Lalta Prasad vs Inspector General Of Police And Ors. on 22 December, 1953

Equivalent citations: AIR1954ALL438

JUDGMENT

Mootham, J.

1. This is a petition under Article 226 of the Constitution. In March 1951 the petitioner was the Station Officer, P. S. Neoria in the district of Pilibhit. On 1-6-1951, the dead body of a newly born child was found; the petitioner made an investigation, and on 9th June he instituted proceedings under Section 318, Penal Code against one Srimati Hulaso. On the 6th July he was transferred to police station Kotwali in the city of Pilibhit. On the 13th July he was placed under suspension, and proceedings were taken against him under Section 7, Police Act on the allegation that he had extorted money from Sri Pitam Lodh, the father-in-law of Srimati Hulaso, by wrongfully confining him and two other persons on the 2nd and 3rd June. The enquiry was conducted by the Superintendent of Police of Pilibhit, the second respondent, who recommended the petitioner's dismissal from the police force.

In September, 1951, the petitioner was called upon by the Deputy Inspector General of Police, Northern Range, to show cause why be should not be dismissed and he was furnished with a copy of the findings of the Superintendent of Police. The petitioner submitted his explanation to the Deputy Inspector General but the latter, by an order dated 12-10-1951, dismissed him from service. An appeal by the petitioner to the Inspector General of Police was rejected on 4-6-1952. The petitioner now prays for the issue of a writ of 'certiorari' quashing the orders of the Deputy Inspector General and of the Inspector General on the ground that the enquiry under Section 7, Police Act was conducted in such a manner as to deprive him. of an adequate opportunity of defending himself.

2. The case is one of some difficulty. No counter-affidavit has been filed on behalf of either of the respondents and the facts set out in the petitioner's affidavit must accordingly be accepted as correct.

3. According to that affidavit, the petitioner was informed at about 4 P. M. on the 13th July that he was urgently required by the second respondent. The petitioner went at once to the Superintendent's bungalow which he reached between 4 and 5 P. M., and on arrival he was served with the following order dated the preceding day, the 12th July :

> "Please submit your written explanation immediately why proceeding's should not be initiated against you for having extorted money from Pital Lodh, resident of village

> Kalika, P. S. Neoria, in the case under Section 318, I .P. C. of village Kalia by wrongfully confining Pitam Lodh, his wife Punia and his son Beni on 2-6-51 and 3-6-51. You must bring this explanation with you when you report to me as ordered separately in an order sent to you through S. O., Kotwali."

The petitioner immediately wrote out and submitted an "explanation" in which he simply denied that he had extorted any money from Pitam or any one else or had confined anybody wrongfully. As soon as this explanation was handed to the second respondent the latter passed an order suspending the petitioner and informed him that proceedings under Section 7, Police Act would be started then and there against him.

4. It appears that seventeen witnesses in support of the allegations made against the petitioner were then at the Superintendent's bungalow and their statements had previously been recorded by another police officer. According to the statement of the petitioner -- which, as I have said, has not been contradicted -- the proceedings started by the substance of his deposition, which had been recorded in English, being translated to each witness who was then asked to sign an endorsement on the record of his statement that it had been read over to him and admitted to be correct. Immediately after the summary of his statement had been read to the witness the petitioner was called upon to cross-examine him. He began to cross-examine the first witness, but objection was taken by the second respondent, who was presiding over the enquiry, to the questions which he put on the ground that they were leading questions. The record of the proceedings of the enquiry is not before us and we do not know what was in fact the nature of the questions put by the petitioner, but after he had endeavoured to cross-examine the first witness he made the following application to the second respondent :

> "Sir, At this stage of proceedings when Mt. Punia, P. W. 1, is being examined and I am allowed to cross-examine her, I put certain questions to her to elucidate the facts but neither the questions nor their answers were recorded by your Honour. I feel that I am not being given the full opportunity to cross-examine the witnesses. Moreover, the preliminary enquiries were done by your Honour and the proceedings are also being conducted by your Honour. So I request that the proceedings should be stopped here and they should be conducted by some other officer of the same rank in order to reach the facts of the case."

On this application the second respondent made the following order :

> "(A) No leading questions to be allowed. (B) This is an absurd demand and there is no provision for sanctioning it in the Police Regulations.
>
> Order conveyed to S. I. who will sign in token of receipt. No vexatious delays will be permitted."

