

(35) In C.W. No. 4436 of 1971, Mr. Ahluwalia, the learned counsel for the petitioners has submitted that the bye-law in question was bad on account of the reason that the order in writing suggesting the alteration in bye-law was not served on the Committee by registered post. The petition, however, does not contain any such averment. Shri Kuldip Singh, learned counsel for the Board, has produced a copy of the letter No. 6510-75 dated May 25, 1971, which was sent to the Market Committee under registered cover and which contained the suggestion regarding the amendment of bye-laws. On seeing this letter, the learned counsel did not press his arguments any further.

(36) No other point was urged by any of the counsel appearing for the petitioners.

(37) In view of what has been stated above, these petitions fail and are dismissed but without any order as to costs.

SANDHAWALIA, J.—I agree.

K.S.K.

APPELLATE CRIMINAL

Before Pritam Singh Pattar and Muni Lal Verma, JJ.

THE STATE OF HARYANA,—Appellant

versus

PHULA RAM,—Respondent.

Criminal Appeal No. 1174 of 1968.

April 3, 1974.

East Punjab Essential Services Maintenance Act (XIII of 1947)—Sections 5 and 7—Code of Criminal Procedure (Act V of 1898)—Sections 190(1) and 200(aa)—Indian Evidence Act (1 of 1872)—Sections 56 and 57(7)—Police Act (V of 1861)—Sections 22 and 29—Complaint filed by a Gazetted Officer authorised by the State Government in that behalf—Such complaint—Whether to be proved and exhibited—Police constable proceeding on leave

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but not joining duty on its expiry—Applications for extension of his leave refused and still not joining duty—Such constable—Whether guilty of an offence within the meaning of section 5(b), Essential Services Maintenance Act—Action of the Constable—Whether falls under section 29, Police Act

Held, that section 56 of the Evidence Act, 1872 lays down that no fact of which the Court will take judicial notice need be proved. Section 57 clause (7) says that the Court shall take judicial notice of the accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette. The appointment etc. of all Gazetted Officers are published in the Official Gazette of the State. Thus where a complaint is made by a Gazetted Officer authorised by the State Government and in the discharge of his official duties, it is not necessary to examine him regarding the facts mentioned therein and to prove the complaint and exhibit it. (Para 7).

Held, that where a police constable proceeds on leave and thereafter makes applications for extension of leave which are not granted and still absents from duty, he cannot be said to have abandoned his employment. He also cannot be said to have absented himself from work because no work had been assigned to him as he had proceeded on leave. Since no work has been assigned to him, the question of his absenting himself from work within the meaning of section 5 clause (b) of East Punjab Essential Services Maintenance Act, 1947, does not arise. He is, therefore, not guilty of an offence under section 7 of the Act. At the most his action is neglect of duty within the meaning of section 29 of the Police Act because he has proceeded on leave and failed to report himself to duty on the expiration of such leave without reasonable cause. (Para 10).

Appeal from the order of Shri K. L. Nagpal, Chief Judicial Magistrate, Jind, dated the 31st July, 1968 acquitting the respondent.

D. D. Jain, Advocate for Advocate-General, Haryana, for the appellant.

M. R. Agnihotri, Advocate, for the respondent.

JUDGMENT

PATTAR, J.—This is an appeal filed by the State of Haryana against the judgment dated 31st July, 1968 of Shri K. L. Nagpal, Chief Judicial Magistrate, Jind, by which he acquitted Phula Ram, respondent of the offence under section 7 of the East Punjab Essential Services Maintenance Act; 1947 (hereinafter called the Act).

(2) The prosecution case is that Phula Ram Constable was sanctioned seven days' earned leave by the authorities with effect from 5th September, 1967 to 11th September, 1967. He, however, did not resume duties after the expiry of his leave. He sent a telegram on 11th September, 1967 for extension of his leave on the ground of illness of his wife. This request of the accused was rejected by the Superintendent of Police on 15th September, 1967 and he was ordered to join duty and necessary information was sent to him by registered post. He was also informed that in case of his failure to join duties he will be proceeded against and he will be treated as absent and strict disciplinary action will be taken against him. This registered letter was received back undelivered with the report that he was evading service to take delivery of the same.

