

- 10 -

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.1184/98

New Delhi, this the 4th day of August, 2000

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Sunil Kumar Sharma, S/O Sh. K.D.Sharma,
R/O E-102, Street No.5, Krishna Nagar,
New Delhi.

.....Applicant.

(By Advocate: Sh. M.M.Sudan)

Versus

1. Govt. of N.C.T. of Delhi through, Lt. Governor, Raj Niwas, Delhi.
2. Commissioner of Police, Delhi Police Hqrs., ITO Complex, New Delhi.
3. Addl. Commissioner of Police, Southern Range, Delhi Police Hqrs., ITO Complex, New Delhi.
4. Dy. Commissioner of Police, Departmental Enquiry/Vigilance Cell, Defence Colony, New Delhi.

....Respondents

(By Advocate: Sh. Anil Kr.Chopra, learned counsel through Sh. R.K.Singh, learned proxy counsel)

O R D E R

Hon'ble Mr. S.A.T. Rizvi, Member (A):

Inspector Sunil Kumar Sharma of Delhi Police has been penalised by order dated 15.3.96 and the appeal preferred by him against the punishment order has been rejected by the Commissioner of Police vide order dated 15.7.97. By virtue of the punishment order, the pay of the applicant has been reduced by two stages in the time scale of pay for a period of two years with immediate effect, and it has been directed that he would not earn any increment of pay during the period of reduction and further that the expiry of the said period of reduction will have the effect of postponing his future increments.

2

The applicant has challenged the aforesaid orders by filing this OA and has prayed for quashing and setting aside of the aforesaid orders with consequential benefits in terms of salary etc.

2. The relevant facts in brief are that while dealing with the case of unnatural death of a married woman on 11.9.94, the applicant (Inspector) registered a F.I.R. No.294/94 on 12.9.94 under Section 498-A/304-B/34 IPC, whereas the respondents have held that instead of Section 304-B IPC, the applicant Inspector should have applied Section 302 IPC. The charge is that the applicant did so, i.e., applied Section 304-B IPC instead of Section 302 IPC dishonestly and maliciously in collusion with the in-laws of the deceased lady (Smt. Reema) and it amounted to gross misconduct and remissness in the discharge of official duties on the part of the applicant Inspector and further that the said conduct was unbecoming of a Police Officer. According to the summary of allegations dated 19.4.95 served on the applicant, he should have charged the accused in the instant case with murder (Sec. 302 IPC) having regard to the information available in the medico legal report prepared at the Holy Family Hospital indicating the presence of pressure marks over the neck, the observations contained in the report of the SDM indicating bruises/ injury around the neck, and the Post Mortem report also indicating extravation on the left/right side of the neck of the deceased and the cause of Reema's death as asphyxia on account of strangulation.

2

(3)

3. In the charge memo dated 19.6.95, the respondents have, in addition to the abovementioned allegations, referred to yet another charge, namely, that of demanding and accepting Rs.5000/- as illegal gratification from the father (Surinder Singh) of the deceased lady (Smt. Reema) in order to help the said father in getting back "Stri dhan" of the deceased lady from the house of the son-in-law (Mukesh) and Mukesh's father.

4. The respondents had ordered a preliminary vigilance enquiry into the matter and, based thereon, a regular D.E. was ordered on 3.4.95. The Enquiry Officer (for short EO) submitted his report and findings on 29.9.95 and, finally, the applicant was found guilty and punished, as already stated, vide respondent's order dated 15.3.96. The respondents have stated that during the course of the departmental proceedings, adequate and fair opportunity was afforded to the applicant and the prescribed procedure was properly followed. Similarly, the prescribed procedure was also followed at the stage of disposal of the appeal filed by the applicant which was turned down, as mentioned above, vide respondent's order dated 15.5.97.