The petitioner made no attempt to cross-examine any of the remaining sixteen witnesses who were then produced.

5. The proceedings were continued the following morning when four further witnesses for the prosecution were examined and, it appears, cross-examined by the petitioner. A charge was then framed against the petitioner and further proceedings were adjourned to the 21st July when the petitioner was required to file a written statement and produce his defence witnesses. The second respondent refused to summon two of the witnesses whom the petitioner desired to examine, but no complaint is made on that score nor is any complaint, made of the fact that the petitioner and two constables, who were alleged also to have been concerned in the act of extortion, were tried jointly.

6. The three principal objections urged by learned counsel to the enquiry against the petitioner were that he had no sufficient warning that an enquiry was about to be held, that he had no adequate opportunity of cross-examining the witnesses and that under Section 35, Police Act a charge against a police officer can only be enquired into by an officer having magisterial powers.

7. We have considered the somewhat meagre evidence before us with much care. The conclusion to which I have reluctantly come is that the petitioner did not have the opportunity which he ought to have been afforded of defending himself against the very serious charge which had been made against him. In arriving at this conclusion I feel bound, in the absence of any denial by the respondents, to accept the petitioner's version of what occurred as substantially correct, and I assume from the fact that the record of the enquiry has not been placed before us that there is nothing therein which would assist us in arriving at a decision.

8. It appears clear that the petitioner had no adequate warning that proceedings against him under Section 7, Police Act were about to be taken. The second respondent's notice calling upon him to submit an explanation is dated the 12th July but it was served upon the petitioner only within about an hour of the commencement of the proceedings. The petitioner swears that only a summary of the deposition of each witness was translated to that witness and there is nothing in the evidence before us to show that the petitioner was supplied with a copy of the depositions. The learned Standing Counsel has very properly not attempted to support the order of the second respondent that leading questions could not be put in cross-examination, but he has argued that the petitioner could probably have successfully cross-examined the witnesses without putting any leading questions to them. It is possible that he might have done so had he been skilled in the art of cross-examination, but even a skilled cross-examiner would be deprived of his most useful weapon if he is deprived of the right to put leading questions.

9. It appears to me that the fact that the petitioner had no adequate warning that an enquiry was about to be held against him, coupled with the fact that he was required to cross-examine the witnesses on the basis of a summary of their depositions and that he was not allowed to put leading questions to the witnesses placed him in a very difficult position. It is certainly desirable that departmental, enquiries should be conducted without any unnecessary delay, but the person whose conduct is being enquired into must be given a reasonable opportunity of defending himself not merely by calling defence witnesses but by testing the value of the prosecution evidence by cross-examination. I find it difficult in this case to resist the conclusion that the petitioner did not have a fair hearing, and that the conduct of the enquiry may have proceeded on the assumption that the petitioner was guilty and could have no answer to the charges. Upon the whole I have come to

the conclusion that the petition should be allowed on these grounds, and it is therefore unnecessary for me to consider the further objection that the charge against a police officer can only be enquired into by an officer having magisterial powers.

10. I would therefore direct the issue of a writ in the nature of 'certiorari' quashing the order of the Deputy Inspector General of Police dated 12-10-1951, and of the Inspector General of Police dated 4-6-1952.

11. The petitioner is entitled to his costs.

Sapru, J.

12. While agreeing with the order proposed by my brother Mootham, I would like to point out a feature of this case which in arriving at my conclusion I have not overlooked. I may say that I consider it unnecessary to recite the facts which have given rise to this application as that task has been done by my brother Mootham. I shall, therefore, go straight to the points to which I wish to draw special attention.

13. Section 7, Police Act (Act 5 of 1861) authorises the Inspector-General, Assistant Inspector General and District Superintendents of Police under such rules as may be framed by the Local Government to dismiss, suspend or reduce any police officer "whom they shall 'think' remiss or negligent in the discharge of his duty or unfit for the same." Paragraphs 489 and 490 of the Police Regulations published under the authority of the United Provinces Government (as it then used to be called) lay down the procedure which must be followed in order to establish a charge under the section of the Act mentioned above.

