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of Criminal Procedure in so far as "that section relates to s. 27 of the Indian Evidence Act", are *intra vires* and do not offend Art. 14 of the Constitution. The order of the High Court acquitting the respondent is also set aside and the order of the Court of Sessions convicting the accused (respondent) under s. 302 of the Indian Penal Code and sentencing him to death is restored.

*Appeal allowed.*

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July 1.

## BHAGAT SINGH

*v.*

## THE STATE OF PUNJAB

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA, and J. C. SHAH, JJ.)

*Government Servant—Dismissal—Member of subordinate rank of police forces—Police officer committing offence—Departmental enquiry and dismissal—Validity—Dismissal from service without fresh show cause notice—Legality—Police Act, 1861 (V of 1861), ss. 29, 35—Government of India Act, 1935 (25 & 26 Geo. 5, Ch. 42), ss. 240(3), 243.*

The appellant, who was employed in the Punjab Police, was found while working as a Police Censor to have detained certain letters illegally and later to have made use of copies and photographs of them for blackmail. He was consequently reverted to his substantive post of head constable on January 14, 1944. Thereafter an enquiry was started against him by the Superintendent of Police and eventually he was dismissed from service on January 25, 1944. His representations to higher authorities having failed he instituted a suit challenging the legality of the order of dismissal on the grounds, inter alia, (1) that s. 240(3) of the Government of India Act, 1935, had not been complied with, and (2) that as the appellant was alleged to have committed a criminal offence the Superintendent of Police could not hold a departmental enquiry in respect of such allegations in view of ss. 29 and 35 of the Police Act, 1861.

*Held* : (1) that s. 243 of the Government of India Act, 1935,

which was a special provision with regard to the subordinate ranks of police forces in India, excluded the operation of s. 240(3) of the Act to the appellant, who was, therefore, governed by the conditions of service as provided under the Police Regulations, and that the substance of s. 240(3) which was brought into the Police Regulations in September 1946 long after the appellant had been dismissed was not applicable to him. Accordingly, he was not entitled to the second notice, under s. 240(3), giving him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

*North-West Frontier Province* v. *Suraj Narain Anand* [1948] F.C.R. 103 and *High Commissioner for India and High Commissioner for Pakistan* v. *I. M. Lal*, [1948] F.C.R. 44, referred to.

(2) that the provisions of the Police Act, 1861, relating to offences committed by a police officer above the rank of a constable do not bar a departmental enquiry in respect of a matter where it is also possible to prosecute such an officer under that Act.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 349 of 1957.

Appeal by special leave from the judgment and decree dated November 29, 1954, of the Punjab High Court in Regular Second Appeal No. 891 of 1951.

*Hardayal Hardy* and *N. N. Keswani*, for the appellant.

*N. S. Bindra* and *D. Gupta*, for the respondent.

1960. July 21. The Judgment of the Court was delivered by

*Wanchoo J.*

WANCHOO J.—This is an appeal by special leave against the judgment of the Punjab High Court in a service matter. The brief facts necessary for present purposes are that the appellant was appointed as a foot-constable in 1931 in the Punjab Police and was dismissed on January 25, 1944. Shortly before, he was acting as an Assistant Sub-Inspector and actually working as a Police Censor. The charge against him was that while he was working as Police Censor, he detained certain letters illegally and had copies and photographs made of them and later used these copies and photographs for blackmail. He was consequently reverted to his substantive post of head constable on

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January 14, 1944. Thereafter on January 21, 1944, an enquiry was started against him by the Superintendent of Police and he was eventually dismissed. He went in appeal to the Deputy Inspector General of Police, which was dismissed. He then went in revision to the Inspector General of Police, which also failed. Finally he made several representations and memorials to the Punjab Government but without avail. Consequently the present suit was filed by the appellant in February 1949. The plaint as originally filed, after narrating the facts relating to the appellant's service, merely stated that the charge of misconduct was brought against the appellant on account of enmity and that the departmental enquiry made by the Superintendent of Police was arbitrary and not according to law, rules and regulations prescribed for the same. Besides this vague general allegation, the only specific grievance made out by the appellant in the plaint was that the Superintendent of Police had dismissed him without recording his defence evidence and without giving him an opportunity to produce the same. The appellant amended the plaint later and added one more grievance, namely, that he had been appointed by the Deputy Inspector General of Police and could only have been dismissed by him and not by the Superintendent of Police. As to the Departmental enquiry, certain further defects therein were pointed out besides the allegation already made that his defence had not been taken and that he had not been given an opportunity to produce it. Those further defects were (i) that he was not permitted to engage counsel, (ii) that he was not allowed full opportunity to cross-examine the prosecution witnesses, and (iii) that he was not asked by the enquiry officer to state what he had to say in answer to the charge against him and was not permitted to file a written-statement explaining the alleged incriminating circumstances against him.

