
(2007) 07 MP CK 0049
In the Madhya Pradesh High Court

Sunil Shrivastava

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 26-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 169, 170
Penal Code, 1860 (IPC) — Section 147, 148, 149, 27, 302

Citation : (2007) 4 MPHT 260

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.—The petitioner has filed this petition challenging the charge sheet Annexure P-1, dated 29-10-2006.

2. The petitioner also challenged the order of suspension, Annexure P-2, dated 16-9-2006 that order has been revoked subsequently by the respondent vide another order dated 13-11-2006, Annexure, hence the petition of the petitioner with regard to suspension has become infructuous.

3. The petitioner was working in the police department as Sub Inspector. At the relevant time he was posted as In-charge Police Station, Unnao, District Datia. A cognizable offence under Sections 302, 147, 148, 149 was registered at Crime No. 38/06 at Police Station, Unnao on the report of one Raghubir Singh son of Pratap Singh Dangi, resident of Village Devra that on 8-5-2006 at around 7.30 in the evening Khushali Dangi, Vinod Dangi, Charan Dangi, Santosh Dangi and Maithilisharan Kushwaha murdered his son-in-law, Mulayam Singh Dangi. On the basis of the aforesaid First Information Report a case under Sections 302, 147 and 148, IPC was registered against the aforesaid five persons. The case was registered on 8-5-2006 and from 8-5-2006 to 23-5-2006 the investigation of the case was conducted by Assistant Sub Inspector Mr. P.S. Yadav. Thereafter, Khushali Dangi submitted a complaint to the Superintendent of Police that he and other persons had been falsely implicated in the case. It has further been stated

by him that the deceased and complainant had earlier also tried to implicate them in a false case. The complainant put forth cogent evidence with regard to non-involvement in the case. Hence, the Superintendent of Police directed the Additional Superintendent of Police to conduct inquiry. The Additional Superintendent of Police conducted a detailed investigation and examined number of witnesses and also the fire-arm which was said to be used in the offence and after investigation he found that the accused persons which were mentioned by the complainant in the FIR were not the real culprits of the crime and opined that Mariiram Dangi, Maithilisharan Dangi and Balli alias Balvir Singh were the suspected persons who may had committed crime. He further opined that both the arms recovered from Maniram Dangi and other fire arm be sent for investigation to FSL, Sagar and thereafter further investigation be carried out in the case. Copy of the report has been filed along with the return as Annexure R-5. Thereafter the investigation of the case was handed over to the petitioner. The petitioner recorded statements of Parmeshwari, Hardas, Gayadeen, Harimohan, Ramesh Choubey, Brijkishore, Mukundilal, Suresh Gupta, Karan Singh, Tala @ Shripat, Vishnu Swami, Satish Dangi, Vinod Vanskar, Devkinandan Dangi, Sitaram Kushwaha, Bablu Ahirwar, Maniram and Prajapati. He also received FSL report and consulted then Superintendent of Police. After the examination of FSL report the petitioner found that there was a contradiction between the version of Raghubirsingh Dangi and the FSL report, medical report and statements of other witnesses, then the petitioner came to the conclusion that complainant, Raghubirsingh along with other person committed murder of deceased Mulayam Singh and lodge false FIR against other persons. As per the order of Superintendent of Police, Datia and after perusal of the report of Additional Superintendent of Police petitioner arrested Raghubirsingh and Maithili Dangi and also lodged a First Information Report, against them. On the memorandum u/s 27 he seized the weapon from the above accused persons and they were produced before the Court.

4. There was some apprehension in the mind of the department with regard to real accused persons, hence the investigation of the crime was again stopped vide order dated 2-9-2006 passed by the Superintendent of Police. Then the matter was sent for opinion to the Deputy Director (Prosecution). The Deputy Director (Prosecution) in his opinion dated 8-9-06, forwarded to the Superintendent of Police, Datia, opined that looking to the report of the Forensic Expert and the post-mortem report the version submitted by the complainant in the initial First Information Report was not correct hence further investigation was necessary in the matter against the other accused persons. Thereafter, vide an order dated 14-9-2006 the Superintendent of Police withdrew the investigation of the case from the petitioner and handed it over to Additional Superintendent of Police, Datia and subsequently a charge-sheet has been issued to the petitioner on 29-10-2006. In the aforesaid charge-sheet two charges were levelled against the petitioner. The charge was that in a case which was registered at Crime No. 38/06 at Police Station, Unnao without proper evidence

and faulty investigation petitioner arrested Raghubir Dangi and Maithili Dangi, hence he committed misconduct. The petitioner denied the aforesaid charge and when the department decided to proceed against the petitioner, the petitioner filed the present petition.

