

that it should be properly tried after affording to both the parties fuller opportunity to plead and place before the Court their respective contentions.

As a result of the foregoing discussion, I have no hesitation in allowing this appeal which I hereby do, and after setting aside the judgments and decrees of the two Courts below direct that the application of the liquidator be heard afresh and decided after properly and more fully adjudicating upon the objections raised by the plaintiff-society. The society would be entitled to amend its objections, if it so desires, in order to amplify the grounds on which the legality of the order of winding up is questioned. The liquidator would of course be entitled to put in a rejoinder in accordance with law. The parties are directed to appear in the Court of the learned Senior Subordinate Judge on 27th April, 1964 when the case will be marked to a competent Subordinate Judge for further proceedings in accordance with law and in the light of the observations made above. There would be no order as to costs of the proceedings in this Court. Other costs would be costs in the cause.

D. K. MAHAJAN, J.—I agree.

R.S.

#### REVISIONAL CRIMINAL

*Before Inder Dev Dua and Daya Krishan Mahajan, JJ.*

HOSHIAR SINGH,—*Petitioner.*

*versus*

THE STATE,—*Respondent.*

Criminal Revision No. 214-D of 1963.

*Punjab Police Rules—Rule 16.38—Scope of—Sanction of District Magistrate for prosecution of a police officer*

The Workers,  
Co-operative  
Gardening &  
Mixed-farming  
Society, Ltd.

*v.*  
The State of  
Punjab  
and another

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for an offence in an ordinary Court of law—Whether necessary—Interpretation of statutes—Function of Court in interpreting statutes—Scope of.

Held that Rule 16.38 of the Punjab Police Rules was now intended to impose nor has the effect of imposing a condition precedent to the trial of a police officer in a Court of law, a sanction or an order by the District Magistrate, as contemplated therein. The language of the Rule confines its application to departmental enquiries only. The investigation for establishing a *prima facie* case is merely meant to guide the District Magistrate, uncontrolled by the opinion of the Superintendent of Police, whether or not a departmental proceeding should be initiated against the guilty party, and it is the procedure and the punishment controlling the departmental proceedings alone, which have been prescribed by this rule. It is not possible to construe this rule in a manner which would add to the provisions of the Code of Criminal Procedure or the Prevention of Corruption Act or any other statute dealing with or regulating the prosecution of offences in the ordinary Courts of law so as to make the sanction or order by the District Magistrate under the rule in question to be a mandatory condition precedent for such a prosecution. The Police Act was enacted for the regulation of police and is designed to re-organise the police so as to make it a more efficient instrument for the prevention and detection of crime. There is no provision in the Act which deals with the subject of trial of the police officers in the ordinary criminal Courts for the offences of corruption alleged to have been committed by them.

Held, that it is not the function of a Court, while interpreting a law, to re-write it. A Court cannot make law; it can merely interpret or construe it, and not modify or amend it under the cloak or guise of interpretation; though in this process of construction it may give the law shape, but this is permissible only within the strict limits of discernible legislative scheme or intent.

*Petition for revision under section 439/561A of the Code of Criminal Procedure of the order of Shri Pritam Singh Pattar, Special Judge, Delhi, dated the 13th August,*

1963, dismissing the petition of the petitioner that his prosecution was illegal and without jurisdiction.

FRANK ANTHONY AND D. R. SEHGAL, ADVOCATES, for the Petitioner.

BISHAMBER DAYAL AND KESHAV DAYAL, ADVOCATES, for the Respondent.

### JUDGMENT

DUA, J.—This Criminal revision has been placed before us pursuant to the order of Grover, J., dated 20th January, 1964. The point is very short and the facts necessary for understanding the contention raised may in a nut-shell be stated.

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The petitioner, Sub-Inspector of Police in Kashmeri Gate Police Station, was challaned by the Anti-Corruption Branch of the Delhi Administration under section 5(2) of the Prevention of Corruption Act and Section 161, Indian Penal Code, for having accepted illegal gratification amounting to Rs. 70 from one Om Parkash. This is alleged to have happened in October, 1961. As a result thereof, he was suspended from service and charge-sheeted, which was followed by a departmental enquiry. When a show-cause notice was served on him on the conclusion of the enquiry intimating to him the proposed punishment, he objected to the legality of the enquiry because the permission of the District Magistrate in accordance with Rule 16.38 of the Punjab Police Rules had not been obtained. The departmental enquiry, it appears, was quashed on this ground. Thereafter, the challan was put into Court under the

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directions of the Deputy Inspector-General of Police. This time an objection to his prosecution was raised before the learned Special Judge on the ground that in the absence of reference to the District Magistrate and in the absence of his orders, directing prosecution, the Special Judge could not take cognizance of the trial. It is not controverted that no such reference had been made to the District Magistrate for the purposes of the trial in Court. Support for this objection was sought from Rule 16.38 mentioned above. The learned Special Judge in his order, dated 13th August, 1963 disallowed the objection holding that Rule 16.38 did not apply to the trials before the ordinary Courts and that it was merely concerned with punishment by departmental authorities for departmental enquiries.

