

APPELLATE CIVIL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

INSPECTOR-GENERAL OF POLICE, PUNJAB, CHANDIGARH,
ETC.,—Appellants.

versus

AMRIK SINGH,—Respondent.

L. P. A. No. 10 of 1972,

July 24, 1975

Punjab Police Rules, Volume II (1934)—Rule 16.3—Police constable tried for being in possession of illicit liquor—Prosecution giving up the only non-official witness as having been won over—Magistrate refusing to record the evidence of official witnesses in attendance and acquitting the accused—Such acquittal—Whether on 'technical ground' under Rule 16.3 (1) (a)—Superintendent of Police purporting to act under Rule 16.3(1) (b)—Disciplinary action not sustainable under the clause but sustainable under Rule 16.3(1) (a)—Such action—Whether valid.

Held, that where an accused, a permanent police constable, is tried on the charge of having been found in possession of illicit liquor but is acquitted by the Magistrate, without recording the evidence of the official prosecution witnesses on the ground that the only non-official witness in the case was stated to have been won over by the accused and thus not available to the prosecution, such acquittal is not only contrary to the procedure prescribed in the Code of Criminal Procedure but is also without jurisdiction. The Magistrate has no jurisdiction to refuse to record the evidence of the prosecution witnesses which the prosecution intends to produce and who are in attendance. Such a procedure is unheard of and is contrary to all canons of law relating to the procedure of a trial. In the case of such an acquittal of a police officer, the criminal charge against him fails on a 'technical ground' and disciplinary action can be taken against him under clause (a) of rule 16.3(1) of the Punjab Police Rules, 1934, Volume II.

(Paras 2 and 4)

Held, that if the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of that power. Where the disciplinary action taken by the Superintendent of Police purporting to exercise his power under clause (b) of rule 16.3(1) of the Rules is not sustainable, but can be sustained under clause (a) of rule 16.3 (1), such action is valid.

(Para 5)

Letters Patent Appeal under clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice R. S. Narula, dated 20th July, 1971, passed in C.W. No. 80 of 1969.

J. L. Gupta, Advocate-General, Punjab, *for the appellants.*

D. R. Puri, Advocate, *for the respondent.*

JUDGMENT

Judgment of the Court was delivered by :—

Tuli, J. This appeal under clause 10 of the Letters Patent is directed against the judgment of the learned Single Judge allowing the writ petition of Amrik Singh (C.W. No. 80 of 1969) by order dated July 20, 1971.

(2) Amrik Singh respondent was a permanent Constable who, on November 6, 1966, was alleged to have been carrying 4,500 millilitres of illicit liquor contained in a bladder in a cloth pack on the carrier on his cycle in the area of village Athali. This liquor was recovered from his possession by A.S.I. Malkiat Singh in the presence of Excise Inspector Kesho Dass and one Rattan Singh, a member of the public. The respondent was sent up for trial to the court of Shri Om Parkash Singla, Judicial Magistrate, First Class, Phagwara. At the trial, Rattan Singh was given up by the prosecution on the ground that he had been won over. The learned Judicial Magistrate refused to record the evidence of the other two witnesses that is, A.S.I. Malkiat Singh and Excise Inspector Kesho Dass, and acquitted the respondent. The observations of the learned Magistrate are reproduced below :—

“The prosecution gave up Ratna, the only public witness joined in the raid as having been won over by the accused and the fact is that he is not available to the prosecution in support of their case of recovery of liquor from the accused. *Kartar Singh v. State* (1), reports briefly a ruling of the Punjab High Court that no conviction can safely be recorded on the evidence of police officials when the public witness joined in the raid does not support the prosecution case. That principle applies even when the accused is a police employee and no conviction can be based on the evidence of Excise Inspector Kesho Dass and A.S.I. Malkiat Singh. In this situation, the evidence of the prosecution is closed and the accused acquitted. Liquor said to have been recovered be destroyed.

(1) 1966 P.L.R. 3:

**Inspector-General of Police, Punjab, Chandigarh; etc. v.
Amrik Singh (Tuli, J.)**

This order was passed on June 17, 1967, and the State did not file an appeal against acquittal or any other proceedings under the Code of Criminal Procedure, but the Superintendent of Police, Kapurthala, started disciplinary proceedings against the respondent under rule 16.3(1) of the Punjab Police Rules, 1934, Volume II, the relevant portion of which reads as under :—

“16.3(1) When a Police Officer has been tried and acquitted by a criminal Court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless—

(a) the criminal charge has failed on technical grounds; or

(b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over;
or

(c) * * * * *

(d) * * * * *

(e) * * * * *

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinate by the order of the Superintendent of Police but may be taken against Upper Subordinates only with sanction of the Deputy Inspector General of Police; and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab); Volume I; Part I.”

(3) A charge-sheet was issued to the respondent reading as under :

“That you were arrested by Shri Malkiat Singh A.S.I./C.I.A., Phagwara in case F.I.R. 383, dated 6th November, 1966

under section 61/1/14 Excise Act, P.C. Phagwara, in which a bladder in a cloth pack containing 4500 ml. illicit liquor was recovered from the carrier of your cycle in the presence of Excise Inspector Kesho Ram and one Ratna son of Bhana; caste Addharmi of village Authdi. You were sent up for trial and acquitted by Shri O. P. Singla, J.M.I.C., Phagwara, on 17th June, 1967 as the only public witness joined in the raid was given up as won over. The remaining two witnesses A.S.I. Malkiat Singh and Excise Inspector Kesho Ram were not examined by the Court. So, this case is covered by Police Rule 16.3”.