5. We have heard the learned counsel for both the parties and have perused the material on record.

6. The learned counsel for the applicant has applicant has forcefully argued that, in the circumstances of this case, the applicant did not commit

2

(4)

any mistake "dishonestly and maliciously" in applying Section 304-B IPC instead of Section 302 IPC. The learned counsel has drawn our attention to the facts on record which reveal that in the initial statement of the father of the deceased lady dated 11.9.94, there is nothing at all to indicate that Smt. Reema (deceased) was murdered by her husband or father-in-law or by anyone else. The deceased was brought dead to the Holy Family Hospital in the early hours of 11.9.94 and the father of the deceased turned up in the afternoon that day to say that he found his daughter's dead body in the Holy Family Hospital and that the persons responsible for her death were her husband (Mukesh), her father-in-law (Ajit Singh), her mother-in-law and her younger sister-in-law and the reason was non-fulfilment of the ever increasing demand for dowry. The deceased's father (Surender Singh) had nothing at all to say about the actual cause of death. The SDM of the area turned up on 12.9.94 and prepared an inquest report and that very day the body of the deceased was subjected to post-mortem. In his statement, recorded by the said SDM on 12.9.94, the father of the deceased again did not throw any light on the actual cause of death of his daughter and simply stated that he had a doubt that his daughter was done to death by her husband (Mukesh) and the father of Mukesh. Of course, the medico legal report prepared at the Holy Family Hospital had indicated the presence of pressure marks over the neck of the deceased and, as already mentioned, the SDM had also observed bruises/injury on and around the neck, and the post-mortem report too had revealed extravasation on the left/right side of the neck

d

(5)

of the deceased and the cause of Reema's death as asphyxia on account of strangulation. The respondent's case is that in the light of the evidence contained in the aforesaid medico legal report, the observations of the SDM and the post-mortem report, it was a clear case of murder and nothing else, and, honestly going, the Inspector (applicant) should have applied Section 302 IPC.

7. The learned counsel for the applicant has built up a seemingly strong theory of defence by pointing out that the other Inspector, who finally investigated the concerned criminal case, also did not disagree with the application of Section 304-B IPC, and later, the ACP of the CAW Cell and also the Chief Prosecutor went along with the application of same Section of the IPC, and further, a little later, the learned Addl. Session Judge also charged the accused persons under Section 304-B IPC etc. He has also mentioned that soon after the occurrence of the crimes of murder etc., special reports are submitted to the senior police officers and the same procedure was followed in this case. However, no authority, senior to the applicant, indicated any change in the Section of the IPC applied by him at any stage.

8. We have given our careful thought to the matter and have come to the conclusion that in order to decide this OA, it should not be necessary for us to go into the finer aspects of the legal question raised by the learned counsel for the applicant and try to pronounce on which particular Section of the IPC could or

dr

(6)

should have been applied by the Inspector in the circumstances of this case. A judgement on such an issue, before a competent law court gives its verdict, is necessarily to be made by the Officers of the Police responsible for registration, investigation etc. of crimes. We are also aware that while the Courts do exercise proper care at the stage of framing of charge in criminal cases, nothing can prevent a competent criminal court from punishing an accused person finally under a Section of the IPC different from the Section or Section applied earlier at any stage or at the stage of the framing of charge. Thus, in this view of the matter, the authority to apply one Section of the IPC or the other resides elsewhere and we cannot involve ourselves in this exercise. Nevertheless from a perusal of the OA, filed by the applicant, we find that the applicant (Inspector) on reaching the Holy Family Hospital, where the body of the deceased lady was lying, met the deceased's father-in-law (Ajit Singh), who told him that the deceased had suffered colic pain in her abdomen, and so they had rushed Reema (deceased) to the Hospital from their residence in Village Madanpur Khader, but unfortunately she was declared as brought dead. This admission on the part of the applicant is important and we are inclined to think that the applicant (Inspector) should have carefully weighed the situation in the light of this admission. Without deciding the question of application of this or that Section of IPC in the manner argued by the learned counsel for the applicant, we would merely like to say in passing and not conclusively that, prima-facie, the facts and circumstances of this case, as

