @ Bobby, Manorama Rani mother-in-law and Inder Mohan father-in-law for not bringing adequate dowry. He alleged that Ritu Bala was in fact murdered by the accused by strangulation and was given internal injuries. An FIR No.454 dated 19.12.2007 was registered under Sections 302, 498-A and 120-B IPC with Police Station, Sector 5, Panchkula. During investigation it was found that the features of strangulation and latent injuries were not observed on the neck and body of the deceased in her post mortem examination. The possibility of Ritu Bala dying because of the gas geyser installed in bath room was given probable cause of death. At the instance of the father of the deceased re-investigation was conducted and again Section 302 was proposed to be added. Husband of the deceased namely Chander Kumar @ Bobby was arrested and was released on regular bail after expiry of sixty days by way of statutory bail. Mother-in-law Manorma Devi was arrested on 14.08.2008 and was in custody. Manorama Devi filed application under Section 439 Cr.P.C. for grant of bail before the petitioner. The said bail application was allotted to the petitioner to which reply was filed by State on 03.09.2008. The petitioner found that the plea for regular bail by Manorma Devi was justified and therefore, he made order dated 04.09.2008 granting her regular bail. An anonymous complaint was sent to the High Court alleging that the petitioner had passed the order dated 04.09.2008 for oblique motives. The complaint was dated 15.10.2009 (Annexure P-4). Registrar (Vigilance), Haryana Sh. P. L. Ahuja submitted his report dated 07.03.2009 stating there in that order granting bail on 04.09.2008 appeared to be mala fide and as a result the petitioner was directed to furnish his explanation. The petitioner gave his detailed explanation/reply on 24.10.2009. But, thereafter, the petitioner was served with a charge sheet dated 21.08.2010 on the ground that he had passed the order dated 04.09.2008, prima facie, with the mala fide intention. Obviously the charge sheet was issued to him for passing the judicial order granting bail and nothing more, in that, there was no other charge against him. The regular departmental enquiry was held by Justice S. K. Jain (retired), who submitted his report on 30.09.2011 (Annexure P-10) holding that order granting bail dated 04.09.2008 was passed with mala fide intention. The Enquiry Officer proceeded himself as Appellate Authority and commented on the merits of the bail order. There was absolutely no evidence regarding mala fide intention or extraneous consideration anywhere. On the basis of the enquiry report dated 30.09.2011 a show cause notice dated 13.02.2012 was issued to the petitioner to which he gave the reply. Insofar as the accused Manorama Devi, is concerned, the trial was held. Eventually the same Judge Mr. P. L. Ahuja vide judgment and order dated 04.06.2010, acquitted her of the charge as there was no evidence against her. Thus Mr. Ahuja's preliminary report as Registrar (Vigilance) and judgment of acquittal, was clear cut self-contradictory. On 17.08.2012 the learned District and Sessions Judge, Rewari forwarded the order dated 13.08.2012 impugned in this petition, informing him that he was retired compulsorily in accordance with the provisions of Sub-rule (viii) of Rule 4 of

Haryana Civil Service (Punishment & Appeal) Rules, 1987. Hence this petition.

ARGUMENTS:

3. In support of the writ petition the learned senior counsel for the petitioner assailed the impugned action of the respondents in punishing him for the alleged misconduct of granting regular bail to Manorma Devi which was a judicial order and the fact that Manorama Devi was ultimately acquitted by the same Judge who gave preliminary enquiry as Registrar (Vigilance), shows the perversity on the part of the respondents in punishing the petitioner by retiring him compulsorily from the service. According to the learned senior counsel for the petitioner, perusal of the enquiry report clearly shows that the Enquiry Officer has practically and on all purposes acted as appellate authority over the order granting regular bail, giving the reasons as to why the findings of the fact recorded in the order of granting bail were not correct. But the same were correct and that is why Manorma Devi was finally acquitted by the Sessions Court.