Shri Pritam Singh, District Inspector of Police, was appointed to enquire into the charge who submitted his report to the Superintendent of Police. On the basis of that report, the Superintendent of Police, Kapurthala, issued a show-cause notice to the respondent intimating that :—

“On a careful consideration of the finding and in particular of the conclusion arrived at by the enquiring officer in respect of the charges framed against you, I am provisionally of the opinion that penalty of dismissal should be imposed upon you.”

The respondent was called upon to show cause against the proposed action and in case he made any representation, it would be considered. The respondent was allowed ten days' time to submit his representation to the show-cause notice. The respondent submitted his explanation and after considering the same the Superintendent of Police passed an order on December 23, 1967, dismissing him from service. Against that order, the respondent filed an appeal which was dismissed by the Deputy Inspector-General of Police, Jullundur, Range, on March 29, 1968. He then filed a revision-cum-mercy petition to the Inspector-General of Police which was rejected on October 4, 1968, and the copy of that order was sent to the respondent on October 26, 1968. Thereafter, the respondent filed C.W. 80 of 1969, challenging the order of his dismissal passed by the Superintendent of Police and confirmed by the Deputy Inspector-General of Police and the Inspector-General of Police.

(4) It was urged before the learned Single Judge, that the Superintendent of Police, decided to hold departmental enquiry against

Inspector-General of Police, Punjab, Chandigarh; etc. v.
Amrik Singh (Tuli, J.)

the respondent on the ground that this acquittal was vitiated because Ratna had been won over, that is, the Superintendent of Police sought to take action under clause (b) and not clause (a) of rule 16.3(1) of the Punjab Police Rules. The learned Single Judge came to the conclusion that the Superintendent of Police did not form his own opinion as to the winning over of Ratna which led to the failure of the criminal charge against the respondent. We respectfully agree with the conclusion of the learned Single Judge on this point. He, however, expressly held that the criminal charge against the respondent could be said to have failed on a technical ground and the case was covered by clause (a) of rule 16.3(1), but the disciplinary action taken against the respondent could not be sustained because the Superintendent of Police did not act under that clause. We respectfully agree with the learned Single Judge, that the criminal charge against the respondent had failed on a technical ground because the Magistrate refused to record the evidence of the two prosecution witnesses, who were available and without recording their evidence expressed the opinion that he would not convict the respondent on their testimony. The result was that the available prosecution evidence was shut out by the Magistrate and the respondent was acquitted, not that no evidence had been led against him but because the Magistrate refused to record any evidence in the case. The acquittal of the respondent by the Magistrate, in these circumstances, was not only contrary to the procedure prescribed in the Code of Criminal Procedure, but without jurisdiction. The Magistrate had no jurisdiction to refuse to record the evidence that the prosecution intended to produce. It was not a case in which the prosecution was remiss in producing evidence and the Magistrate was not prepared to allow further opportunities. On the other hand, it was a case in which on the very first hearing the learned Magistrate refused to record the evidence of the prosecution witnesses, who were in attendance and closed the prosecution on the ground that whatever, the witnesses might say, he was not going to believe them. It is an unheard of procedure that the learned Magistrate adopted which is contrary all canons of law relating to procedure as to a trial. We, therefore, hold that in this case the criminal charge against the respondent failed on a technical ground and disciplinary action could be taken against him under clause (a) of rule 16.3(1) of the Punjab Police Rules, 1934.

(5) We, however, do not agree with the learned Single Judge that the disciplinary action taken by the Superintendent of Police could not

be sustained on the ground that he purported to exercise his power under rule 16.3(1)(b) and not rule 16.3(1)(a). It has been submitted before us by the learned counsel for the appellant-State that if the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question, as has been held by their Lordships of the Supreme Court in *J. K. Steel Ltd., v. Union of India and others* (2). Similar observations are to be found in *P. Balakotiah, v. Union of India and others* (3), *Afzal Ullah v. State of Uttar Pradesh and another* (4), and *Hukumchand Mills Ltd. v. The State of Madhya Pradesh and another* (5). It is unfortunate that these decisions of the Supreme Court were not brought to the notice of the learned Single Judge. The disciplinary action taken by the Superintendent of Police against the respondent can be traced to a legitimate source, that is rule 16.3(1) of the Police Rules and, therefore, cannot be quashed on the ground that he purported to exercise his power under clause (b) and not clause (a) thereof. As the impugned order of the Superintendent of Police, affirmed by the Deputy Inspector-General of Police and the Inspector-General of Police, can be sustained under clause (a) of rule 16.3(1) of the Police Rules, the learned Single Judge erred in quashing the same. It is significant to note that no attack was made before the learned Single Judge on the merits of the case nor has any such plea been raised by the learned counsel for the respondent before us that on merits the impugned order cannot be maintained. The arguments have been addressed only on the point of law noted above, that is, whether the disciplinary action, taken by the Superintendent of Police in purported exercise of his power under clause (b) of rule 16.3(1), can be sustained under rule 16.3(1) (a) when it is found that it is not sustainable under rule 16.3(1)(b). Our decision being against the respondent on that point, this appeal has to be allowed. The result is that this appeal is allowed, the judgment of the learned Single Judge is set aside and the writ petition of the respondent is dismissed. We, however, leave the parties to bear their own costs throughout.

B. S. G.

- (2) A. I. R. 1970 S. C. 1173.
- (3) A. I. R. 1958 S. C. 232.
- (4) A. I. R. 1964 S. C. 264
- (5) A. I. R. 1964 S. C. 1329.