5. The respondents in the return stated that the petitioner had not conducted the investigation properly and there were discrepancies in the investigation conducted by the petitioner. He wrongly investigated the case and without any cogent evidence arrested Raghubir Dangi who was the complainant and Maithili Dangi who was a witness in the case. Hence, the charge sheet has rightly been issued against the petitioner.

6. Learned Counsel for the petitioner has submitted that after perusal of the entire record of the case no misconduct made out against the petitioner. The petitioner conducted investigation properly intelligently and from the Forensic Laboratory Report and the report of the Additional Superintendent of Police as well as the medical report it is clear that the complaint lodged false First Information Report, hence the petitioner inquired the truth of the incident and arrested the real accused persons, hence the charge is liable to be quashed.

7. Learned Government Advocate has submitted that against the charge sheet no writ petition is maintainable and the inquiry is in progress. Prima facie there is enough material against the petitioner for issuance of the charge sheet.

8. The question for determination before this Court is whether the petitioner has committed any misconduct in the facts and circumstances of the case and the charge sheet be quashed or not?

9. From the facts of the case it is clear that the petitioner was posted as Incharge Police Station, Unnao on 30-7-2006. Earlier, the investigation of the case was conducted by Mr. P.S. Yadav, from 8-5-2006 to 23-5-2006. On the basis of the preliminary investigation and the First Information Report he found prima facie that there was enough evidence against Khushali Dangi, Santosh Dangi, Charan Dangi, and Maithili Sharan and arrested them on 14-9-2006. Thereafter, Khushali Dangi submitted a complaint that he and other accused persons had been wrongly implicated in the case. On the basis of above complaint the Superintendent of Police directed the Additional Superintendent of Police to conduct an inquiry and the Additional Superintendent of Police conducted a detailed inquiry and vide his report, copy of which has been filed as Annexure R-5 he opined that the four accused persons had falsely been implicated in the case by the complainant. He further stated that Maniram Dangi and Maithili Dangi were the real culprits and the fire-arm, i.e., Katta which was used in the incident has to be seized. Thereafter the Superintendent of Police directed the petitioner to conduct investigation vide letter dated 15-7-2006.

10. Further Additional Superintendent of Police in his report dated 15-7-2006 specifically mentioned that after examining the complaint submitted by Khushali Singh Dangi son of Ajuddhi Dangi he came to the conclusion that there was a

possibility that Maniram Dhobi had fired a gun shot from a Katta (country made pistol) towards Mulayam Singh in order to register a false case u/s 307 of the Indian Penal Code and in that course of event the gun shot injury hit Mulayam Singh Dangi and due to the aforesaid injury Mulayam Singh Dangi was died. In reaching the aforesaid prima facie conclusion he mentioned statements of which were recorded by him of Khushali Ram, Charansingh, Santoshsingh son of Malkhansingh Dangi, Maithilisharan son of Hardu Kushwaha, Satish Kumar son of Gajransingh Dangi, Vinod Kumar son of Mitthu Vanshkar, Harimohan son of Rajaram Joshi, Ramesh Choubey son of Radheshyam Choubey, Brajkishore son of Ghanaram Chhipa, Hardas son of Dhalle Vanshkar, Parmeshwaridas son of Hardayal Kushwaha, Ballu Barar son of Khushali Ahirwar, Maithilisharan son of Harprasad Dangi, Gurdayal son of Sitaram Kurmi, Surajsingh son of Kishoresingh Dangi, Sanju son of Ram Milan Rajak, Rajkumar Dangi son of Babulal Dangi, Jugalkishore son of Lalaram Badhai, Ramji son of Udaisingh Khangar, Ramkrishna Dangi son of Ramjisharan Dangi, Parmeshwaridas son of Kammu Ahirwar, Laxminarayan son of Ajuddhi Dangi, Maniram Dhobi son of Jagram Dhobi, Balram alias Balli son of Dwarika Prasad Dangi and Maithilisharan son of Ramdas Dangi. Apart from this, the Additional Superintendent of Police mentioned the fact that the fire arm which was recovered in earlier investigation be sent to Forensic Laboratory Sagar for expert's opinion. Apart from this, Deputy Director (Prosecution) in his letter dated 8-9-2006 sent to the Superintendent of Police, Datia specifically stated that the version of complainant Raghubirsingh who lodged the First Information Report that Vinod, who had a Pachphera fired towards Mulayam Singh was not convincing because as per the post-mortem report it appears that the gun shot was fired by Katta (country made pistol). Hence, it is likely that complainant had lodged a false complaint.