4. The learned senior counsel for the petitioner then argued that it has been repeatedly held by the Apex Court that making of judicial orders by the judicial officers cannot be used to dispense with the services unless the order is found to be mala fide or made for extraneous consideration. He cited several decisions in support of his submission. The senior counsel for the petitioner then submitted that there is absolutely no evidence from the department as to mala fide intention or regarding extraneous consideration, if any, nor any evidence was tendered by the department before the Enquiry Officer. On the contrary, the complaint itself was anonymous. No anonymous complaints without affidavit could be entertained unless they were supported by the affidavit, by the person making complaint. But in the present case it was not even verified whether the complainant exists or not. Therefore the question of mala fides or extraneous consideration did not arise. The findings recorded by the Enquiry Officer are wholly perverse and have been recorded casually showing scant regard for the judicial proceedings and the judicial orders made. That being the only charge against the petitioner, the petition is liable to be allowed and the petitioner should be granted the reliefs accordingly.

5. Per contra, learned counsel for the respondents opposed the petition and submitted that the parameters laid down by the Apex Court in respect of interference in the extra ordinary writ jurisdiction with the orders in relation to the judicial officers, have been clearly laid down in the case of Registrar General, Patna High Court versus Pandey Gajendra Prasad and others, 2012 AIR (SC) 2319. The Apex Court has clearly stated that the High Court should not interfere in its extra ordinary jurisdiction with departmental proceedings by making judicial review since the scope of judicial review is extremely limited. According to the learned counsel for the High Court the present case is of same type and the enquiry was conducted by Justice S. K. Jain (retired). The petition cannot be entertained and will have to be dismissed.

CONSIDERATION:

6. We have heard learned counsel for the rival parties at length. We have gone through the entire record, including the documents and the ratio of various judgments cited by learned counsel for the rival parties.

We think we will have to first deal with the factual aspects in the matter to find out whether there is any perversity in respect of the findings recorded by the Enquiry Officer.

7. At the outset, it is necessary to begin with the genesis of this case that is; the anonymous complaint (Annexure P-4), sent to the Chief Justice of Punjab and Haryana High Court. The complainant at the end of the complaint has described himself as we are "your concerned citizens of Panchkula". Admittedly, neither name of the complainant nor the address was furnished anywhere. The bare perusal of the complaint shows that it was against police, public prosecutor as well as the petitioner in as vague terms as it could be. It was stated therein that the order dated 04.09.2008 granting bail to Manorama Devi, was made for extraneous consideration. Be that as it may. A report was prepared by Mr. P. L. Ahuja, Registrar (Vigilance) on 07.03.2009, in which he prima facie held that there appeared to be mala fide. As a result, charge sheet was prepared and served on the petitioner. Articles of charge Annexure P-8 shows only one charge. The said charge reads thus:

(i) "ARTICLES OF CHARGE You Shri Sanjeev Jindal, the then Additional District and Sessions Judge, Panchkula, now as such at Narnaul, are charged as under:-

1. A bail application No. 91 of 2008 was moved by Smt. Manorma Devi, one of the accused in case F.I.F. No. 454 dated 19.12.2007 under Section 498-A, 302, 120-B I.P.C. registered at Police Station, Sector-5, Panchkula. The said bail application came up for hearing in your Court and you vide -7- your order dated 04.09.2008 accepted the bail application of the applicant/accused by observing as under:-

"..... The trial of the case is likely to take a long time and therefore, this Court is of the considered opinion that no useful purpose would be served to detain the present applicant-accused any more in judicial custody that too especially when appears from the facts and circumstances of the present case including the medical reports of P.G.I., Rohtak and F.S.L., Madhuban that the deceased in all probabilities had died a natural death without any foul play."

The findings recorded by you regarding deceased died a natural death is contrary to the report dated 06.08.2008 of Board of Doctors wherein the doctors have opined as under :-

" F.I.R. and inquest papers alleged the cause of death to be strangulation. Although features of strangulation have not been observed in the neck on post-mortem examination, possibility of asphyxia death due to smothering cannot be ruled out in view of reddish brown scab covered abrasions on nose and lower lip

and marked congestion without associated inflammation in internal organs reported on histopathology. These findings must be interpreted keeping in view circumstantial evidence."

So your aforesaid findings recorded in order dated 04.09.2008 is prima facie a malafide intention.

As such, you having passed the aforesaid order dated 04.09.2008 granting bail to Manorma prima facie a malafide intention, for the reasons best known to you, have committed misconduct and acted in a manner unbecoming of a Judicial officer and thereby lowered the image of judiciary in the eyes of public.