(3) Another letter was issued to him by the Police Department which was delivered to him on 7th October, 1967, but in spite of that he did not resume duty. Subsequently he sent a medical certificate of Government Dispensary Dhamtan Sahib, wherein the Doctor had recommended him 15 days rest, which was received in the Police Department on 13th October, 1967. The respondent, however, did not resume duty even on 26th October, 1967. He sent another telegram for extension of leave up to 8th November, 1967 on the ground of his illness without attaching any medical certificate. No action was taken on this telegram as his request for further leave had already been declined. No application was received from him for further extension of leave after 8th November, 1967.

(4) A case under section 7 of the Act was registered against the respondent. Phula Ram was arrested on 5th December, 1967 and was challaned. The Chief Judicial Magistrate framed the charge against him and recorded the evidence of the prosecution and also of the respondent, but did not give any finding on merits, and acquitted the respondent on the preliminary objection raised by his counsel that the complaint which was the foundation of the whole case was not duly proved and exhibited and, therefore, he had no jurisdiction to take cognizance of the offence against him. Feeling dissatisfied the State Government filed this appeal alleging that the complaint was filed by the Deputy Superintendent of Police and it was not essential to prove and exhibit it and the decision of the trial Court was wrong and that it may be reversed and the accused may be convicted and sentenced under section 7 of the Act.

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(5) Section 7 sub-section (3) of the Act reads as follows:—

“No Court shall take cognizance of any offence under this Act except upon complaint in writing made by a person authorised in this behalf by the State Government.”

Vide Notification No. 1248-Camp/48/2075, dated 20th January, 1948 the Punjab Government authorised all police officers of and above the rank of Deputy Superintendent of Police and Heads of various Government Departments to make complaints in writing to a Court against persons of their respective Departments, who are alleged to have committed offence against the Act. In the instant case the complaint was filed by the Deputy Superintendent of Police, Jind and it bore his signatures. The Chief Judicial Magistrate, Jind, on receipt of this complaint, took cognizance and framed the charge on 16th March, 1968 under section 7 of the Act against respondent Phula Ram. The prosecution examined three witnesses in this case and closed its evidence on 23rd May, 1968 and then the case was adjourned for evidence of the defence. The respondent examined two witnesses in defence and his application for production of additional evidence was rejected by the Chief Judicial Magistrate on 25th June, 1968 and he heard the arguments and acquitted Phula Ram on the aforesaid preliminary objection raised by him.

(6) Section 190(1) of the Code of Criminal Procedure, as amended by Punjab Act 25 of 1964 lays down as under:—

“Except as hereinafter provided any Chief Judicial Magistrate and any other Judicial Magistrate specially empowered in this behalf, may take cognizance of any offence—

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) * * * *
- (c) * * * *

Section 200(aa) of the Code of Criminal Procedure lays down that—

“when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of

a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.”

(7) In the instant case the complaint was made by the Deputy Superintendent of Police, Jind against the respondent in his capacity as a public servant and, therefore, it was not necessary to examine the Deputy Superintendent of Police regarding the facts mentioned therein and to prove the complaint and exhibit it. The Deputy Superintendent of Police was authorised by the State Government to file the complaint. Section 56 of the Indian Evidence Act, 1872 lays down that no fact of which the Court will take judicial notice need be proved. Section 57 clause (7) says that the Court shall take judicial notice of the accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette. The appointment, etc., of all Gazetted Officers are published in the official Gazette of the State. In view of these provisions of law the Court is to take judicial notice of the name, designation and signatures of the Deputy Superintendent of Police and there was no necessity to prove the complaint and to exhibit it. After the receipt of this complaint the Chief Judicial Magistrate took cognizance of the offence and summoned the accused, framed charge against him and recorded the evidence of the parties. Consequently the decision of the Chief Judicial Magistrate that the complaint should have been proved and exhibited before he could take cognizance of the offence in view of the provisions of section 7(3) of the Act is erroneous and must be set aside and I order accordingly.

(8) The learned counsel for the respondent contended that assuming that the facts of this case are correct even then there was no offence committed by the accused under the provisions of the Act. Section 5 of the Act says that—

“Any person engaged in any employment or class of employment to which this Act applies who:—

(a) disobeys any lawful order given to him in the course of such employment, or

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(b) without reasonable excuse abandons such employment or absents himself from work, or

(c) * * * *

is guilty of an offence under this Act.”