It strikes me that the use of the word 'think' in Section 7 is somewhat deliberate. One of its dictionary meaning is "to judge, to form or hold as an opinion, to consider." It would thus appear to be milder than the expression 'found' or 'established', for, it requires a less degree of positive certainty than those words as regards the fact in controversy or dispute. I am mentioning this in order to indicate that I am not basing my conclusions in this case in ignorance of the wider latitude that has been given to the officers concerned in arriving at their decision by this word. The processes, however, by which, they must 'think' have been indicated by the regulations and it is because I think that an essential process by Which they are required to arrive at their thought has been disregarded that I have come reluctantly to the conclusion that intervention in this case by means of a writ of 'certiorari' quashing the order of the Deputy Inspector-General of Police dated 12-10-1951, and of the Inspector-General of Police dated 4-6-1952, is called for. To make this position clear I would invite attention to Rule 1 under para. 490 of the Police Regulations which is to the following effect:

> "1. As much evidence must first be placed on record as the Superintendent of Police considers necessary to establish a charge under Section 7, Police Act. This evidence may be either oral or documentary and must be material to the charge. If oral--

(a) it must be direct, i.e., if it is fact which could be seen or otherwise perceived it must be the evidence of the person who said he saw or otherwise perceived it;

(b) it must be recorded by the Superintendent of Police himself in the presence of the officer charged, who must be allowed to cross-examine the witnesses; provided that the statements recorded by a magistrate or a gazetted police officer in the course of a preliminary enquiry into the conduct of the officer charged will be admissible and need not be recorded again, if

(i) they were originally recorded in the presence of the officer charged and an opportunity was given to him to cross-examine the witnesses; or if

(ii) though not originally recorded in his presence, they are later by a gazetted police officer read out to and admitted by the witnesses in the presence of the officer charged, and the officer charged is willing that they should be so read out instead of being recorded anew, and 'the officer charged is then given an opportunity to cross-examine the witnesses'."

14. Now, while it was no doubt for the Superintendent of Police to decide how much evidence was necessary to establish the charge it was also essential for him to allow a cross-examination of the witnesses produced. Section 143, Evidence Act. lays down that leading questions may be asked in cross-examination. The reason why leading questions are allowed to be put to an adverse wit-ness in cross-examination is that the purpose of a cross-examination being to test the accuracy, credibility and general value of the evidence given, and to sift the facts already stated by the wit-ness, it sometimes becomes necessary for a party to put leading questions in order to elicit facts in support of his case, even though the facts so elicited may be entirely unconnected with facts testified to in an examination-in-chief.

Now, as has been pointed out by my brother Mootham, after the petitioner had cross-examined the first witness an application was made to the second respondent pointing out that certain questions put to Mst. Punia and their answers had not been recorded by him. On this application the second respondent, 'inter alia', made the very general and wholly wrong order, that 'no leading questions shall be allowed'. I think the order passed by the second respondent betrays an ignorance of the principles on which a cross-examination should be allowed to be conducted. It is not suggested that it was not open to the officer conducting the enquiry to disallow a particular question when that question is composite, irrelevant or confusing. But a general order restricting the right of the petitioner to put any leading question at all stands on a completely different footing. The questions disallowed are not before us and it is impossible for us to say what their exact nature was or would have been had they been allowed to be put, but it does strike me that the order was of a much too sweeping character and cannot be justified, regard being had to the basic meaning to be attached to the word 'cross-examine'.

I am, therefore, not in a position to say that the petitioner was not handicapped by the general order placing a complete restriction on the mode in which his cross-examination was to be conducted. For

this reason I have been driven to the conclusion that it is essential in the interests of justice to interfere in this case. It may well be that the petitioner was abusing his right of cross-examination, but there is no material which would justify us in holding that that was the case. The authorities were under a statutory obligation to give to the applicant an opportunity to cross-examine the witnesses and I cannot escape the feeling that a correct view was not taken of the right of a person charged with an offence under Section 7 in regard to cross-examination.

15. On this ground I have come to the reluctant conclusion that, important as the discipline of the police force is and desirable as it is for this Court not to interfere lightly with orders of disciplinary action against police officers, there is no escaping the position that the procedure adopted in disallowing all leading questions in cross-examination was such as could prejudice a fair hearing of the case against the petitioner. The case, therefore, is one which calls for intervention by this Court and I agree with my brother Mootham that a writ should issue quashing the order of the Deputy Inspector-General of Police dated 12-10-1951, and of the Inspector-General of Police dated 4-6-1952.