The suit was opposed on behalf of the Punjab Government and among others their main defence was that the enquiry was in accordance with the

Regulations and was not arbitrary. It was also denied that no opportunity had been given to the appellant to lead defence evidence or to cross-examine prosecution witnesses or to make his own statement in answer to the charge. It was admitted that permission was refused to engage a counsel; but it was finally averred that taking the enquiry as a whole there was no such defect in its conduct as to invalidate it or call for interference by the courts.

Three issues, all of a general nature, were framed by the trial court, namely—

1. Whether the plaintiff's dismissal is void, illegal, inoperative and wrongful and what is its effect?

2. Whether the Civil Courts have jurisdiction to entertain the suit or to go into the question of the validity of the departmental enquiry?

3. Whether the suit for a declaration lies and is competent and why?

It is unfortunate that the specific points raised by the appellant whatever they were were not made the subject-matter of specific issues. However, the trial court came to the conclusion that the case of the appellant was governed by s. 240(3) of the Government India Act, 1935; and it was reinforced in this conclusion by the Police Regulations which, according to it, provided for the same safeguards as were contained in s. 240(3).

It therefore held that as s. 240(3) had not been complied with, the dismissal was void and illegal. As to the other two issues relating to the jurisdiction of civil courts they were decided in favour of the appellant.

There was an appeal to the District Judge by the Punjab Government. The District Judge agreed with the conclusions of the trial court on the applicability of s. 240(3) to the case of the appellant and further referred to an amendment in the Police Regulations which required that before an order of dismissal or reduction in rank is made, the officer to be punished shall be produced before the officer empowered to punish him and shall be informed of the charges

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proved against him and called upon to show cause why an order of dismissal or reduction in rank should not be passed. The District Judge was conscious that this amendment in the Regulations was made in September 1946 long after the dismissal of the appellant and therefore would not apply to the appellant's case; but he overruled this contention on the ground that the rule was merely declaratory of the law and only removed the ambiguity that might have arisen because of s. 243 of the Government of India Act. He therefore dismissed the appeal.

Then followed a second appeal by the Punjab Government to the High Court. The High Court held that s. 240(3) did not apply to the case of the appellant and that s. 243 was the governing section. In consequence the High Court further held that the appellant was not entitled to the protection of s. 240(3) and as the amendment to the Police Regulations which brought in the substance of s. 240(3) therein was made after the dismissal of the appellant, he could not take advantage of it. As to the enquiry, the High Court held that though there might have been minor procedural defects in the enquiry it was on the whole substantially in accordance with the Regulations and principles of natural justice and could not therefore be held to be invalid. The High Court pointed out that there was no serious contravention of the Regulations and the witnesses who had appeared were cross-examined by the appellant who was also called upon to produce his defence within 48 hours. He however did not choose to do so and wanted a postponement which was refused and thereafter the Superintendent of Police proceeded to dismiss him.

Learned counsel for the appellant challenges the correctness of the view taken by the High Court and three points have been urged on his behalf before us, namely, (1) s. 240(3) of the Government of India Act applied to police officers of subordinate rank and there was nothing in s. 243 which took away from such officers the protection of s. 240(3); (2) Even if the Police Regulations alone applied, there was such violation of the relevant regulations as to vitiate the enquiry

proceedings; and (3) The Superintendent of Police could not hold a departmental enquiry as a criminal offence had been committed; and reliance in this connection was placed on ss. 29 and 35 of the Police Act, No. V of 1861.

*Re. (1).*

Section 243 of the Government of India Act appears in Chapter II of Part X dealing with 'Civil Services'. That Chapter begins with s. 240 and sub-s. (3) thereof provides that no member of a civil service or holding any civil post in India shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Section 243 however is in these terms:—

"Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Act relating to those forces respectively."

