

FULL BENCH

Before Mehar Singh, A. N. Grover and Shamsher Bahadur, JJ.

NAND NANDAN SARUP,—*Petitioner*

versus

THE DISTRICT MAGISTRATE, PATIALA AND OTHERS,—
Respondents

Civil Writ No. 1933 of 1963

Punjab Police Rules (1934)—Rule 16.38(2)—Whether mandatory—District Magistrate—Whether must record reasons for preferring departmental inquiry to judicial prosecution.

1966

April 20th.

Held, that the provisions of sub-rule (2) of rule 16.38 of the Punjab Police Rules are mandatory and its compliance is imperative. When on an enquiry under sub-rule (1) of rule 16.38, a *prima facie* case is established indicating the commission by a police officer of a criminal offence in connection with his official relations with the public, a judicial prosecution is normally to follow, but the District Magistrate has been given power to order departmental proceedings instead 'for reasons to be recorded'. The reasons to be recorded by the District Magistrate are for not proceeding with a judicial prosecution, and for proceeding departmentally. If no reasons are recorded, the order is not in conformity with this sub-rule and must be quashed.

Case referred by the Hon'ble Mr. Shamsher Bahadur on 19th November, 1965, to a larger Bench for decision of an important question of law involved in the case and the case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice Mehar Singh, the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice Shamsher Bahadur, on 20th April, 1966.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Quo-warranto, mandamus, prohibition, certiorari, or any other appropriate writ, order of direction be issued quashing the order of sanction, dated 27th September, 1963 and the proceedings of enquiry based thereon.

M. M. PUNCHI, NAND LAL PUNCHI AND DR. A. S. ANAND, ADVOCATES, for the Petitioner.

M. S. PANNU, DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER OF FULL BENCH

Mehar Singh, J. MEHAR SINGH, J.—The petitioner, Nand Nandan Sarup, in this petition under Articles 226 and 227 of the Constitution, was, on September 16, 1963, Naib Court (Foot Constable) in the Court of the Sub-Divisional Magistrate at Patiala, and is said to have been caught red-handed on that day, accepting a bribe of Rs. 4 from one Mohinder Singh. A case in that respect having been registered, investigation for an offence under section 5(2) of the Prevention of Corruption Act, read with section 161 of the Penal Code, having been completed, a report in regard to the incident was made by the Superintendent of Police, Patiala, on September 27, 1963, to the District Magistrate of Patiala, who, in his order of the same date, said that he had gone through the report of the Superintendent of Police and the preliminary enquiry report of the Deputy Superintendent of Police against the petitioner, and, as a *prima facie* case was proved against the petitioner, he should be proceeded against departmentally. In the last part of his order the District Magistrate said that, therefore, he was sanctioning the holding of a departmental enquiry against the petitioner. The case had been placed before the District Magistrate by the Superintendent of Police under sub-rule (2) of rule 16.38 of the Punjab Police Rules, 1934 (1959 Edition). When this petition came for hearing before my learned brother, Shamsher Bahadur, J., the learned counsel for the petitioner urged that the order of the District Magistrate was in contravention of sub-rule (2) of rule 16.38 and hence be quashed.

The only sub-rules of rule 16.38 that are relevant here are the first two sub-rules which read—

“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."

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The learned counsel for the parties in support of their respective contentions, the petitioner's counsel to strengthen his contention, and the counsel for the respondents to negative the same, cited before the learned Single Judge *Bua Dass Kaushal v. The Inspector-General of Police, L.P.A. No. 169 of 1957*, decided on August 19, 1958, in which the judgment of the Bench was delivered by Dulat, J., *Jagan Nath v. The Senior Superintendent of Police, Ferozepore* (1), in which the judgment was given by my learned brother, Grover, J., *Chanan Singh v. The Delhi Administration, L.P.A. 68-D of 1961*, decided in January 23, 1963, in which the judgment was given by my Lord, the Chief Justice, *Hoshiar Singh v. The State* (2), a Division Bench decision of Dua and D. K. Mahajan, JJ., and *Walaiti Ram v. The State of Punjab* (3), a judgment of my learned brother, Shamsheer Bahadur, J., and the learned Judge sensing a seeming conflict of opinion in those decisions referred this case to a larger Bench, and this is how it comes before this Full Bench for final disposal.