The attention of the learned Special Judge was drawn to a decision of the Supreme Court in *State of Uttar Pradesh, etc. v. Babu Ram Upadhyya* (1), and to an unreported Bench decision of this Court in *Chanan Shah v. Delhi Administration and others*, L.P.A. No. 68-D of 1961, decided on 23rd January 1963. These decisions; according to the learned Special Judge, were concerned with departmental enquiries and, therefore, did not advance the present petitioner's case. Reliance by the Court below was placed on a decision of the Bombay High Court in *Paras Nath Panda and another v. State of Bombay* (2) for the view that the powers of a Special Judge to take cognizance of offences specified in section 6 of the Criminal Law Amendment Act are wide and unlimited and no limitation has been placed on him as to how he should take cognizance of offences. It is this view

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(1) A.I.R. 1961 S. C. 751

(2) A.I.R. 1962 Bom. 205.

of the learned Special Judge which is assailed before us in the present criminal revision.

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Rule 16.38 of the Punjab Police Rules, on the construction of which the fate of this revision depends, so far as relevant for our present purpose, is as follows:—

“16.38(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a Police Officer of a criminal offence in connection with his official relations with the Public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having 1st Class powers.

(2) When investigation of such a complaint establishes a *prima facie* case, a judicial prosecution shall normally follow, the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.

(3) Ordinarily a magistrate before whom a complaint against a police officer is laid proceeds at once to judicial enquiry. He is, however, required to report details of the case to the District

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Magistrate, who will forward a copy of this report to the Superintendent of Police. The District Magistrate himself will similarly send a report to the Superintendent of Police in cases of which he himself takes cognizance.

- (4) The Local Government has prescribed the following supplementary procedure to be adopted in the case of complaints against police officers in those districts where abuses of the law with the object of victimising such officers or hampering investigation is rife. The District Magistrate will order that all petitions against police officers shall be presented to him personally. If he considers that these petitions are of a frivolous or factious nature, it is within his discretion to take no action on them. When he considers an enquiry to be necessary he will use his discretion whether to send the papers to the Superintendent of Police or to a magistrate for judicial enquiry. "In the case of formal criminal complaints the District Magistrate will arrange for all cases to be transferred from other courts to his own."

Shri Anthony, the learned counsel for the petitioner, has challenged the correctness of the view taken by the Bombay Bench in *Paras Nath Pande's* case and, according to him, this view is not only contrary to the legislative scheme as disclosed by the language of the rule in question, but also runs counter to the ratio of some decisions of this Court. In support of his contention he has drawn

attention to a decision of Grover, J., in *Jagan Nath v. Senior Superintendent of Police, Ferozepore* (3), where it was observed:—

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“The scheme of these rules apparently is that whenever any complaint is made against police officer of a criminal offence in connection with his official relations with the public which would include an offence under the Prevention of Corruption Act, the Superintendent of Police cannot take any decision himself but he must forward that information to the District Magistrate who is then to decide whether the investigation of the complaint shall be conducted by a police officer or made over to a selected Magistrate having 1st Class powers. The judicial prosecution has normally to follow when investigation of such a complaint establishes a *prima facie* case but the District Magistrate alone is empowered to direct for reasons to be recorded that the matter should be disposed of departmentally.”

Here I may point out that the writ petition in the reported case was directed against a departmental enquiry and there was no question of assailing a judicial trial before a competent court. That it was in this context that the learned Judge had made the aforesaid observations would be clear from the following passage:—

“Thus it is clear that a departmental enquiry can only be ordered by the District Magistrate after investigation of the

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complaint conducted by the police officer or the Magistrate to whom such a task is entrusted by the District Magistrate has been completed and the District Magistrate has applied his mind to the result of the aforesaid investigation. He has to keep in mind at that stage that normally a judicial prosecution should take place if a *prima facie* case is disclosed but it will be then his discretion to deviate from that normal rule and order a departmental enquiry."

