

1960

*M/s. Madan
Mohan Damma
Mal Ltd.
& Another*

v.

*The State of West
Bengal & Another*

*Raghubar
Dayal J.*

that the mustard oil in the wagon which will be otherwise presumed to be stored for sale by the appellants, was not stored for sale.

We are therefore of opinion that the conviction of the appellants of the offence under s. 462 of the Act is correct. The appeal therefore stands dismissed.

Appeal dismissed.

1960

November 25.

THE STATE OF UTTAR PRADESH &
OTHERS

v.

AJODHYA PRASAD

(P. B. GAJENDRAGADKAR, A. K. SARKAR,
K. SUBBA RAO, K. N. WANCHOO and
J. R. MUDHOLKAR, JJ.)

Public Servant—Complaint of taking bribes against Police Officer—Magisterial enquiry into complaints—Departmental trial—Validity of—Police Act, 1861 (V of 1861), s. 7—U. P. Police Regulations, paras. 486, 489.

The respondent was posted as officer incharge of a police station when complaints were received by the District Magistrate that the respondent was receiving bribes. The District Magistrate got an enquiry made by the Sub-Divisional Magistrate and forwarded the report together with his own endorsement to the Superintendent of Police. The respondent was forced to go on 2 months leave and was reverted to his substantive post of Head Constable, but later he was promoted to the rank of officiating Sub-Inspector and posted at another police station. Meanwhile on further complaints an investigation was made and it was reported that the respondent was a habitual bribe taker. He was charged under s. 7 Police Act for 9 charges of bribery and after departmental trial was dismissed by the Superintendent of Police. He filed a Writ Petition before the High Court challenging the order of dismissal *inter alia* on the ground that the offences charged being cognizable offences the Superintendent of Police had no jurisdiction to hold the departmental trial without first complying with the provisions of para. 486(1) of the U. P. Police Regulations. The High Court accepted this contention and quashed the order of dismissal.

Held (per Sarkar, Subba Rao and Mudholkar, JJ.) that the subject matter of the magisterial enquiry and of the departmental trial was substantially the same and that the departmental trial was validly held. The fact that there was an interregnum between the magisterial enquiry and the departmental trial did not affect the question. Paragraph 486 did not apply to a case where a magisterial enquiry was ordered and a police officer could be departmentally tried under s. 7 Police Act after such magisterial enquiry.

1960
—
The State of Uttar Pradesh & Others
v.
Ajodhya Prasad

Per Gajendragadkar and Wanchoo, JJ.—The provisions of para. 486 were merely directory and even if there was non-compliance therewith the order of dismissal was not invalidated.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 270 of 1959.

Appeal by special leave from the judgment and order dated December 23, 1957, of the Allahabad High Court (Lucknow Bench) at Lucknow in Civil Miscellaneous Application (O. J.) No. 86 of 1954.

C. B. Aggarwala, G. C. Mathur and C. P. Lal, for the appellants.

Achhru Ram, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the respondent.

1960. November, 25. The Judgment of Sarkar, Subba Rao and Mudholkar, JJ., was delivered by Subba Rao, J., and that of Gajendragadkar and Wanchoo, JJ., was delivered by Wanchoo, J.

SUBBA RAO, J.—This is an appeal by special leave against the judgment and order of the High Court of Judicature at Allahabad, Lucknow Bench, allowing the petition filed by the respondent under Art. 226 of the Constitution.

Subba Rao J.

The facts are in a small compass and may be briefly stated. In the year 1933 the respondent was appointed a constable in U. P. Police Force; on December 1, 1945, he was promoted to the rank of head constable and in May, 1952 he was posted as officer incharge of Police Station, Intiathok, District Gonda. Complaints were received by the District Magistrate, Gonda, to the effect that the respondent was receiving bribes in the discharge of his duties. On September 16, 1952, the District Magistrate, Gonda, directed the Sub-Divisional Magistrate to make an enquiry in respect of the

1960

—
*The State of Uttar
 Pradesh & Others*
 v.

