

(2001) 03 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 446 of 1993

Swapan Deb

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 157, 164, 41(1)
Penal Code, 1860 (IPC) — Section 376

Citation : (2001) 2 GLT 50

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : P.K. Biswas, for the Appellant; D.K. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

B.B. Deb, J.—By this writ petition under Article 226 of the Constitution of India, the Petitioner, a Sub-Inspector of Police challenged the validity and constitutionality of the impugned punishment imposed upon him vide D.O. 931 dated 25.2.1992. By the impugned order having exhausted the departmental proceeding, the Petitioner was imposed with a departmental penalty of withholding of his following one increment for a period of two years with cumulative effect. He also challenged the validity, legality and constitutionality of appellate order passed by the Deputy Inspector General of Police Range (W/N), Tripura dated 4.8.1992 confirming/affirming the aforesaid punishment.

2. The case of the Petitioner, in short, is that while the Petitioner was posted as Sub-Inspector of Police at Kalamchar Police Station under West Tripura District on 17.4.1989 at about 9-15 P.M., as alleged in Memorandum of charges, he trespassed into Boxanagar Forest Range Office and detained one Smti Chunati Debbarma without any prior allegation of cognizable offence and put said adult Smti Chunati Deb Barma under unnecessary harassment. The department drew

up departmental proceeding bearing No. 46/89 on 2.9.1989 against the Petitioner. Shri J.C. Majumdar, Assistant Commandant DAR (West) West Tripura, Agartala was appointed as Inquiring Authority and having exhausted the procedure, the Inquiring Authority conducted and concluded the inquiry by submitting his report on 12.7.1991 holding charge No. II having been proved against the Petitioner, while charge No. I failed. Acting upon the inquiry report, the disciplinary authority (S.P., West) proposed to impose a punishment of reduction to the minimum stage of scale for a period of two years requiring the Petitioner to furnish second show cause and also allowing the Petitioner for personal hearing by provisional order dated 21.10.1991. The Petitioner participated in personal hearing on 4.11.1991 and after hearing him, final order of penalty was passed vide D.O. No. 931 dated 25.2.1992 as already mentioned above. The Petitioner preferred appeal which was also failed as already stated.

3. The Petitioner challenged the impugned order on the following grounds:

(i) That during inquiry as many as seven prosecution witnesses were examined in absence of any Defence Assistant and despite the Petitioner made representation on 16.1.1991 seeking re-examination of the witnesses whom he could not cross-examine, the same was dis-allowed by the Inquiring Authority. The finding of the Inquiring Authority to the effect that Charge No. II remains proved, based on no evidence.

(ii) That on receipt of an information by the Officer-in-charge of Kalamchara Police Station, namely Shri Priya Lal Majumdar to the effect that one unknown girl was brought at Boxanagar Forest Range Office and lived with one Shri Anil Debbarma said Priya Lal Majumdar made an entry in the G.D. Book and directed the Petitioner to cause inquiry and as such having not been involved the Officer-in-charge Shri Priya Lal Majumdar in the aforesaid departmental proceeding, the Petitioner was singled out with ulterior motive.

(iii) That the Petitioner as per order of the Officer-in-charge of Kalamchara Police Station along with other staff rushed to the Boxanagar Forest Range Office and found said Anil Debbarma and Smti Chunati Deb Barma sleeping in a single bed in a closed room and he brought both of them to the Police Station and the Officer-in-charge examined them. The Officer-in-charge recorded their statements, registered Kalamchara P.S. Case No. 5(4)/89 u/s 376 I.P.C. (rape) on 18.4.1989 and endorsed the case for investigation to the Petitioner and as such whatever had been done by the Petitioner, he did under the direction/supervision of the officer-in-charge.

(iv) That the said lady Smti Chunati Deb Barma was produced before the learned Sub-Divisional Judicial Magistrate, Sonamura with a prayer for recording her statement u/s 164 Code of Criminal Procedure and that was recorded by the learned Sub-Divisional Judicial Magistrate, Sonamura. She was also examined by the Medical office. But during the aforesaid long process, said Smti Chunati Deb Barma never made any complaint against the Petitioner or anybody else.

(v) That the father of said woman made a petition before the learned Sub-Divisional Judicial Magistrate, Sonamura on 19.4.1989 stating, inter alia, that marriage between Smti Chunati Deb Barma and Shri Anil Deb Barma was settled to be solemnized after her release from the aforesaid case and no complaint was made by her or by her father against the Petitioner till that time.

