

Mahendra Singh vs State Of U.P. And Ors. on 15 February, 1955

Equivalent citations: AIR1955ALL400, (1955)IILLJ750ALL, AIR 1955 ALLAHABAD 400

ORDER

M.L. Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.

2. The petitioner was posted as a head constable at police outpost, George Town, police Station Colonelganj, Allahabad, in August, 1952. On 15-9-1952, one Sukru made a report against the petitioner that he used to extort money from persons who grazed their cattle on road patris, and the City Deputy Superintendent of Police noted down the numbers of four one rupee currency notes produced by Sukru and handed them back to him. The City Deputy Superintendent of Police was subsequently informed that the money had been taken by the petitioner from Sukru, and on receiving this information, he along with the Circle Inspector proceeded to the outpost and recovered the currency notes from the pocket of the uniform shirt of the petitioner.

The petitioner was then suspended under the orders of the Senior Superintendent of Police, and proceedings were started against him. The enquiry into the matter was made by Shri Mahendra Singh, Deputy Superintendent of Police, before whom witnesses were produced and who recorded their statements in the presence of the petitioner, and the petitioner was allowed to cross-examine them. The petitioner was further afforded opportunity to offer any, explanation or defence for his conduct. The above facts have been taken from the counter-affidavit filed in the case and in the rejoinder affidavit it has been vaguely stated that the contents of para. 3 were not admitted in the form in which they were mentioned.

3. On 3-1-1953, the Deputy Superintendent of Police submitted his report with a recommendation that the petitioner be dismissed from service. On receipt of the report, the Senior Superintendent of Police issued a notice to the petitioner on 8-1-1953, enclosing a copy of the findings of the Deputy Superintendent of Police, and calling upon the petitioner to show cause why he should not be dismissed from the police force. The petitioner submitted his explanation on 16-1-1953. The Senior Superintendent of police by his order dated 3-2-1953 imposed the punishment of reduction of the petitioner to the post of a constable for a period of three years.

The petitioner went up in appeal against this order, and the Deputy Inspector General of Police was of the opinion that the charge against the petitioner had been proved, but the punishment awarded by the Superintendent was inadequate. He consequently issued another notice to the petitioner to show cause why the punishment, awarded to him by the Senior Superintendent of Police be not

enhanced and why he be not dismissed from service. The petitioner submitted his explanation on 2-7-1953. The Deputy Inspector General of Police, then called the petitioner for any oral explanation that he might like to give and for hearing the petitioner in his defence.

The petitioner appeared before him on 13-7-1953 and is said to have stated that- he had nothing to add to the written statement already submitted by him. The Deputy inspector General of Police then passed an order on the same day (13th of July) dismissing the petitioner from service. An appeal against that order was dismissed by the Inspector General of Police on 9-1-1954.

4. The present petition was filed on 6-4-1954, praying for the issue of a writ of certiorari calling for the record of the departmental proceedings and quashing the orders of the Senior Superintendent of Police, the Deputy Inspector General of Police and the Inspector General of Police dated 3-2-1953, 13-7-1953 and 9-1-1954, respectively.

5. I am not concerned in this case with the other facts stated by the petitioner in his two affidavits, in which an attempt has been made to show that a conspiracy had been hatched against the petitioner and that the petitioner had not extorted any money from Sukru. The question has been considered by the officers, who had authority to go into this matter and their finding is against the petitioner.

The learned counsel for the petitioner has urged two points in support of the petition. His first submission is that the petitioner could not be dismissed by an order of the Senior Superintendent of Police, as the Senior Superintendent of Police does not exercise the powers of a Magistrate, and under Section 35 of the Police Act only a Police Officer exercising the powers of a Magistrate could enquire into any charge against the petitioner, as he was above the rank of a constable. The Police Act is an Act which was passed in the year 1861 and there was Section 6 In the Act; as originally passed, laying down that the Assistant Superintendent of Police, Superintendent of Police, Deputy Inspector General of Police and the Inspector General of Police will have magisterial powers, & Section 35 provides that "any charge, against a police officer above the rank of a constable under this act 'shall be enquired into and determined only by an officer exercising powers of a Magistrate.'" Section 7 of the Act confers powers on the Inspector General of Police, Deputy Inspector General of Police, Assistant Inspector General of Police and the District Superintendent of Police of dismissing, suspending or reducing any police officer of the subordinate rank and of awarding such other punishments as are laid down in Clauses (a) to (d) of the second paragraph of this section. The Act, as it was originally framed, was perfectly workable, as the different officers, enumerated in Section 7, had magisterial powers conferred upon them by Section 6 of the Act. Section 6 was subsequently deleted by the Central Act No. 10 of 1882, but no alteration appears to have been made in Section 35 of the Act.