Ajodhya Prasad
 —

Subba Rao J.

said complaints. On November 3, 1952, the Sub-Divisional Magistrate, after making the necessary enquiries, submitted a report to the District Magistrate recommending the transfer of the respondent to some other station. On November 17, 1952, the District Magistrate sent an endorsement to the Superintendent of Police to the effect that the Sub-Divisional Magistrate had found substantial complaints against the integrity of the respondent, that he had also received such complaints and that his general reputation for integrity was not good, but that his transfer should, however, come after sometime and that in the meantime his work might be closely watched. On being called upon by the Superintendent of Police to submit an explanation for his conduct, the respondent submitted his explanation on November 29, 1952. On December 17, 1952, the respondent was forced to go on leave for two months. Before the expiry of his leave, he was reverted to his substantive post of head constable and transferred to Sitapur. On February 17, 1953, he was promoted to the rank of officiating Sub-Inspector and posted as Station Officer at Sidholi. On February 27, 1953, the Superintendent of Police made the following endorsement in his character roll:

“A strong officer with plenty of push in him and met with a strong opposition in this new charge. Crime control was very good but complaints of corruption were received which could not be substantiated. Integrity certified.”

Meanwhile on further complaints, the C.I.D. probed the matter further and on July 26, 1953, the Superintendent of Police, Investigation Branch, C.I.D., reported that the respondent was a habitual bribe-taker. On July 28, 1953, he was placed under suspension and on August 18, 1953, he was charged under s. 7 of the Police Act with remissness in the discharge of his duty and unfitness for the same inasmuch as while posted as a Station Officer, Police Station, Intiathok, he had been guilty of dishonesty, corruption and misbehaviour in that he had on nine occasions, particulars of which were given in the charge, accepted bribes. It may be mentioned that the magisterial inquiry

related to seven of the nine charges alleged against the respondent. The trial was conducted by the Superintendent of Police and the respondent submitted his explanation on September 12, 1953. The Superintendent of Police, who conducted the trial, examined many witnesses and found that seven out of the nine charges had been established. Thereafter he issued a notice to the respondent calling upon him to show cause why he should not be dismissed from the police force. On February 20, 1954, the respondent submitted his explanation and the Superintendent of Police, by his order dated February 22, 1954, dismissed the respondent from service with effect from the said date. The appeal preferred by the respondent to the Deputy Inspector General of Police was dismissed by his order dated June 2, 1954. Thereafter the respondent on August 5, 1954, filed a petition under Art. 226 of the Constitution before the High Court of Judicature at Allahabad, Lucknow Bench, for quashing the order of dismissal.

Before the High Court three points were raised, namely, (1) as the petitioner was officiating as Sub-Inspector of Police at the time of the departmental trial the Superintendent of Police had no power to dismiss him, since an order in such circumstances could only be made by a police officer senior in rank to a Superintendent; (2) the trial was vitiated by a number of serious irregularities; and (3) the specific acts with which the petitioner was charged were cognizable offences and, therefore, the Superintendent of Police had no jurisdiction to proceed with a departmental trial without complying with the provisions of sub-paragraph (1) of para. 486 of the Police Regulations. The learned Judges of the High Court held that the respondent was charged with committing cognizable offences and therefore sub-paragraph (1) of para. 486 governed the situation and that, as no case, as required by the said sub-paragraph, was registered against the respondent in the police station, the order of dismissal was invalid. They further held that the case was not covered by the first proviso to sub-paragraph (1) of para. 486, as, in their opinion, the information

1960

*The State of Uttar
Pradesh & Others*
v.
Ajodhya Prasad

Subba Rao J.

1960

—
*The State of Uttar
 Pradesh & Others*

v.

Ajodhya Prasad

—

Subba Rao J

about the commission of the offences was not in the first instance received by the Magistrate and forwarded to the police for inquiry. In view of that finding they found it unnecessary for them to express any opinion upon other arguments which had been advanced on behalf of the respondent. In the result they issued a writ in the nature of *certiorari* quashing the impugned orders. Hence the appeal.