4. The Respondents filed counter contending, inter alia, that since no cognizable case was apparent on the face of the circumstances, the Petitioner being a Sub-Inspector of Police should not have trespassed into the house building of Forest Range office, should not have brought the said woman to Police Station in the night and having done so, the Petitioner not only exceeded his jurisdiction, but also infringed the fundamental right of that Tribal woman. The counter affidavit also contends that on receipt of some information regarding living of a woman with said Anil Deb Barma in the Forest Range Office, the O/C undoubtedly made a G.D. Entry bearing No. 544 dated 7.4.1989 and asked the Petitioner to inquire into the matter, but the Petitioner was never endorsed or asked to investigate the matter u/s 157 Code of Criminal Procedure and as such the arrest of Shri Anil Deb barma and Smti Chunati Deb barma and detention of her, who is adult, was an illegal action done by the Petitioner having exceeded his jurisdiction. During inquiry, all sorts of opportunities had been allowed to the Petitioner and the finding arrived at by the Inquiring Authority is legal, valid and reasonable. The disciplinary authority having accepted the inquiry report allowed the Petitioner all sorts of opportunities, even personal hearing was allowed to the Petitioner before imposition of penalty and as such the imposed penalty being a minor one suffers from no illegality. The counter-affidavit also contends that though seven witnesses were examined in absence of Defence Assistant, the representation of the Petitioner dated 16.1.1991 seeking re-examination of the witnesses was disallowed by the inquiring authority, but considering the legal implication and for allowing fair justice, the inquiring authority re-examined all the material witnesses and recorded their statements in presence of the Petitioner and his defence assistant and as such the irregularity initially committed in examining the seven witnesses in absence of the defence assistant stood cured. The counter-affidavit also contends that all sorts of reasonable opportunities had been allowed to the Petitioner, in conducting the inquiry no mandatory provision of procedural law had been violated and having regard to the gravity of the misconduct, the disciplinary authority took a lenient view in imposing minor punishment of withholding of one increment of the Petitioner for two years with cumulative effect and as such the impugned order does not call for any interference by this Court.

5. I have heard Mr. P.K. Biswas, learned Counsel for the Petitioner and Mr. D.K. Bhattacharjee, learned Counsel for the Respondents.

6. Mr. Biswas, the learned Counsel for the Petitioner submits that as many as seven witnesses on behalf of the prosecution had been examined, whom the defence could not cross-examine for which the defence made application for re-

examination of those witnesses allowing the delinquent officer to cross-examine, but that petition was rejected, as a result great pre-judice caused to him.

7. On the other hand, Mr. Bhattacharjee, learned Counsel for the Respondents submits that though initially the prayer of the Petitioner was not allowed by the inquiring authority, but subsequently having regard to the legal implication the inquiring authority allowed the defence to cross-examine those witnesses.

8. From order sheet dated 19.2.1991 of the proceeding file, it appears that the delinquent Petitioner sought for permission to re-examine the P.Ws. as already examined by the previously appointed inquiring officer and also to allow Shri B.B. Bardhan, Retd. Dy. S.P. to act as his defence assistant and both the prayers were allowed.

9. From the deposition of P.Ws. it reveals that the depositions of the witnesses had been recorded in presence of the delinquent officer, signature of the Petitioner was also available in the deposition form as acknowledgment receipt. The disposition sheet also transpires that after examination of all the witnesses, the delinquent officer was allowed to cross-examine them and some witnesses were also cross-examined by the defence.

10. This being the position available in the proceeding file, I am of the considered opinion that the delinquent officer was allowed all sorts of opportunities to cross-examine all the witnesses and in conducting the inquiry, the delinquent had never denied any sort of opportunity to cross-examine any of the witnesses examined on behalf of the department.

11. The learned Counsel for the Petitioner submits that the charged framed against the Petitioner would ex-facie reveal that no imputation of mis-conduct was made out warranting any formal proceeding to be conducted. The Memorandum of Charges is available in the appellate order vide Annexure-E and for convenience sake, the Memorandum of Charges are re-produced below:

Article-I:

That SI Swapan Deb of West Tripura Dist. is charged for gross misconduct in that while he was functioning at KLC PS as SI of Police on 17.4.89 at about 2115 hrs he un-authorisedly trespass into the Boxanagar Forest Range Office, thus the said SI showed conduct unbecoming of a police officer

Article-II:

That SI Swapan Deb of West Tripura Dist is charged for gross misconduct in that while he was functioning at KLC PS on 17.4.89 at 2115 hrs he entered into the Forest Range Office Boxanagar, detained one Smti Chunati Deb Barma without any prior allegation of cog offence and caused harassment to the adult persons by way of interfering in their personal affairs and showed conduct unbecoming of a police officer.