The result is that under Section 7 the officers enumerated therein have been given powers to dismiss or otherwise punish police officers of subordinate rank but none of these officers excepting the Inspector General of Police, possesses the powers of a Magistrate and under Section 35 it is only an officer having a power of a Magistrate, who can enquire into the charge against police officer- above the rank of a constable.

There thus appears to me to be a contradiction in the terms of Sections 7 and 35 of the Police Act. There being an inconsistency in the two provisions of law contained in the same enactment, the Court can possibly give effect to the provision of only one of them. I prefer to give effect to the provisions of Section 7. It clearly, and in so many words, confers powers on the officers enumerated in the section, to dismiss or otherwise punish police officers of subordinate rank, which means police officers up to the rank of Inspectors of Police.

The provisions of Section 35 could be given effect to as long as Section 6 of the Act had not been deleted, but after the deletion of that section, its provisions become contradictory to the provisions of Section 7. The Legislature appears to have forgotten to delete S 35 when it deleted S 6. But I have no doubt that the Legislature did intend to confer powers on the officers, enumerated in Section 7, to impose the penalties provided therein. I think effect should, therefore, be given to the provisions of Section 7 in preference to the provisions of Section 35.

6. The learned counsel for the respondents argued that the provisions of Sections 7 and 35 were not contradictory and effect could be given to both of them. His contention is that the word 'charge' used in Section 35 refers to the type of offences enumerated in Section 29 of the Police Act and does not refer to such matters as remissness or negligence in the discharge Of duty, or unntness for the post, as mentioned in Section 7.

In support of his argument he referred me to the case of -- 'Shiv Nandan Sinha v. State of West Bengal', AIR 1954 Cal 60 (A). In this case a Division Bench of the Calcutta High Court held that Sections 7 and 35 were different in their scope and application and there was no illegality in resorting to either or to both of them. Their Lordships say that proceedings under Section 35 of the Police Act are of a penal nature and do not refer to proceedings taken under Section 7. I do find some difficulty, with all respect, in agreeing with the view taken by the Calcutta High Court.

It is difficult to say that a police officer accused of an act mentioned in Section 7 is not charged with the commission of that act. The Police Regulations provide for a charge being framed for an act mentioned in Section 7. The other difficulty is- that Section 29 itself says that in cases coming under that section conviction is to be recorded by a Ma gist: ate and, if Section 35 refers only to charges under Section 29, Section 35 becomes superfluous. But in view of the opinion that I have expressed in the previous paragraph, I do not think it necessary to consider that case in any detail.

7. The other point urged by the learned counsel for the petitioner is that proper opportunity was not given to the petitioner by the Deputy Inspector General of Police when he issued the notice asking the petitioner to show cause why he should not be dismissed from service. I do not think there is any substance in this point. A previous show cause notice had been issued by the Superintendent of Police and there is no complaint, that, as far as the Superintendent of Police, is concerned, he did not give proper opportunity to the petitioner to show cause against the proposed dismissal of the petitioner.

In this notice, issued by the Superintendent of Police, the petitioner was asked to show cause why he should not be dismissed from service. A second notice to the same effect was issued by the Deputy

Inspector General of Police, and the complaint of the learned counsel is that he said in the order that the cause should be shown in writing within seven days of the receipt of the order. Subsequently he gave to the petitioner opportunity of personally appearing before the Deputy Inspector General of Police.

It has not been stated in the affidavit, filed along with the petition, that the petitioner wanted to produce any fresh evidence before the Deputy Inspector General of Police or to cross-examine the prosecution witnesses. He did present himself before the Deputy Inspector General of Police on the 13th of July, and I believe the contents of paragraph 7 of the counter-affidavit, wherein it is stated that the petitioner told the Deputy Inspector General at Police that he had nothing to add to the written statement already submitted by him on the 2nd of July. In my opinion, there was a proper show Cause notice issued to the petitioner and the petitioner was also given every reasonable opportunity of showing cause.

8. For the reasons given above, I dismiss this petition with costs.