In *Chanan Singh's case*, following *The State of Uttar Pradesh v. Babu Ram Upadhya* (4), my Lord, the Chief Justice held that the provisions of sub-rules (1) and (2) of rule 16.38 are mandatory, and that decision has been followed in another Division Bench case *Union of India v. Ram Kishan*, Regular Second Appeal No. 256-D of 1962, decided on March 4, 1964, by my Lord, the Chief Justice and myself. In both these cases, on the strength and basis of the decision of their Lordships in *Babu Ram Upadhya's*

(1) 1961 P.L.R. 860.

(2) 1965 P.L.R. 438.

(3) 1965 P.L.R. 523.

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

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case, sub-rules (1) and (2) of rule 16.38 have been held to be mandatory provisions. No argument has been addressed by the learned counsel in this respect and indeed none is open in view of the decision of their Lordships in *Babu Ram Upadhya's case*.

In the present case, there is no question of non-compliance with sub-rule (1) of rule 16.38, but what has been pressed by the learned counsel for the petitioner is that while it is the imperative duty of the District Magistrate, when ordering departmental proceedings against a police officer, to record reason for that, he has not done so in this case, and hence there has been clear contravention of this sub-rule by the District Magistrate, whose order cannot thus be sustained. Now, it is obvious on the plain language of sub-rule (2) that when, on an enquiry under sub-rule (1), a *prima facie* case is established indicating the commission by a police officer of a criminal offence in connection with his official relations with the public, a judicial prosecution is normally to follow, but the District Magistrate has been given power to order departmental proceedings instead 'for reasons to be recorded'. The reasons to be recorded by the District Magistrate are for not proceeding with a judicial prosecution, and for proceeding departmentally. Apparently, in the present case, the District Magistrate has recorded no reasons for not proceeding with a judicial prosecution against the petitioner and for ordering departmental proceedings against him. If the sub-rule was directory, the matter may have been overlooked, but the sub-rule has been held to be mandatory and its compliance is thus imperative. The learned counsel for the respondents contends that while the rest of the provisions of the sub-rule are mandatory, the recording of the reasons for preference of one class of proceedings as against another class in the terms of the sub-rule cannot be said to be mandatory, but he is unable to support this by any sound reasoning or by any authority. The sub-rule has been held to be mandatory and these words 'for reasons to be recorded' cannot be picked out of the context of the sub-rule and held not to be so. The learned counsel for the respondents has first referred to *State of Madras v. A. R. Srinivasan*, Civil Appeal No. 1113 of 1964, decided by their Lordships of the Supreme Court on March 2, 1966, to support this argument, but that was a case of the State Government agreeing with the findings of the Enquiry

Tribunal and taking disciplinary action against the delinquent officer. Their Lordships held that there was no obligation on the State Government to record reasons in every such case when imposing penalty in consequence of departmental enquiry where the Government was agreeing with the findings of the Enquiry Tribunal in which obviously reasons for the findings appear. It is apparent that the case has no bearing on the facts of the present case. The learned counsel for the respondents then refers to sub-article (3) of Article 320 of the Constitution and contends that it has been held in *State of Uttar Pradesh v. M. L. Srivastava* (5), and *State of Bombay v. Kargaonkar*, an unreported judgment of the Supreme Court in Civil Appeal No. 289 of 1958, that although the expression used in the sub-article is 'shall be consulted', but such consultation is not mandatory, and he points out that that gives an indication how the words 'for reasons to be recorded' in sub-rule (2) of rule 16.38 should be read. But it is immediately apparent that there is no parallel between the two provisions and their Lordships did not pick out words from the context and find the main provision imperative and a few words in it not so. These two cases have no bearing so far as the context of sub-rule (2) of rule 16.38 is concerned.

The provisions of sub-rule (2) of rule 16.38 having been held to be mandatory, the compliance with same is imperative, which has not been done in this case by the District Magistrate because he has recorded on reasons for preferring departmental proceedings against the petitioner and not proceeding in the ordinary manner by way of criminal prosecution. So his order is not in conformity with this sub-rule and it cannot be maintained. The consequence is that the impugned order of the District Magistrate of Patiala is quashed. It is, of course, open to the authorities to proceed against the petitioner in the terms of the law. There is no order in regard to costs in this petition.

A. N. GROVER, J.—I agree.

SHAMSHER BAHADUR, J.—I also agree.

B. R. T.

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