
(2013) 04 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1250 of 2012 (O and M)

Surjit Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 61

Citation : (2013) LabIC 2302 : (2013) 3 SCT 477

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : J.S. Puri, for the Appellant; B.S. Rana, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of LPA No. 1250 of 2012 and CWP No. 7315 of 2012 which was ordered to be listed for hearing along with appeal on 1.10.2012. In brief, the appellant was enrolled as Assistant Sub Inspector in the Department of Police, Haryana on 1.10.1977, promoted as Sub Inspector in 1990 and Inspector in the year 2004. He was posted as Sub Inspector and was incharge of CIA Staff, Panchkula in the year 2003 when he registered one FIR No. 156 dated 27.2.2003 u/s 18 /61 /85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") at Police Station, Sector 5, Panchkula, against Kasturi Devi and Satish Kumar on account of possession of 148 grams of opium. Both the accused were arrested because 110 grams of opium was recovered from the conscious possession of Kasturi Devi and 38 grams from the conscious possession of Satish Kumar in the presence of Deputy Superintendent of Police, Panchkula. However, according to the allegation, the appellant himself declared Satish Kumar as innocent on 6.3.2003 without any basis and did not get his innocence verified either from the SHO, Police Station, Sector 5, Panchkula or from any Gazetted Officer. The challan was presented against Kasturi Devi on 17.4.2003, who was tried by the Special Court, Panchkula and was acquitted on 2.12.2005 on account of benefit of doubt.

Thereafter, the appellant was charge-sheeted on 30.12.2006 for declaring Satish Kumar accused as innocent without getting it verified from the SHO, Sector 5, Panchkula or from the Gazetted Officer and in the departmental enquiry the allegations were proved as per report dated 27.11.2007. The appellant was served show-cause notice by the Superintendent of Police, Panchkula and after going through his reply, he was exonerated on 14.12.2007 with a direction that the enquiry be filed. Thereafter, the Inspector General of Police served show cause notice on 4.4.2008 upon the appellant, purportedly under Rule 16.28 of the Punjab Police Rules, Volume II, as to why penalty of reduction in rank should not be imposed upon him, while exercising the power of review. After taking reply, the Inspector General of Police, reviewed the order of Superintendent of Police and awarded stoppage of five annual increments with permanent effect on 15.5.2008 which was challenged by the appellant by way of appeal before the Director General of Police, Haryana on 12.6.2008 in which order of the Inspector General of Police was modified vide order dated 7.2.2009 and the stoppage of five annual increments with permanent effect was reduced to three. The appellant filed revision petition before the Financial Commissioner and Principal Secretary, Department of Home, Government of Haryana on 7.5.2009 but allegedly no order was convened to him, however, it was later on discovered that the revision petition was dismissed.

2. Thereafter, the Annual Confidential Report (for short "ACR") of the petitioner pertaining to the years 2003-2004 was downgraded in view of the punishment order passed against him which was challenged in appeal but the same was dismissed. Aggrieved against the order of downgrading the ACR and dismissal of the appeal filed against it, the appellant filed CWP No. 5022 of 2012 which was dismissed by the learned single Judge on 19.3.2012 on the ground that the downgrading of ACR is a consequence of order of punishment which has not been challenged. Against the said order of the learned single Judge dated 19.3.2012, the appellant has filed the present LPA No. 1250 of 2012.

3. Insofar as the writ petition No. 7315 of 2012 is concerned, that has been filed by the petitioner to challenge the order dated 28.2.2012 by which a show-cause notice has been issued as to why he should not be reverted from the rank of Inspector to the rank of Sub Inspector since there exist adverse remarks in ACR regarding integrity and reliability etc. for the period from 5.11.2002 to 31.3.2003 and punishment of stoppage of three annual increments with permanent effect has been imposed and because of that his name has been removed from promotion list "F" on the basis of which he was promoted as Inspector by Inspector General of Police, Ambala Range, Ambala Cantt., on 16.8.2004 on provisional basis.

4. While the writ petition was listed before the learned single Judge on 19.9.2012, the following order was passed:

Counsel for the petitioner states that against the order dated 19.3.2012 passed by this Court in CWP No. 5022 of 2012 (Surjit Kumar v. State of Haryana and

others) (Annexure P-16), which was preferred by the petitioner, LPA No. 1250 of 2012 has been preferred which is now listed for 1.10.2012. Adjourned to 30.1.2013.

5. But on 1.10.2012 in LPA No. 1750 of 2012, the following order was passed:

The appellant had filed the present writ petition challenging the Annual Confidential Reports down-grading him from "Very Good" to "Integrity Doubtful". This downgrading in the ACR was the result of departmental enquiry against the appellant, which resulted in the imposition of penalty of stoppage of three annual increments with cumulative effect.