Obviously s. 243 was a special provision with regard to subordinate ranks of police forces in India and it is not in dispute that the appellant belonged to the subordinate ranks. Therefore according to s. 243, the conditions of service of the subordinate ranks are governed by or under the Acts relating to police forces and s. 240(3) can have no application to them. The *non obstante* clause of s. 243 makes it clear that so far as the subordinate ranks of police forces in India are concerned, s. 243 will apply and not the earlier provisions including s. 240(3). We are therefore of opinion that in view of the special provisions in s. 243 relating to the subordinate ranks of police forces in India (to which the appellant undoubtedly belonged), s. 240(3) would have no application. We may in this connection refer to the judgment of the Privy Council in *North-West Frontier Province* v. *Suraj Narain Anand* (1), where it was held that the *non obstante* clause in s. 243 excluded the operation of s. 240(2) in the case of subordinate ranks of police forces in India and that conditions of service included the right of dismissal.

(1) [1948] F.C.R. 103.

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That case dealt with s. 240(2) but the same reasoning would in our opinion apply to s. 240(3). As has already been pointed out by the learned District Judge, the substance of s. 240(3) was brought into the Police Regulations in September 1946 long after the appellant had been dismissed and would therefore not apply to the appellant. He would therefore not be entitled to the second notice under s. 240(3) as explained in *I. M. Lall's case* by the Privy Council: (See *High Commissioner for India & High Commissioner for Pakistan* v. *I. M. Lall* (1)). Nor was such notice necessary under the Police Regulations as they existed at the time of the appellant's dismissal. The view taken by the High Court under the circumstances is correct.

*Re.* (2).

So far as violation of the material provisions of r. 16.24 of the Police Regulations is concerned, we find that only three specific allegations material for the purpose were set out by the appellant, namely, (i) that he was not given the chance to defend himself, (ii) that he was not allowed to cross-examine the prosecution witnesses, and (iii) that he was not allowed to explain the circumstances appearing against him and was not allowed to file a written statement. It is enough in this connection to say that he was certainly given a chance to produce defence but did not himself avail of it. It also appears as found by the High Court that the witnesses were cross-examined by the appellant at length and on the whole there is nothing to show that he was not allowed to explain the circumstances appearing against him. We therefore agree with the High Court that there is no such serious contravention of the Regulations as to call for interference by the Courts.

*Re.* (3).

Reliance in this connection is placed on ss. 29 and 35 of the Police Act. Section 29 provides for penalties for neglect of duty etc. by police officers and lays down the extent of punishment on conviction by a magistrate. Section 35 defines what magistrate can try a

(1) [1948] F.C.R. 44.

charge against a police officer above the rank of a constable under the Police Act and such a magistrate has to be a First Class Magistrate. These sections nowhere exclude departmental enquiry. All that they lay down is that where an offence punishable under the Police Act is committed by a police officer above the rank of a constable and is to be tried by a court of law it has to go before a First Class Magistrate. That, however, does not mean that no departmental enquiry can be held with respect to a matter where it is also possible to prosecute a police officer under the Police Act. There is no force in this contention also and it is hereby rejected.

The appeal therefore fails and is hereby dismissed, but in the circumstances of this case we pass no order as to costs.

*Appeal dismissed.*

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M/s. GUDUTHUR BROS.

*v.*

THE INCOME-TAX OFFICER, SPECIAL CIRCLE, BANGALORE.

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

*Income-tax—Assessment—Penalty—Imposition by Income-tax Officer without reasonable opportunity given to assessee of being heard—Order set aside on appeal and refund directed—No express order of remand—Continuance of proceedings by the Income-tax Officer—Legality—Indian Income-tax Act, 1922 (11 of 1922), ss. 28 (1)(a) and 28(3).*

The appellants failed to file their return within the prescribed time and on a notice issued under s. 28(1)(a) of the Indian Income-tax Act, 1922, to show cause why penalty should not be imposed on them, they filed a written reply. Without affording them an opportunity of being heard as required by s. 28(3) of the Act the Income-tax Officer imposed a penalty on them. On appeal the Appellate Assistant Commissioner set aside the order and directed refund of the penalty. Thereafter the Income-tax Officer issued a further notice giving an opportunity to the appellants of being heard. The appellants objected to this notice and