12. So far Article of Charge No. I is concerned, the delinquent was not found

guilty by the inquiring authority and that was accepted by the disciplinary authority and as such the imputation of mis-conduct under Article of Charge No. I is not relevant to decide the present petition. The delinquent was held guilty by the inquiring authority so far Article of Charge No. II is concerned for which he was imposed with penalty and as such it is to be examined.

13. The learned Counsel for the Petitioner having referred the aforementioned Article of Charge No. II submits that no ingredient of mis-conduct would be available in the imputation so levelled against the Petitioner.

14. From the aforequoted Article of Charge No. II it appears that the imputation of misconduct levelled against the Petitioner was that the Petitioner detained one Smti Chunati Deb Barma without any prior allegation of cognizable offence and by such detention, the Petitioner put that woman under harassment and also it caused interference in her personal liberty and thus the Petitioner was asked to face departmental inquiry for the aforesaid misconduct.

15. The learned Counsel for the Petitioner submits that the F.I.R. was lodged by said Smti Chunati Deb Barma and that was recorded by Shri Priya Lal Majumdar, Officer-in-charge of the Kalamchara Police Station on 18.4.1989 and the case was endorsed to the Petitioner for investigation.

16. It is found that a purported F.I.R. was there with a signature of said Smti Chunati Deb Barma, but that was written by one Shri Priya Lal Majumdar. Officer-in-charge of Kalamchara Police Station on 18.4.1989 giving the time 0105 hrs. (mid-night). Though no specific allegation disclosing any cognizable offence was spelt out in the F.I.R. with specific term, but some insinuating allegations of allurements given by Shri Anil Deb Barma in obtaining her (Chunati) consent in cohabitation could be ascertainable from the F.I.R.

17. From the recorded statement of said Smti Chunati Deb Barma itself, it appears that she claimed herself to be the married wife of Shri Anil Deb Barma. From her deposition, it also reveals that while she was produced before the learned Sub-Divisional Judicial Magistrate, Sonamura, the learned S.D.J.M. put some questions to her and she stated that she was married to Shri Anil Debbarma, yet both of them were remanded to judicial custody and subsequently released on bail.

18. Now, the question is had Chunati Debbarma been married to Shri Anil Debbarma why they had not been released by the learned Sub-Divisional Judicial Magistrate, Sonamura, but they were remanded to judicial custody and why that fact of marriage was not disclosed in the F.I.R. itself?

19. The learned Counsel for the Respondents submits that the F.I.R. was not written by Smti Chunati Debbarma herself nor had been written by any public, but it was written by Shri Priya Lal Majumdar, Officer-in-charge of Kalamchara Police Station himself. That being so, the fabrication, if any, done in writing the F.I.R., that was committed, by said Shri Priya Lal Majumdar and not the

delinquent. Why Shri Priya Lal Majumdar was not brought into the net of prosecution, remains not answered by the learned coinsel for the Respondents.

20. Let me examine the deposition of Shri Priya Lal Majumdar as available in the proceeding file. From his deposition, it appears that at about 9.15 P.M. on that night he received secret information that in Boxanagar Forest Range Office, Watcher Shri Anil Debbarma brought one unknown woman with ill motive and kept her in his house. Accordingly, on suspicion he recorded the information in the P.S.G.D. bearing No. 544 and asked the delinquent S.I. to cause an inquiry into the matter. Accordingly, the delinquent being accompanied by Constables rushed to the spot and brought Watcher Shri Anil Debbarma and the woman, namely, Smti Chunati Debbarma to Police Station as both of them were found living in a single cot inside a closed room in the Forest range Office and the situation itself created strong reasonable suspicion as to the commission of any cognizable offence. The said witness further deposed that he interrogated that woman and from her version it appeared that having allured the said woman with a promise of marriage Shri Anil Deb Barma did sex with her and as such this witness recorded the F.I.R., registered the case vide Kalamchara P.S. Case No. 5(4)89 u/s 376 I.P.C. and endorsed the investigation to the delinquent officer.