The penalty for the offence is given under section 7(1) of the Act. It is admitted that this Act applied to the Police Department of the Haryana State *vide* notification issued by the Government under section 3 of that Act.

(9) In the instant case respondent Phula Ram had made an application for earned leave for one month on 30th August, 1967 on the ground that his wife was seriously ill and there was no other person at home to look after her and to get her treated. By order dated 4th September, 1967, seven days earned leave was sanctioned by Superintendent of Police, Jind, with effect from 5th September, 1967 to 11th September, 1967. Phula Ram respondent did not join after the expiry of his leave and sent a telegram on 11th September, 1967 which is Exhibit P.C. to the effect—“wife seriously ill please grant leave for one month.” This request for extension of leave was rejected and Phula Ram was directed to resume his duty immediately failing which he will be treated as absent from duty and that strict disciplinary action will be taken against him. He was informed by registered post about these orders, but he did not join. He sent telegram Exhibit D.A. dated 25th October, 1967 stating—“sick pray extend leave till 8th November, 1967”. No action was taken on this telegram because his previous request for extension of leave had already been declined and he had already been informed of the decision to join at once. No further communication was received from the respondent before or after 8th November, 1967 for grant of leave from 8th November, 1967 onwards. The case was registered against him and he was arrested on 5th December, 1967.

(10) The learned counsel for the appellant State of Haryana contended that the above facts showed that the respondent abandoned his employment or absented himself from work. This contention of the learned counsel for the State does not seem to be correct. The respondent, Phula Ram had proceeded on leave and thereafter he had been making applications for extension of leave on the ground of illness of his wife and also of himself, but the leave was not granted

to him. Under these circumstances he cannot be said to have abandoned his employment. He also cannot be said to have absented himself from work because no work had been assigned to him as he had proceeded on leave and had not joined his duty. He could only be assigned any work after he had joined his duty. Since he did not join his duty and no work had been assigned to him, the question of his absenting himself from work within the meaning of section 5 clause (b) of the Act did not arise.

(11) In the notices issued by the Police Department after the rejection of his leave by the authorities on 15th September, 1967 he was simply asked to resume duty at once failing which he will be treated as absent from duty without permission and disciplinary action will be taken against him. He may be guilty of neglect of duty, but this fact is different from abandoning employment or of absenting oneself from work without reasonable cause which is the particular offence contemplated in clause (b) of section 5 of the Act.

(12) Section 22 of the Police Act lays down that every police officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police officer in any part of the general police district. Section 29 of the Police Act prescribes penalty for neglect of duty, which reads as under:—

“Every police officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police duty, or who shall be guilty of cowardice or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both.”

Thus the action of the respondent is a clear neglect of duty within the meaning of section 29 of the Police Act because he had proceeded on leave and at the most failed to report himself to duty on the

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expiration of such leave without reasonable cause. He may be thus liable for neglect of duty as contemplated in section 29 of the Police Act but is not guilty of offence under clause (b) of section 5 read with section 7 of the Act. If any authority on this point is needed reference may be made to the Supreme Court decision in *The State of Punjab v. Kharaiti Lal* (1) wherein it was held—

“Neglect of duty as contemplated by section 29 of the Police Act is quite different from abandoning an employment or of absenting oneself from work without reasonable cause which is the particular offence contemplated by clause (b) of section 5 of the East Punjab Essential Services (Maintenance) Act. Where on account of the physical infirmity or deficiency the work assigned to a constable on refresher course is cancelled and he is expected to be in Police Lines during the material time without doing any work, his absence from Police Lines during the relevant time may amount to neglect of duty, but is not synonymous with absence from work or abandonment of employment which has been made penal under clause (b) of section 5. Hence he is not guilty under section 5(b).”

These observations clearly apply to this case. The respondent is not guilty of abandonment of employment or absenting himself from work. However, he is guilty of neglect of duty within the meaning of section 29 of the Police Act.

(13) The contention of the learned counsel for the respondent is correct and is accepted and I hold that no offence was committed by the respondent under section 7 of the Act. The respondent has been rightly acquitted by the Chief Judicial Magistrate though for wholly wrong reasons. The appeal filed by the State of Haryana, therefore, stands dismissed.

VERMA, J.—I agree.

N. K. S:

(1) A.I.R. 1956 S.C. 551.