



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 87 of 2018

Date of Decision: 06.12.2021

Shri. Basant Kumar Mishra

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Paul, Sr. Adv. with
Mr. S. Chanda, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER

1. This application under Article 226 of the Constitution of India has been filed assailing the impugned order dated 19.01.2018, and corresponding disciplinary proceeding No. 1 of 2018, which had been drawn up against the petitioner for alleged misconduct in the discharge of his duties.

2. The brief facts necessary for adjudication of the case are that, when the petitioner who is in the rank of Inspector in the Police Department was posted as Officer In-Charge of Madanriting Police Station, on 12.01.2017 an



FIR was lodged at the police station by one Shri. Lapynkupbor Umsong and Shri. Korishon Umsong, the brother and uncle respectively of one Miss. XXX (victim girl), against Smti. Aitimon Umsong and Shri. Shngain Nongrum for alleged rape committed by Shri. Shngain Nongrum on the victim girl with the assistance of Smti. Aitimon Umsong. It appears that the complaint was narrated directly to the petitioner by the complainant in the presence of the petitioners' sub-ordinate Lady Police Officer, but the said complaint was not registered at that point of time, nor was it reduced to writing by the petitioner. On 05.09.2017, a second FIR was lodged by the same persons with regard to the same offence reported earlier in January 2017, with a further request that the persons responsible and also the police be prosecuted under the POCSO Act. Thereafter, a case was registered being Madanriting PS Case No. 84 (9) 17 u/s 366 A IPC R/W sec. 5(i) (ii)/1/q/6/17 POCSO Act, and an enquiry was directed to be conducted into the matter by the Superintendent of Police by order dated 13.09.2017. On submission of the enquiry report, the respondent No. 3 proposed that action as may deemed fit, may be taken up against the petitioner and accordingly the Director General of Police (respondent No. 2) vide memorandum dated 6th December, 2017 initiated the departmental proceedings against the petitioner.

3. Being aggrieved with the initiation of the departmental proceedings, the writ petitioner has preferred the instant writ petition.

4. Mr. K. Paul, learned senior counsel assisted by Mr. S. Chanda, learned counsel for the petitioner submits that on 12.01.2017, one Lapynkupbor Umsong had appeared in the police station with a request that



his sister (victim girl), who was allegedly staying with one Shri. Shngain Nongrum be traced out and returned back to his place. Learned senior counsel submits that neither was there any written complaint made nor were there any allegations of rape or otherwise against Shri. Shngain Nongrum, and as the petitioner was not conversant with the Khasi Language, he had taken assistance of WPSI P. Wahlang to interact with the complainant to translate his complaint into English. He further submits that, the petitioner had then taken steps and also had deputed staff but the said victim girl could not be traced, but after further efforts the said girl was found on 16.01.2017, and brought to Madanriting Police Station, wherein the mother of the victim girl was questioned on the victim's age but the matter rested at that and nothing further was done as according to the petitioner, the grievance of the complainant had been addressed, inasmuch as, the victim girl had been located and handed over to the mother.

5. Mr. K. Paul, learned senior counsel submits that surprisingly, the said Shri. Lapynkupbor Umsong and Shri. Korishon Umsong after an expiry of 9 (nine) months, and after the transfer of the petitioner from Madanriting Police Station, had lodged the FIR dated 05.09.2017, with the Superintendent of Police, East Khasi Hills, alleging amongst other things that the FIR lodged on 12.01.2017 was not registered by the police, and on production of the said victim girl, the police did not tell them about the POCSO Act and instead asked them to compromise the matter. The learned senior counsel then submits that in the ensuing enquiry to the matter, apart from the petitioner, a show cause notice was also issued to WPSI P. Wahlang, and her explanation given therein was accepted and the enquiry against her was dropped, whereas



against the petitioner it was directed that action be initiated for the alleged lapses on his part.

6. Mr. K. Paul, learned senior counsel submits that the impugned disciplinary proceedings sought to be initiated against the petitioner is not sustainable in the eyes of law, inasmuch as, the FIR dated 05.09.2017, filed subsequently by the complainants was after a lapse of 9 (nine) months without any explanation as to the delay which cast doubts on the veracity of the FIR itself. He further contends that, the allegations of inaction against the police as alleged in the FIR dated 05.09.2017, are false and vexatious, as the complainants on the inaction of the police had the liberty to resort to Section 154 (3) and 200 of the Code of Criminal Procedure which was not done and as such, the FIR had been lodged it seems, only to victimize the petitioner.

7. He further submitted that, the statement of WPSI P. Wahlang, recorded in the course of the preliminary enquiry had clearly mentioned that she too had no knowledge about any written FIR or compromise letter, as stated in the second FIR, and she being the person who interacted with the complainants was best placed to reveal the truth about the facts that occurred on 12.01.2017 and 16.01.2017. Learned Senior counsel submits that as the respondents had already accepted the statement of WPSI P. Wahlang, on the alleged FIR dated 12.01.2017 and dropped the proceedings against her, there was no justifiable reason to not accept the explanation to the show cause by the petitioner, which was similar to the statement of WPSI P. Wahlang, but instead the disciplinary proceedings had been initiated against him. He submits that, the impugned disciplinary proceedings being discriminatory and biased are therefore liable to be set aside and quashed.