Shri Anthony has, however, relied on some other passages in this judgment at pages 40 and 41 and particularly on the following passage:—

"It may be pointed out that it is exactly this kind of situation which the police Rules definitely meant to meet so that the District Magistrate may be able to have an impartial investigation conducted in the first instance to enable him to come to an independent decision as to whether the normal judicial prosecution should follow in the event of a *prima facie* case being disclosed as a result of the investigation or whether the police officer should be proceeded against departmentally."

In the reported case there was complete non-compliance of the provisions of sub-rule (1) of Rule 16.38 of the Punjab Police Rules and the learned Judge also observed that the provisions of sub-rule (2) were not present to the mind of the learned District Magistrate concerned for he had made the order acting on the facts supplied in the memorandum of the Senior Superintendent of



Police and also the requisite sanction was granted without giving any reasons for proceeding departmentally against the petitioner. The true principle of law accepted and applied by the learned Judge in the reported case does not seem to me to support Shri Anthony's contention that for the purposes of the normal judicial prosecution also order of the District Magistrate under rule 16.38 was necessary as a condition precedent, and that the petitioner could not, in the absence of such an order, lawfully be challaned by the Anti-Corruption Department under the Indian Penal Code and the Prevention of Corruption Act.

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Our attention has next been drawn to an unreported judgment of a Bench of this Court (Falshaw C.J. and Mehar Singh J.) in *Union of India v. Ram Kishan*, Regular Second Appeal No. 256-D of 1962 decided on 4th March, 1964. In that case Ram Kishan (Respondent in this Court) was charge-sheeted for gross negligence of duty and the charge-sheet served on him was accompanied by a summary of allegations. Departmental enquiry was held by a Inspector of Police, as a result of which he was dismissed on 3rd of September, 1957, by an order of Shri D. C. Sharma, Superintendent of Police (Central) Delhi. The respondent sued the Union of India for a declaration that the order of his dismissal was void and also for recovery of certain amount as his pay and allowances. One of the grounds challenging the dismissal was that the provisions of Rule 16.38, Chapter 16 of the Punjab Police Rules, Volume II, had not been complied with. The trial Court found Rule 16.38 to be directly and not mandatory. On appeal the learned Additional District Judge following the decision of the Supreme Court in *Babu Ram Upadhya's case* held this rule to be mandatory which had not been complied with.

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For this reason as also for the reason that the dismissing officer was not empowered to dismiss the respondent, the decree of the first Court was set aside and the plaintiff's suit decreed. On second appeal the Bench considered the scope and effect of this rule and, following the ratio of the Supreme Court decision in *Babu Ram Upadhyaya's case*, approved the view taken by Grover, J., in *Jagan Nath's case* who, it may be noted; had also followed the aforesaid Supreme Court decision. The Bench also referred to the earlier decision of the learned Chief Justice and Tek Chand J., in *Chanan Singh's case*, allowing the appeal from the order of Gosain, J., and granting the aggrieved party the necessary writ on account of non-compliance with this rule. A decision by Bishan Narain J., in *F. A. Stanley v. The Inspector-General of Police, Delhi*, Civil Writ No. 29-D of 1957, decided on 27th of January, 1959; holding this rule to be directory was also noticed and not approved. Referring to these bench decisions Shri Anthony has emphasised that the rule in question being mandatory, it makes no difference whether the party to be proceeded against is to be subjected to a departmental enquiry or tried for an offence in a Court of Law. It is of course not disputed that all the decisions to which reference has been made by the learned counsel relate to challenge to the departmental enquiry on account of non-compliance with this rule, but this difference, says the counsel; is immaterial, for the mandate laid down in this rule goes to the very root of the proceedings—whether departmental or in a Court of law. *J. K. Cotton Spinning and Weaving Mills, Co., v. State of Uttar Pradesh* (4); has been relied upon for the contention that a statutory rule has the same legal force as the statute under which it is framed, and it is

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(4) A.I.R. 1961 S. C. 1170.

argued that the rule in question must accordingly be held to be as binding and effective as the provisions of the statute itself under which this rule has been made. In this connection we have also been referred to sections 7 and 46 of the Police Act. Sub-section (2) of the latter, it may be pointed out empowers the State Government to make rules under this Act for giving effect to its provisions. The rule being mandatory in language, it is contended that the case be sent back to the authorities concerned for complying with its provisions.