11. Office of Forensic Science of Crime Mobile Unit Datia in its letter dated 20-5-2006 sent to the Superintendent of Police, Datia, which is signed by Dr. K.K. Asthana, Senior Scientist Officer of Crime Mobile Unit, Datia stated that there was a fire arm entry wound in the left arm pit of the deceased and there was light blackening and sinyingh effect and a blackening hole in the shirt of the deceased. The wound was irregular in nature which shows that there was no sufficient force in the bullet and the skin margins were inverted, direction of the fire could had been parallel and close range and looking to the injury of wound it was caused by country made pistol and this injury could not be caused by factory made fire arm because there was no sufficient force in the bullet and there was no exist wound in the body. The Scientist also opined that the country made pistol which was used in the incident be also recovered. On the basis of the above evidence of experts including Forensic Science Laboratory report and also the report of the Additional Superintendent of Police the petitioner examined number of witnesses. Thereafter he registered an offence against Raghubirsingh Dangi and Maithilisharan and on the memorandum of aforesaid two accused persons recovered a country made pistol of 315 bore. Thereafter, the aforesaid two persons were sent to jail. They filed an application before the Chief Judicial

Magistrate u/s 169, Cr.P.C. for releasing them, that application was rejected. Thereafter, they filed a revision before the Additional Sessions Judge, which was registered as Criminal Revision No. 85/06 and was also dismissed vide order dated 3-10-2006. Subsequently because no charge sheet was filed against the aforesaid accused persons, they were released from jail.

12. From the above facts it is clear that there was sufficient evidence against the aforesaid two accused persons for their arrest in the crime u/s 302, IPC. Earlier, the First Information Report of the incident was lodged by Raghubirsingh. In the aforesaid First Information Report he specifically stated that Vinod had fired towards Mulayamsingh Dangi with his pachphera and that version was not found correct by the Forensic Experts and also by the doctor. In such circumstances, it cannot be said that the petitioner has committed any irregularity and illegality in the investigation rather this Court found that petitioner conducted the investigation properly and intelligently. From the record it is not clear that on what basis the Superintendent of Police decided to issue charge sheet to the petitioner. In reply to the charge sheet petitioner submitted a detailed reply mentioning all the circumstances stated above. However, vide order dated 20-2-2007 the Superintendent of Police observed that the reply filed by the petitioner was not proper and appointed Inquiry Officer, Mr. R.K. Sharma, Sub Divisional Officer (Prosecution). There is no reasoning or mentioning of fact in the order of Superintendent of Police that why the petitioner was prima facie found guilty of misconduct or why his explanation was not proper. In my opinion, in the facts and circumstances of the case it was obligatory on the part of the Superintendent of Police to record his reasons for negating the explanation put forth by the petitioner.

