

for reasons to be recorded. The further Departmental procedure is prescribed by the remaining clauses. It is clear that Rule 16.38 is not designed to be a condition precedent to the launching of a prosecution in a Criminal Court; it is in the nature of instructions to the Department and is not meant to be of the nature of a sanction or permission for a prosecution. Nor can it override the provisions of the Criminal Procedure Code and the **Prevention of Corruption Act**. We agree with the observations of Dua and Mahajan JJ. in *Hoshiar Singh v. The State* (supra) where they said :

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“.....I do not think Rule 16.38 was intended or could have the effect of imposing as a condition precedent to the trial of a police officer in a Court of law, a sanction or an order by the District Magistrate, as contemplated therein. The language appears to me to be confined only to departmental enquiries. The investigation for establishing a *prima facie* case is merely meant to guide the District Magistrate, uncontrolled by the opinion of the Superintendent of Police, whether or not a departmental proceeding should be initiated against the guilty party, and it is the procedure and the punishment controlling the departmental proceedings alone, which appear to have been prescribed by this rule”.

We have, therefore, no option but to set aside the order of acquittal passed by the High Court and remand the matter to the High Court for fresh disposal in accordance with law. It is so ordered.

P.B.R.

Appeal allowed.