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It has also been argued that the procedure adopted for trying the petitioner is differential and, therefore, had, being violative of Article 14 of the Constitution. In this connection reference has been made to a decision of the Supreme Court in *Lachhmandas Kewalram v. State of Bombay* (5), where it is laid down by the majority that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

On behalf of the respondent Shri Bishamber Dayal has contended that the rule in question does not contemplate another sanction by the District Magistrate as a condition precedent to the trial of the petitioner for an offence under the Prevention of Corruption Act and the Indian Penal Code. According to him, the Prevention of Corruption Act is an exhaustive code in this respect and the only sanction which is required is the one provided in section 6 of this Act. The Bombay decision in *Paras Nath Pande's case*, says the learned counsel, is on all fours and it lays down a sound rule of law which is not hit by the ratio of the decision of the Supreme Court in *Babu Ram Upadhya's case*, and of the other decisions of this Court cited on behalf of the petitioner.

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(5) A.I.R. 1952 S. C. 235.

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Passing reference has also been made to sections 190 and 196 of the Criminal Procedure Code, providing for sanction in respect of certain offences, and it is contended that where sanction as a condition precedent to a lawful trial is intended it is so provided in clear terms. The rule in question, it is further submitted, does not add to or supplement these sanctions for the purpose of trial in Courts of law.

After devoting my most earnest attention to the arguments addressed at the bar, as at present advised, I do not think Rule 16.38 was intended or could have the effect of imposing as a condition precedent to the trial of a police officer in a Court of law, a sanction or an order by the District Magistrate, as contemplated therein. The language appears to me to be confined only to departmental enquiries. The investigation for establishing a *prima facie* case is merely meant to guide the District Magistrate, uncontrolled by the opinion of the Superintendent of Police, whether or not a departmental proceeding should be initiated against the guilty party, and it is the procedure and the punishment controlling the departmental proceedings alone, which appear to have been prescribed by this rule. This view also seems to find support from the opening part of Chapter 16 of the Punjab Police Rules headed "Punishments" which begin with Rule 16.1 sub-rule (1) of Rule 16.1 gives us a clear clue as to the scope of the other rules contained in this Chapter. It says:—

"No police officer shall be departmentally punished otherwise than as provided in these rules."

Sub-rule (2) gives the details of the various punishments permissible and the punishing authorities.

Keeping in view the purpose and object of these rules as also of the parent Act (Act No. V of 1861) empowering the framing of these rules, I find it somewhat difficult to construe them in a manner which would add to the provisions of the Code of Criminal Procedure or the Prevention of Corruption Act or any other statute dealing with or regulating the prosecution of offences in the ordinary Courts of law so as to make the sanction or order by the District Magistrate under the rule in question to be a mandatory condition precedent for such a prosecution. The Police Act enacted for the regulation of Police, it may incidentally be observed, is designed to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime. Our attention has not been invited to any provision of the Act which deals with the subject of trial of the police officers in the ordinary criminal Courts for the offences of corruption alleged to have been committed by them.

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I have proceeded on the assumption, without deciding, that the rule in question has been made under the rule-making power delegated by the law-maker in the Police Act and the rule has the same legal force in as the statute under which it is framed. In this connection it may, however, be pointed out that the publication containing the Punjab Police Rules in two volumes merely show that they are "issued by and with the authority of the Provincial Government under sections 7 and 12 of Act V of 1961". Section 7 purports to provide for appointment, dismissal, etc., of inferior officers and section 12 confers power on the Inspector-General of Police to make rules. Those two sections, if I may say so with respect, can hardly be considered to postulate a rule placing

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restrictions on the trial of police officers in the ordinary Courts of law for offences alleged to have been committed by them.

However, without adverting to and expressing any opinion as to the *vires* of such a provision in the Police Rules (a point on which we have not been addressed) even on the language of, Rule 16.38, in my opinion, to accede to its construction, as suggested by the petitioner's learned counsel, virtually means re-writing the rule, which is not the function of this Court. This Court cannot make law, it can merely interpret or construe it, and not modify or amend it under the cloak or guise of interpretation; though in this process of construction it may give the law shape, but this is permissible only within the strict limits of discernible legislative scheme or intent.

For the foregoing reasons, this revision fails and is hereby dismissed.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and Harbans Singh, JJ.

HARTEJ BAHADUR SINGH,—Appellant.

*versus*

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 384 of 1963.

1964

April, 23rd

*Pepsu Tenancy and Agricultural Land Act (XIII of 1955)—S. 43—Consolidation Officer putting the landlord in possession of land—possession of the landlord—whether wrongful or unauthorised—Mistake committed by Consolidation authorities—whether can be corrected by the*