8. Learned senior counsel in his submissions then reiterates that the very fact that the explanation of WPSI P. Wahlang, given in her show cause and in her statement in the preliminary enquiry had been accepted and no disciplinary proceedings drawn up against her, even though, she had interacted with the complainant being conversant in the local language and the proceedings had been initiated against the petitioner, reflects that the petitioner had been singled out and discriminated against. In support of his arguments, learned senior counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Man Singh v. State of Haryana*** reported in ***(2008) 12 Supreme Court Cases 331*** and the judgment of Delhi High Court in the case of ***Virender Singh Chankot v. Union of India*** reported in ***2019 SCC OnLine Del 11498***, to emphasize the Doctrine of Equality, fair play and reasonableness.

9. Mr. K.P. Bhattacharjee, learned GA for the respondents in reply, submits that the first glaring fact that is inescapable, is that when the FIR was lodged on 12.01.2017, the same was not registered by the petitioner which prompted the aggrieved complainants to file the second FIR on 05.09.2017, for a crime which was committed in the month of January, 2017. Learned counsel submits that Section 154 of the CrPC mandates that the information received verbally should be reduced to writing and acted upon, which the petitioner failed to do even though, the offence complained about was a cognizable offence. The learned counsel submits that as an Officer In-charge of a police station, the petitioner failed to perform his legal duties as a Controlling Officer and instead tried to hush up the matter, especially when the victim girl had appeared at Madanriting P.S, and he had seen her tender



age. Learned counsel submits that inspite of strong allegations of rape, the petitioner failed to take legal action to bring justice to the victim.

10. The learned counsel has also drawn the Court's attention to the enquiry report which has been submitted by the respondent No. 4, and submits that the finding therein clearly reveals that the allegations made against the petitioner during his tenure at the police station during the month of January, 2017 was correct and that he had failed to take action in a sensational case that was reported, but rather tried to hush it up by compromising the matter without any record at the police station and the aggrieved family members including the victim girl were made to believe that it was a family matter. With regard to the role of WPSI P. Wahlang, who also appears in the FIR, learned counsel submits that the enquiry found her only partially to be blamed as she was only an Officer assisting the petitioner who should have given required directions on having received such complaint. He therefore, submits that by citing discrimination or unequal treatment, the petitioner deserves no consideration as he was the main person in-charge who should have taken necessary action.

11. The learned counsel lastly submits that the disciplinary proceedings are yet to be concluded and it is not the case of the petitioner that he has been found culpable and penalty has been inflicted. Rather, he submits the petitioner is seeking to pre-empt the due process of law by assailing the initiation of the disciplinary proceedings on the ground that the sub-ordinate Officer has been let off, which he contends is unsustainable. Learned counsel in support of his case has placed reliance on the judgment in the case of ***State of Tamil Nadu & Another Vs. M. Mangayarkarasi & Others*** reported in ***(2019) 15 Supreme Court Cases 515*** and also in the case of ***State of***



Karnataka & Another Vs. N. Gangaraj reported in (2020) 3 Supreme Court Cases 423, on the point of review powers of the Court in disciplinary proceedings and lastly submits that, there being no merit in the case the same be dismissed.

12. I have heard learned counsel for the parties. It is required to note at the outset, that by order dated 24.04.2018, the records of the departmental proceedings were called for by this Court, and as such, the departmental proceedings could not be proceeded with by the respondents, even though, there were no specific orders staying the proceedings.

13. The factual aspects of the case as noted by this Court and also stated above by the learned counsels, needs no further discussion. The only issue raised by the petitioner in this petition is that, in initiating disciplinary proceedings only against him, he has been subjected to unequal treatment and discrimination, while his sub-ordinate WPSI P. Wahlang, who was assisting him in dealing with the complainants, when they had approached the police station to lodge their complaint has been let off.

14. I have perused the enquiry report, and the article of charges framed against the petitioner which reveal that materials exist, to warrant the initiation of the disciplinary proceedings, more so, when the integrity, devotion to duty are in question, apart from the allegation of failure to perform his legal duties as a Controlling Officer. More importantly, this is not a case where the petitioner is seeking a review or challenging the findings of a disciplinary proceedings but has come at a stage of initiation of the proceedings itself. This Court under its powers conferred by Article 226 of the Constitution of India, can interfere in the matter of disciplinary proceedings if the disciplinary/enquiry proceedings were conducted in violation of manner



prescribed, against the Principles of Natural Justice, the order is non speaking and unreasoned or the decision-making process is in violation of Rules or that the decision is without any evidence or suffers from malafide or malice or without jurisdiction. The instant case not coming within the scope of such situations, in my considered view, no interference is called for by this Court and the proceedings should be allowed to reach its logical conclusion, inasmuch as, the petitioner will undoubtedly be given adequate opportunity to defend himself in the proceedings.

15. With regard to the aspect of discrimination as alleged, this Court is not inclined to interfere with the decision of the respondents in not drawing up proceedings against the said WPSI P.Wahlang, as from the records of the articles of charge specifically Article IV, it has been recorded that she is only an attached Officer and not the Controlling or decision making officer of the police station, and that it was up to the Officer In-charge (petitioner) to give her advice and directions, which was not done so.

16. The decisions as relied upon by the counsels having only limited application are not discussed or referred to.

17. For the reasons aforementioned, the instant writ petition being devoid of merit is accordingly dismissed.

18. The records of the Departmental Proceeding No. 1 of 2018, to be transmitted back forthwith to the concerned respondent who is also expected to conclude the said proceedings at the earliest.

19. No order as to costs.

Judge

Meghalaya
06.12.2021
"D.Thabab-PS"