21. Having regard to the evidence of the O/C. concerned it transpires that the delinquent brought Smti Chunati Debbarma and Shri Anil Debbarma from the Forest range Office on the basis of the G.D. Entry made by the O/C and on having strong reasonable suspicion as to the commission of any cognizable offence. So, in my considered opinion, the bringing of Smti Chunati Debbarma and Shri Anil Debbarma from Boxanagar Forest range Office to Police Station is squarely covered by the provision of Section 41(1)(a) of the Code of Criminal Procedure. It is on record that till the fateful night Smti Chunati Debbarma was not the married wife of Shri Anil Deb Barma. Said Anil Debbarma used to live in the Forest Range Office alone, but the local people noticed on that night that one lady was sleeping with Shri Anil Debbarma in the same room and the people passed on the information to the Police Station, as a result the aforesaid G.D. Entry was made by the Officer-in-charge, Shri Priya Lal Majumdar which necessitated further verification by a police officer and for that purpose the delinquent officer was deputed by the O/C. to cause spot inquiry. The delinquent went there and found said Anil Debbarma sleeping with one lady (Chunati) in a closed room on a single cot and having reasonable suspicion of commission of cognizable offence, the delinquent brought them to Police Station. To that extent all the activities of the delinquent, appear to be fully covered by the provision of Section 41(1)(a) of the Code of Criminal Procedure. Whether their further detention in Police Station is permissible under law, is to be examined with reference to the materials available on record.

22. The F.I.R. was written by the O/C Shri Priya Lal Majumdar, signed by the woman, Smti Chunati Debbarma and the case was registered by the O/C and endorsed it to the delinquent. At the time of registration of the case, both Anil

Debbarma and Smti Chunati Debbarma had been in Police Station. Ex facie the language used in the F.I.R. reveals suspicion as to commission of cognizable offence. The contents of the F.I.R. might have been fabricated, might not have been the true version of the said woman Smti Chunati Debbarma, her Signature might have been procured on the F.I.R. having not apprised her of the contents, but for such omission and illegality the delinquent cannot be held responsible as the F.I.R. was written not by the delinquent but by the O/C. Shri Priya Lal Majumdar. Neither the counter-affidavit nor the learned Counsel for the Respondents during argument could convince me as to why the O/C Shri Priya Lal Majumdar was not brought under the periphery of the disciplinary proceeding. That being the position of record, it cannot be presumed that the contents of the F.I.R. were fabricated and this being so, a strong suspicion is made out regarding commission of cognizable offence by the F.I.R. itself justifying further detention in custody and next day forwarding of the accused to the learned Sub-divisional Judicial Magistrate, Sonamura. The said woman Smti Chunati Debbarma and/or detenu Shri Anil Debbarma never made any complaint before the learned S.D.J.M. on their production as to fabrication of the contents of the F.I.R.

23. In this case, only one irregularity appears to me which deserves to be highly condemned. At the time of causing raid in the Forest Range Office and at the time of bringing the woman Smti Chunati Debbarma at midnight to the police station, the delinquent police officer had not been accompanied by any woman police. Since from the G.D. Entry it was well informed that a lady was residing with Shri Anil Debbarma inside a house of Forest Range Office suspiciously, before proceeding to conduct raid to that place, the delinquent should have taken the assistance of any woman police. It is not available on record whether any woman police was detailed in duty at the relevant time at Kalamchara Police Station.

Be that as it may, the police organization is directed to provide at least two woman constables to every police station in Tripura and no search or raid during any period between sunset and sunrise could be allowed inside a house by a police party without being assisted by at least two woman constables. In future if any such incident happens where a raid or search is conducted during the aforesaid period inside a house by the police without being assisted by any woman police, the matter will be seriously dealt with.

Let an abstract of the aforesaid observation (para 23) of this Court be communicated to the Director General of Police, Tripura for circulation among all police officials concerned.

24. Having regard to the aforesaid, I am of the considered opinion that in conducting raid in the Forest range office on the basis of the recorded G.D. Entry, in bringing the woman Smti Chunati Debbarma and Shri Anil Debbarma in P.S. house and causing their arrest and subsequent forwarding to the court on the basis of F.I.R. recorded by the O/C, the delinquent committed nothing to be

termed as "mis-conduct".

25. In that view of the matter, the writ petition succeeds. The impugned punishment imposed upon the Petitioner by the disciplinary authority by withholding his one increment for two years with cumulative effect and the impugned appellate order by which the impugned punishment was confirmed, are set aside and quashed.

26. The writ petition is allowed accordingly with no order as to costs.