

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
CHARAN SINGH

DATE OF JUDGMENT 20/02/1981

BENCH:
REDDY, O. CHINNAPPA (J)
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REDDY, O. CHINNAPPA (J)
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 1007 1981 SCR (2) 989
1981 SCC (2) 197 1981 SCALE (1) 399
CITATOR INFO :
F 1988 SC 805 (4, 9, 14, 15)
APL 1989 SC 558 (14)
R 1989 SC 811 (8)

ACT:
Punjab Police Rules 1934-Rule 16.38-Scope of-Rule in the nature of departmental instruction-Cannot override Criminal Procedure Code and Prevention of Corruption Act.

HEADNOTE:

The Punjab Police Rules, 1934 lay down the procedure to be followed in imposing punishment on police officer found guilty of mis-conduct or a criminal offence and make an exhaustive provision for departmental inquiries. Rule 16.38 lays down the guidelines to be followed by the Superintendent of Police in dealing with a complaint about the commission of a criminal offence by a Police officer in connection with his official relations with the public. It enjoins upon the Superintendent to give immediate information to the District Magistrate who thereupon has to decide whether investigation of the complaint should be conducted by a police officer or by a Magistrate.

The respondent, a police officer, was convicted of an offence under section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act and sentenced to suffer imprisonment.

On the ground that there was non-compliance with the provisions of Rule 16.38 of the Rules a single Judge of the High Court acquitted the respondent.

Setting aside the order of acquittal and remanding the case to the High Court for fresh disposal in accordance with law.

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HELD: The High Court was wrong in acquitting the respondent. [990 D]

Rule 16.38 is not designed to be a condition precedent to the launching of a prosecution in a Criminal Court. It is in the nature of instructions to the department and is not meant to be of the nature of a sanction or permission for a prosecution; nor can it override the provisions of the Criminal Procedure Code and the Prevention of Corruption Act. [991 A-B]

Hoshiar Singh v. The State LXVII-1965 Punjab Law Reporter 438 @ 442, approved.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 23 of 1976.

From the Judgment and Order dated 21-11-1973 of the Punjab and Haryana High Court in Criminal Appeal No. 396/72.

O.P. Sharma and M.S. Dhillon for the Appellant.

K.K. Manchanda and B. Datta for the Respondent.

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The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. The respondent was convicted by the learned Special Judge, Ludhiana, of an offence under Sec. 5(1)(d) read with Sec. 5(2) of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for a period of one year and to pay fine of Rs. One hundred. On appeal, a learned Single Judge of the High Court acquitted the respondent on the ground that there was noncompliance with the provisions of Rule 16.38 of the Punjab Police Rules, 1934. An application for the grant of a Certificate under Art. 134 (1) (c) of the Constitution was moved before the learned Single Judge and was granted. The learned Single Judge observed that when the case was argued before him, an earlier judgment of a Division Bench of the Punjab High Court in Hoshiar Singh v. The State was not brought to his notice and that had the decision been brought to his notice he would not have allowed the appeal merely on the ground that there was no compliance with Rule 16.38 of the Punjab Police Rules.

The learned Single Judge of the High Court was clearly wrong in acquitting the respondent on the ground that there was noncompliance with the provisions of Rule 16.38. A perusal of Chapter XVI of the Punjab Police Rules shows that the provisions of the Chapter deal with Departmental punishments and the procedure to be followed in imposing such punishments. Guidance is given as to how Police Officers guilty of misconduct and criminal offences may be dealt with. The Chapter begins with Rule 16.1, the first clause of which is as follows:

"No police officer shall be departmentally punished other wise than as provided id these rules".

Thereafter the rules refer in some detail to the various punishments which may be imposed and provide for suspension, subsistence etc. Rule 16.24 makes exhaustive provision for the procedure in Depart mental enquiries. Provision for review and appeal is made in the sub sequent rules. Rule 16.38 prescribes-more correctly we may say-Rule 16.38 lays down the guide-lines of the procedure to be followed when a Superintendent of Police receives any complaint about the commission of a criminal offence by a police officer "in connection with his official relations with the public". The Superintendent of Police is enjoined to give immediate information to the District Magistrate who is thereupon to decide whether the investigation of the complaint shall be conducted by a Police Officer or by a Magistrate. It is stated that though 'a judicial prosecution shall normally follow', the matter may be disposed of departmentally if the District Magistrate so orders,

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for reasons to be recorded. The further Departmental procedure is prescribed by the remaining clauses. It is clear that Rule 16.38 is not designed to be a condition

precedent to the launching of a prosecution in a Criminal Court; it is in the nature of instructions to the Department and is not meant to be of the nature of a sanction or permission for a prosecution. Nor can it override the provisions of the Criminal Procedure Code and the Prevention of Corruption Act. We agree with the observations of Dua and Mahajan JJ. in *Hoshier Singh v. The State* (supra) where they said:

"..... 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 depart mental 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".

We have, therefore, no option but to set aside the order of acquittal passed by the High Court and remand the matter to the High Court for fresh disposal in accordance with law. It is so ordered.

P.B.R.

Appeal allowed.