BY ORDER OF HON'BLE THE CHIEF JUSTICE AND JUDES.

sd/-

REGISTRAR GENERAL"

8. Perusal of the above charge shows that the petitioner had indicated the probability that the deceased died in naturally without any foul play, considering medical reports of PGI, Rohtak and FSL, Madhuban. According to the charge the said finding about natural death was contrary to the report dated 06.08.2008 of the Board of Doctors, who had opined that there was no features of strangulation but possibility of asphyxial death due to smothering could not ruled out, but the finding must be interpreted keeping in view the circumstantial evidence. It was, therefore, stated in the charge that the finding for granting bail was, prima facie, in correct and mala fide. It is noteworthy that nowhere in the chargesheet it was stated how it was mala fide or for extraneous consideration, even if it is assumed that the finding of fact in the bail order was prima facie incorrect.

9. The enquiry was held and in enquiry the Enquiry Officer prepared enquiry report Annexure P-10. Thereafter the petitioner was given a show cause notice along with enquiry report vide dated 13.02.2012 (Annexure P-11) to which he filed reply dated 24.04.2012 (Annexure P-12). We find from the record following salient features:

(i) The report of the Medical Board itself stated that there was no features of strangulation but there was possibility of asphyxia death due to smothering cannot be ruled out but then the said finding must be interpreted keeping in view the circumstantial evidence. This was the report of the Board. The Enquiry Officer has not considered this aspect. To say in other words the medical report was inconclusive even about smothering.

(ii) In the FIR that was registered by the father it was stated that the deceased was murdered with strangulation and latent injury. Which the medical opinion indicated that it was not so.

(iii) No definite opinion regarding cause of death by smothering was given in any of the medical opinion/reports.

(iv) As per the investigation there was no disturbance of any kind in the kitchen, room or in the house including the wooden door and chitakni of both rooms. The geyser was found present in the working order.

(v) There were no defence marks or wound marks or external injury.

(vi) The poligraphic test of accused Manorama Devi and her husband was conducted leading into no evidence against Manorama Devi.

(vii) The accused Manorama Devi was sought to be prosecuted for the offence of murder but then her son, her husband etc. Were also prosecuted and therefore with no concrete observation it can be said that Manorama Devi has strangled the when the other male members in the house have also been prosecuted.

(viii) Manorama Devi was arrested and was in custody for about twenty days and she being a woman was entitled to benefit of Section 437 Cr.P.C., particularly when there was no direct or indirect evidence against her except for the fact that she was a member of the family of the husband of the deceased.

10. The enquiry officer thus treated the said medical report as the gospel truth without considering the aforesaid circumstances and to find out whether the judicial discretion exercised by the petitioner to grant regular bail to a "woman", was justified or not. According to us, whether the order was justified or not, could not be the subject-matter of a finding by enquiry officer, unless the same is found to have been made with mala fide intention, for extraneous consideration of for corruption. But there is neither any finding nor evidence to that effect. This approach is nothing but out and out perversity on the part of the enquiry officer in holding that since the order granting regular bail appeared to be contrary to the report of the medical board, therefore it was mala fide.

11. Nay the same is in ignorance of the first principle namely malice in law, malice in fact

12. As regards the tendency of making false and fabricated complaints as in the present case namely the anonymous complaint, the observations made by the Division Bench of this Court in the case of Jatinder Pal Singh versus High Court of Punjab and Haryana in CWP No.15869 & 16339 of 2012 decided on 26.08.2015, para 34 (Per P. B. Bajanthri, J.) would be apt. We quote the same as under:

"34. There is a growing tendency of making false and fabricated complaints against Judges at all levels, especially the District Judiciary. Realising this menace, High Court has issued office order dated 10.04.2015 with reference to DO letter No.CJI/CC/Comp/2014-15 dated 3.10.2014 of the Hon'ble Chief Justice of India that complaints should not be entertained in the absence of supporting affidavit. The said order is to protect the judicial officers. In other words not to entertain false and fictitious complaints. Extract of the order reads as follows:-

"i) The complaint making allegations against members of the Subordinate Judiciary in the States will not be entertained and no action will be taken

thereon, unless it is accompanied by a duly sworn affidavit of the complainant and verifiable material to substantiate the allegations made therein;

ii) If action on such complaint meeting the above requirement is deemed necessary, authenticity of the complaint will be duly ascertained and further steps thereon will be taken only after satisfaction of the competent authority designated by the Chief Justice of the High Court; and

iii) If the above requirements are not complied with, the complaint will be filed/ lodged without taking any steps thereon."