The learned single judge has dismissed the writ petition taking note of the fact that insofar as the penalty imposed upon the appellant is concerned, that has not been challenged and the order has attained the finality and the order downgrading the ACR was consequential only.

Mr. J.S. Puri argues that against the penalty order also writ petition has been filed in which notice of motion has been issued. Since, counsel of both the parties agree that the outcome of the said writ petition will have bearings on the present appeal, it is requested by them that the writ petition be also heard along with this appeal. While adjourning this appeal to November 1, 2012, we direct that Writ Petition No. 7315 of 2012 shall also be listed for hearing along with this appeal.

6. In view of the aforesaid circumstances, both the LPA and the Writ Petition were heard together and are being disposed of by a common order.

7. It is argued by the learned counsel for the appellant in respect of his innocence while challenging the order of punishment of stoppage of three increments with cumulative effect that the house from where the opium was recovered belongs to Kasturi Devi who was indulged in the business of opium whereas the second accused Satish Kumar is a shopkeeper near the house of Kasturi Devi and the house of Kasturi Devi is situated in a busy locality. Although, 38 grams of opium was found in a packet under the feet of Satish Kumar but during the investigation it was found that Satish Kumar had just visited the house of Kasturi Devi for some other work and at that point of time the Police party raided the house of Kasturi Devi. At the spur of the moment Kasturi Devi threw the packet towards Satish Kumar and told him to put his feet over it and threatened him that in case he did not do so then she will implicate him in the case. After examining all the respectable of the locality it was found that Satish Kumar was not involved in the said business, therefore, he could not have been proceeded against only because of his presence at that time when the Police party raided the house of Kasturi Devi. It is argued that the appellant being the Investigating Officer came to the conclusion that there was no evidence against the accused Satish Kumar and, therefore, at that stage found him not involved in that case.

8. On the other hand, learned counsel for the State has submitted that Kasturi Devi had to be acquitted by the Court because the appellant had let off Satish Kumar who had conscious possession of 38 grams of opium. In this regard, he has drawn our attention to the observation of the learned trial Court which reads as under:--

It may be noted here that 38 gm Opium was recovered from her co-accused Satish under his feet and his search and seizure were made as per provisions of the Act but accused Satish was got discharged by the prosecution as he was found innocent during the investigation. If it is so on record, the case of the present accused is on better footings. When recovery of contraband under the feet of a person is not a conscious possession, then, the recovery of 110 gm in a hot case lying on open shelf is not a conscious possession of the accused.

9. Thus, the story propounded by the appellant about the innocence of Satish Kumar is unbelievable and because of his apparent connivance with him, not only Satish Kumar was let off without facing the trial but also Kasturi Devi, who was allegedly doing the business of narcotics was acquitted. Thus, in our considered opinion, the order of punishment is perfectly justified and has rightly been observed by the learned single Judge that downgrading of the ACR is not punishment which is a consequence of the punishment of stoppage of three annual increments. Letters Patent Appeal filed by the appellant is accordingly dismissed.

10. Coming to the writ petition, the order of revision from the rank of Inspector to the rank of Sub-Inspector is challenged on the ground that it tantamounts to double jeopardy. In this regard, he has relied upon a decision of the Supreme Court in the case of "Lt. Governor, Delhi and others v. HC Narinder Singh" 2004 (13) SCC 342. In the said case, HC Narinder Singh was appointed as Constable in Delhi Police. A disciplinary action was initiated against him for dereliction of duty which culminated into imposition of penalty of reduction of pay by one stage without cumulative effect. Appeal against the said order was dismissed. Thereafter, the appointing authority issued a second show-cause notice proposing to remove his name from the promotion list to which he was brought under the promotion list as per Rules. The said order was challenged before the Central Administrative Tribunal on the ground of double punishment based on the same cause of action which was accordingly quashed. The appeal filed by the department was also dismissed by the Supreme Court holding that the second proposed action on the same cause of action proposing to reversion contemplated under the impugned show-cause notice would amount to double jeopardy.

11. The aforesaid judgment applies squarely to the facts of the present case. It is clear that for the act of misconduct, the appellant has already been given the punishment after holding the enquiry. Said punishment is in the form of stoppage of three annual increments with permanent effect. The order of reversion of the appellant from the rank of Inspector to Sub-Inspector on the same allegations

would clearly mean inflicting of second punishment. The reversion from higher post to lower post is also one of the penalties under the Rules. Passing of this order would therefore mean inflicting one more penalty upon the appellant for the same misconduct. Thus, following the judgment of the Supreme Court in HC Narinder Singh's case (*supra*), the writ petition is allowed and the order of reversion of the appellant is hereby set aside.