dr

revealed in the aforesaid admission on the part of the applicant, the medico legal report prepared at the Holy Family Hospital, the statement dated 11.9.94 of the deceased's father, the SDM's report and the post-mortem report, were such as could lead to the conclusion that the accused persons had murdered the deceased (Reema) and, therefore, the applicability of Section 302 IPC could as well have been thought of. This is because the medico legal report etc., referred to above, could never reveal bruises on and around the neck of the deceased and could not lead to the conclusion that death was caused due to asphyxia on account of strangulation, if the deceased had actually been suffering from colic pain in the abdomen as per the statement of the deceased's father-in-law quoted in the OA. We find it difficult to brush aside the above conclusions even though we would like strongly to desist the temptation of finally pronouncing on the propriety of application of 302 IPC and alternatively of 304-B IPC. The learned counsel for the applicant has brought out the advantages, comparatively speaking, of applying Section 304-B IPC by saying, inter alia, that Section 304-B IPC shifts the onus to the accused person whereas in the case of Section 302 IPC, the onus remains with the State (Police). This aspect of the matter has a bearing on the public policy and the intricacies of law making and we refuse to be dragged into these arguments.

9. The learned counsel for the applicant has also stated that adding of the charge of bribery at the stage of framing of charge in the departmental proceedings,

much after the summary of allegations had been served on the applicant, is bad in law. The respondents have, however, mentioned that it was necessary to include the charge of bribery as it was necessarily linked up with the other charge of applying Section 304-B IPC (instead of Section 302 IPC) dishonestly and maliciously. We are not really concerned about this aspect inasmuch as due and full opportunity has been afforded to the applicant to meet this charge also alongwith the other. The question of delayed FIR has also been raised by the learned counsel for the respondents. The event took place in the early hours of 11.9.94 but the FIR was registered in the evening of 12.9.94. This delay of about one day is sought to be explained by the applicant (Inspector) on the ground that the post-mortem of the deceased could take place only on 12.9.94 (11.9.94 being a Sunday) and the SDM of the area could also become available for preparing the inquest report and for performing the other related duties on 12.9.94. We think that the matter does not require any further explanation, and we can safely leave this question to be finally decided by the competent law court and keeping in view the facts and circumstances of this case ignore the impact of the aspect of delay in so far as a decision on this OA is concerned.

10. The applicant has taken pains to point out in the modified appeal filed by him before the Commissioner of Police on 9.8.96 that the post-mortem report, the details of which have been relied upon by the respondents, was not available with him when he

registered the FIR. We are not impressed by this defence. If the hands of the applicant (Inspector) were clean, he could instead say and say it clearly enough that he had not seen the post-mortem report and had not known its details before he registered the FIR. That is not what he has, in fact, stated. In the same modified appeal, the applicant (Inspector) has again gone on to add much to the same effect that he has been punished for not taking action on the post-mortem report which was in his possession only for some time after the FIR had been registered. According to the applicant, this particular issue was not a part of the D.E. nor a part of the enquiry and consequently, the applicant had no opportunity to defend himself against this allegation. This aspect of the matter should, therefore, not have been considered at the time of imposing punishment on the applicant. Here again, we see a problem in that in the order dated 3.4.95 which initiated the departmental action against the applicant (Annexure A-7), there is a clear mention that the applicant (Inspector) acted in utter disregard of the post-mortem report etc. and, later, the same thing has been repeated in the summary of allegations dated 17.4.95 served on the applicant. The applicant is, therefore, not in a position, according to us, to assert with any degree of credibility that he was not at all aware of the above-mentioned situation and was, therefore, unable to defend himself properly.

11. Quoting from the Enquiry Officer's report and the order of the Disciplinary Authority, the applicant, *Dr* in his modified appeal, has attempted to emphasise that

(10)

applying of this or that Section of the IPC in the circumstances of the case, is at best a matter of opinion and it is against the rules of natural justice to penalise him on the strength of an opinion expressed by the E.O. or the Disciplinary Authority in this respect. According to us, it is sheer quibbling and cannot lend any strength to the applicant's case.