Mr. C. B. Agarwala, learned counsel appearing for the appellants, raised before us the following points: (1) The Governor exercised his pleasure through the Superintendent of Police, and, as the Police Regulations were only administrative directions, the non-compliance therewith would not in any way affect the validity of the order of dismissal. (2) If the order of dismissal was held to have been made under the statutory power conferred upon the Superintendent of Police, the regulations providing for investigation in the first place under chapter XIV of the Criminal Procedure Code were only directory in nature, and inasmuch as no prejudice was caused to the respondent the non-compliance with the said regulations would not affect the validity of the order of dismissal. (3) The Superintendent of Police was authorized to follow the alternative procedure prescribed by subparagraph (3) of para. 486 and, therefore, the inquiry held without following the procedure prescribed by rule I was not bad. (4) As the magisterial inquiry was held in regard to practically all the charges, the subject matter of the departmental trial, the case is not covered by the provisions of para. 486 of the Police Regulations.

In the case of *The State of U. P. v. Babu Ram Upadhya* (1) in which we have just delivered the judgment, we have considered the first three points and for the reasons mentioned therein we reject the first three contentions.

The appellants must succeed on the fourth contention. From the facts already narrated, the conduct of the respondent, when he was officer incharge of the Police Station, Intiathok, was the subject-matter of

(1) Civil Appeal No. 119 of 1959; [1961] 2 S.C.R. 679.

magisterial inquiry. The Sub-Divisional Magistrate made inquiry in respect of seven of the charges which were the subject-matter of the departmental trial and submitted a report to the District Magistrate. The District Magistrate, in his turn, made an endorsement on the report and communicated the same to the Superintendent of Police recommending the transfer of the respondent and suggesting that in the meanwhile the work of the respondent might be closely watched. Though the Superintendent of Police gave at first a good certificate to the respondent, in respect of the same a further probe was made through the C.I.D. Thereafter the Superintendent of Police conducted a departmental trial in respect of the aforesaid seven charges and two other new charges of the same nature. The inquiry ended in the dismissal of the respondent. In the circumstances it would be hyper-technical to hold that there was no magisterial inquiry in respect of the matter which was the subject-matter of the departmental trial. On the said facts we hold that the departmental inquiry was only a further step in respect of the misconduct of the respondent in regard whereto the magisterial inquiry was held at an earlier stage. If so, the question is whether para. 486 would govern the present inquiry or it would fall outside its scope.

1960

The State of Uttar Pradesh & Others
 v.
Ajodhya Prasad

Subba Rao J.

The relevant provisions of the Police Regulations read:

Paragraph 486: "When the offence alleged against a police officer amounts to an offence only under s. 7 of the Police Act, there can be no magisterial inquiry under the Criminal Procedure Code. In such cases, and in other cases until and unless a magisterial inquiry is ordered, inquiry will be made under the direction of the Superintendent of Police in accordance with the following rules;"

.....
Paragraph 489: "A police officer may be departmentally tried under section 7 of the Police Act—

- (1) after he has been tried judicially;
- (2) after a magisterial inquiry under the Criminal Procedure Code;

1960

—
*The State of Uttar
 Pradesh & Others*
 v.

Ajodhya Prasad

—
Subba Rao J.

(3). after a police investigation under the Criminal Procedure Code or a departmental enquiry under paragraph 486 III above.”

A combined reading of these provisions indicates that para. 486 does not apply to a case where a magisterial inquiry is ordered; and that a police officer can be departmentally tried under s. 7 of the Police Act after such a magisterial inquiry. In this case the departmental trial was held subsequent to the completion of the magisterial inquiry and therefore it falls within the express terms of para. 489(2). The fact that in the interregnum the police received further complaints or that the C.I.D. made further enquiries do not affect the question, if substantially the subject-matter of the magisterial inquiry and the departmental trial is the same. In this case we have held that it was substantially the same and therefore the departmental trial was validly held. We, therefore, set aside the order made by the High Court. As we have pointed out earlier, the High Court, in the view taken by it, did not express its opinion on the other questions raised and argued before it. In the circumstances, we remand the matter to the High Court for disposal in accordance with law.

The costs of this appeal will abide the result.

WANCHOO, J.—We have read the judgment just delivered by our learned brother Subba Rao J. We agree with the order proposed by him. Our reasons for coming to this conclusion are, however, the same which we have given in C.A. 119 of 1959, *The State of Uttar Pradesh v. Babu Ram Upadhya*.

Appeal allowed. Case remanded.