13. It would also be apt to quote the following from the decision of the Apex Court in the case of Ramesh Chander Singh Vs High Court of Allahabd, (2007) 4 SCC, 247 and in particular paragraphs 11 to 13. We quote them as under:

"11. We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality. The appellant-officer was well within his right to grant bail to the accused in discharge of his judicial functions. Unlike provisions for granting bail in TADA Act or NDPS Act, there was no statutory bar in granting bail to the accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and independently.

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, High Court must take extra care and caution.

13. In Iswar Chandra Jain v. High Court of Punjab and Haryana, AIR 1988 SC 1395, this Court observed that while exercising control over subordinate judiciary under Art. 235 of the Constitution, the High Court is under a Constitutional obligation to guide and protect subordinate judicial officers. An honest and strict judicial officer is likely to have adversaries. If complaints are entertained in trifling matters and if the High Court encourages anonymous complaints, no judicial officer would feel secure and it would be difficult for him to discharge his duties in an honest and independent manner. It is imperative that the High Court should take steps to protect honest judicial officers by ignoring ill- conceived or motivated complaints made by unscrupulous lawyers and litigants."

14. Similarly we quote following extract from para 32 of the judgment of Apex Court in the case of Madan Mohan Chaudhary Versus State of Bihar and others, (1999) 3 SCC 396 :

"32. The character roll entries, recorded by various District Judges, have already been reproduced by us in the earlier part of the Judgment. The remarks given by the High Court on various occasions have also been set out above. It has also been found that there were no entries in the character roll of the appellant for the years 1991-92, 1992-93 and 1993-94. The entries for these years were recorded at one time simultaneously and the appellant was categorised as "C" Grade Officer. The expression used by the High Court in the counter affidavit, filed in this Court, in relation to the entries for the aforesaid three years is that they were recorded "at one go". And, we may add, the Officer was made to go! The date on which these entries were made is not indicated either in the original record or in the counter affidavit filed by the respondents. These were communicated to the appellant on 29.11.1996 and were considered by the Full Court on 30.11.1996 but it is clear that these entries were recorded at a stage when the Standing Committee had already made up its mind to compulsorily retire the appellant from service as it had directed the office, on 06.11.1996, to put up a note for compulsory retirement of the appellant. The High Court should have considered that all entries prior to his promotion to Superior Judicial Service were not bad and his integrity either as a member of the Inferior Judicial Service or Superior Judicial Service was never doubted. xxx.... xxx....

xxx...."

15. In the light of the above factual and legal position we are of the firm view that the entire impugned action is illegal and consequently, the petition will have to be allowed. The petitioner's date of birth is 13.09.1961 which means he would complete 58 years on 12.09.2019.

16. In the result we make the following order:

ORDER

(i) CWP No.20000 of 2012 is allowed.

(ii) Rule is made absolute in terms of the following prayer clause:-

Praying for the issuance of a Writ in the nature of Certiorari, quashing the Charge Sheet dated 21.08.2010 (Annexure P-8), Enquiry Report dated 30.09.2011 (Annexure P-10), Show Cause Notice dated 13.02.2012 (Annexure P-11) and Order dated 13.08.2012, vide which the petitioner was compulsorily retired from service under sub-Rule

(viii) of Rule 4 of Haryana Civil Service (Punishment & Appeal) Rules, 1987.

(iii) The petitioner shall be reinstated on his original post from which he was compulsorily retired by order dated 13.08.2012, on or before 30.11.2018.

(iv) The petitioner shall be entitled to continuity of service for the purpose of computing terminal benefits ignoring the order dated 13.08.2012 of compulsory retirement. The petitioner shall not however be entitled to any back wages which we decline.

(v) If the petitioner is not reinstated on or before 30.11.2018, he shall be entitled to claim salary of the post w.e.f. 01.12.2018.

(vi) Costs made easy.