12. The applicant has relied on the judgement of the Hon'ble Supreme Court in the case of M/s. Mahabir Prasad Santosh Kumar Vs. State of U.P. & Ors., (AIR 1970 SC 1302) and has stated that the orders of the Disciplinary Authority etc. should be self-contained, speaking and reasoned ones, so as to ensure that the decision reached is according to law and is not a result of caprice, whim, fancy or reached on grounds of policy or expediency. In the background of the aforesaid judgement, the applicant has pointed out that the Disciplinary Authority has failed to pin him down on any act of omission or commission in the manner stated in the order dated 15.3.96 of the Disciplinary Authority. He has, therefore, contended that the statement of the Disciplinary Authority contained in its order dated 15.3.96 to the effect that the applicant, by his deliberate acts of omission and commission and by suppression/ not allowing of valuable evidence surface at the initial stage, has succeeded in putting the investigation on a wrong track from the beginning, is not well-founded and cannot be said to be just and proper. We cannot accept this argument as the deficiency in the

dr

conduct of the applicant has been clearly brought out at all stages of the proceedings.

13. Referring to the charge of acceptance of illegal gratification, it has been stated that, in respect of it, a separate criminal case is pending in court under the relevant Sections of the Prevention of Corruption Act, 1988. The applicant has stated that his trial on the same charge in the departmental proceedings is against settled law and, in this context, has pointed to the provisions of Article 22 of the Constitution which provides that no one can be put in peril twice for the same offence. He has raised the same issue of double punishment again by referring to the penalty imposed on him by the Disciplinary Authority in the following terms:-

".....I hereby order that two years' approved service of Inspector, Sunil Kumar be forfeited for the lapses proved. Accordingly, the pay of Inspector, Sunil Kumar is reduced by two stages from Rs.2300/- PM to 2180/- PM in the time scale of pay for a period of two years with immediate effect. He will not earn increment of pay during the period of reduction and on expiry of this period, the reduction will have the effect of postponing his future increment of pay."

In regard to the latter plea taken by the applicant, we cannot do better than referring to the judgement of the Full Bench of this Tribunal in A.S.I. Chander Pal Vs. Delhi Administration & Anr. (OA-2225/93) decided on 18.5.99, according to which the said plea has to be rejected. The former plea stemming from Article 22 of

the Constitution also runs counter to long settled law and must accordingly be rejected.

14. In regard to the contents of the medico legal report prepared in the Holy Family Hospital and the SDM's report together with the post-mortem report, we would like to point out that the learned counsel for the respondents was not able to produce these in original nor has given copies thereof. We have, therefore, relied on whatever has been stated about the contents of these reports in the order initiating deptt. enquiry, and in the summary of allegations etc. copies of which are available in the record of the OA.

15. The sum total of the detailed discussions outlined in the preceding paragraphs. is our verdict against the OA. We would like to repeat that, even though purely on a prima facie, we have also felt that there was some justification for applying Section 302 IPC instead of Section 304-B IPC, yet we, in this Tribunal, should generally go by the judgement of the Disciplinary Authority (Police) in such matters. We must, however, in any case ensure that the departmental proceedings are gone into in accordance with the prescribed procedure and that the applicant is afforded full opportunity to state his defence, and further that the requirements of natural justice are also fully met. We are satisfied on these counts and have not discovered any malice or perversity either in this case.

d

16. In the result, the OA fails and is dismissed without any order as to costs.

17. From the OA, it appears that the applicant had filed a revision petition before the Lt. Governor on 10.5.98 and the same which is pending disposal. We would like the Lt. Governor (Respondent No.1) to dispose of the revision petition within three months from the date of receipt of a copy of this order and he can do so without prejudice to the contents of this order. No order as to costs.

d

dr

(S.A.T.RIZVI)
MEMBER (A)

Lakshmi Swaminathan

(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

/sunil/