13. Section 170(1), Cr.P.C., which is as under, gives discretion to the Investigating Officer that if there is sufficient evidence or reasonable ground he can take an accused under custody:

170. Cases to be sent to Magistrate when evidence is sufficient.--(1) If, upon an investigation under this Chapter, it appears to the Officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

In above circumstances, it cannot be said that the petitioner misused his discretion u/s 170(1), Cr.P.C. There is no evidence on record that the act of the petitioner was mala fide or based on extraneous consideration or he received any gratification. There was no allegation of improper motive against the petitioner. It is clear from Section 170(1), Cr.P.C. that it is the duty of the Investigating Officer to find out truth about the crime and in that course he has to take various steps

including recording of evidence of witnesses, obtaining expert's opinion including medical, forensic and thereafter draw a conclusion as to who is the culprit. In this process the Investigating Officer enjoys certain liberty and that liberty cannot be curtailed down only on the basis of facts mentioned in First Information Report. The FIR could be true or could be false also. There is no statutory law that the Investigating Officer is bound to act in accordance with the facts and version mentioned in the FIR.

14. Hon"ble the Supreme Court has held as under with regard to misconduct in M.M. Malhotra Vs. Union of India (UOI) and Others, :

17. The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the state and the public purpose it seeks to serve.

18. In Union of India and Others Vs. Harjeet Singh Sandhu etc., , in the background of Rule 14 of Army Rules, it was held that any wrongful act or any act of delinquency which may or may not involve moral turpitude would be "misconduct" under Rule 14.

19. In Baldev Singh Gandhi Vs. State of Punjab and Others, , it was held that the expression "misconduct" means unlawful behaviour, misfeasance, wrong conduct, misdemeanour, etc.

20. Similarly, in State of Punjab and Others Vs. Ram Singh Ex. Constable, , it was held that the term "misconduct" may involve moral turpitude. It must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

21. "Misconduct" as stated in Batt's Law of Master and Servant (4th Edn. at P. 63) "comprised positive acts and not mere neglects or failures". The definition of the word as given in Ballentine's Law Dictionary (148th End.) is: "A transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness."

15. Hon"ble the Supreme Court has further held in Zunjarrao Bhikaji Nagarkar

Vs. U.O.I. and Others, , as under with regard to power of the Court to quash the charge sheet:

If every error of law were to constitute a charge of misconduct, it would impinge upon independent functioning of quasi-judicial officers like the appellant. Misconduct, in sum and substance, is sought to be inferred in the present case from the fact that the appellant committed an error of law. The charge sheet on the face of it, does not proceed on any legal premise and is thus liable to be quashed. To maintain a charge sheet against a quasi-judicial authority, something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing quasi-judicial order. Since nothing of the sort is alleged herein, the impugned charge sheet is rendered illegal. The charge sheet, if sustained, will impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication where under quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of constant threat of disciplinary proceedings.

Consider all aspects of the matter, it is held that it is not a case for initiation of any disciplinary proceeding against the appellant. Charge of misconduct against him was not proper. It has to be quashed.

16. The Hon"ble Supreme Court has held as under on the aforesaid point in Union of India and Anr. v. Kunisetty Satyanarayana reported in AIR 2007 SC 607:

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

17. Hence, in my opinion, on the basis of above principle of law laid down by Hon"ble the Supreme Court as well as the facts and circumstances of the case, the petitioner has not committed any misconduct and the charge levelled against the petitioner and also the charge sheet is liable to be quashed.

18. Before parting with the case, in my opinion, in the present case the act of the Superintendent of Police who issued charge sheet against the petitioner and also appointed Inquiry Officer cannot be said to be as per law. Apart from this a disturbing fact came to the knowledge of the Court. There are two sets of accused persons, one mentioned by Raghubir Singh in his First Information Report lodged on 8-5-2006 and Anr. set of two accused persons, namely, Raghubir Singh Dangi and Maithilisharan Dangi who were arrested by the petitioner and it is not clear that why the charge-sheet against the two accused persons has not been filed within time and opinions of medical evidence, doctor and Forensic Experts have not been taken into consideration. It is a serious matter and the office is directed to send a copy of this order to the Home Secretary and Director General of Police for necessary action and inquiry.

19. Consequently, the petition of the petitioner is allowed. The impugned charge sheet, Annexure P-1, dated 29-10-2006 and also the inquiry proceedings in pursuance to the aforesaid charge sheet are hereby quashed. Looking to the facts and circumstances of the case the petitioner is also entitled cost of petition which is quantified at Rs. 3,000/- (Rupees Three thousand only).