

Lt Col Deepak Bali Versus the Govt. of India

Lt Col Deepak Bali Versus the Govt. of India

SooperKanoon Citation : sooperkanoon.com/1117085

Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : Jul-21-2010

Judge : S.S. Kulshrestha, Member & the Honourable Lt. Gen. S.S.Dhillon, Member

Appeal No. : OA OF 56 OF 2009

Judgement :

1. This application has been brought against the findings and the order of the General Court Martial (GCM) dated 07.04.2007 whereby convicting the accused/applicant for the offences under Section 69 of the Army Act R/w. Section 7 of Prevention of Corruption Act, 1988 and punishing him for dismissal from service. It is said that the applicant has falsely been roped into this case. There is no evidence worth credence to fix the culpability of the accused/applicant. The work of the firm M/s.Pushpa Engineering Works of which PW2 Sh. Shriram Yadav was the sole Proprietor authorised his son Sh.Suresh Kumar Yadav, PW1 to look after the affairs of the said firm by way of executing the Power of Attorney. The firm defaulted in completing the work as per specifications. Time and again they were warned as is also decipherable from Exh.36, 37, 39 41, 42, 43, 45 and 46. Apart from it, PW1 Sh.Suresh Kumar Yadav was not competent to supervise the work as he was not having engineering qualification. The firm continued to execute the contract work even on holidays so as to avoid supervision of the work by MES staff. Whenever the warnings were sent to the firm, PW1 Sh.Suresh Kumar Yadav gave life threat to DW4 MG Peethambaran. Not only this, PW1 Sh. Suresh Kumar

Yadav in connivance with Ram Avtar Yadav (PW8), Inspector Anti Corruption Branch, CBI, Goa managed all fake trap so as to harm the applicant. There was no demand from the side of the applicant for giving any bribe but that aspect was not taken into consideration by the GCM. Further the integrity and work of the accused/ applicant was appreciated by Brig.V.K.Bhatt, that was not taken into consideration, while arriving to some conclusion. It was further contended that the testimony of prosecution witnesses Sh. Jaiveer Singh (PW4) was not looked and evaluated by GCM in correct prospective. So was also the position of the statement of DW4 MG Peethambaran. Material witness Sh.TUK Nair (PW3) did not support to the prosecution version and even went to the extent of exposing the prosecution story to be all manufactured. Even the trap so planted is not corroborating the prosecution version.

2. This application was resisted from the side of respondents contending that the demand of bribe, its acceptance as well as the recovery of tainted money was proved by the prosecution upto the hilt. There is also no merit in the submissions that the complaint was not registered under the instructions of Superintendent of Police CBI and the investigation was not done by the authorised police officer. In such a trap case, the statement of Complainant (PW1) cannot be brushed aside and other witnesses have corroborated his testimony. The motive to ask the bribe is proved by the Complainant (PW1). The very fact that tainted money was passed on the accused/applicant and recovered from his possession raises a very strong presumption under Section 20 of the Prevention of Corruption Act about the demand and acceptance of bribe money, which is corroborated by the fact that the same money was recovered from him.

3. In order to appreciate the salient points raised from the side of the parties, it shall be useful to make a brief narration of the facts. In the year 2002, the accused/applicant was posted as Garrison Engineer (NW) Vasco (Goa). There were certain enlisted contractors under the accused/applicant for carrying out the work. Relevant for the purpose of the appeal was: M/s.Pushpa Engineering Works of which PW2 Sh. Shriram Yadav was the Proprietor. This firm was represented by his son Sh. Suresh Kumar Yadav (PW1) holding Power of Attorney. The firm was awarded maintenance/repair work in the year 2003-2004. That work contract

included construction of Compound Wall around 33 KV Station at INS Hansa. An agreement No.CWE/N/V/01 of 200-2004 was executed by him. The aforesaid work contract was to be supervised by Sh.Jaiveer Singh, Assistant Garrison Engineer (AGE) (PW4). The firm is said to have not completed the work within the stipulated/extended period and used sub-standard materials as is borne out from the statement of PW4 Sh. Jaiveer Singh, DW4 Sh. MG Peethambaran, DW5 Sh.VK Bhatt, SM, VSM. Even PW4 Sh. Jaiveer Singh issued warning in the Site Order Book (Exh.27). The firm carried out the execution of the work even on holidays which was reprimanded vide Exh.26, 27, 39, 41, 42, 43, 45 and 56. Show Cause Notice was also given to the firm and was asked for stopping the work as it was not as per specifications. However, the Running Bill of the contractor was cleared by the applicant but he made the demand for bribe.

4. The accused/applicant was charged for the two offences as under:

First Charge Army Act Section 69 COMMITTING A CIVIL OFFENCE THAT IS TO SAY, BEING A PUBLIC SERVANT, OBTAINING GRATIFICATION OTHER THAN LEGAL REMUNERATION IN RESPECT OF AN OFFICIAL ACT, CONTRARY TO SECTION 7 OF THE PREVENTION OF CORRUPTION ACT, 1988 In that he, at Goa, on 07 Jan 2004, while being the Garrison Engineer (Naval Works), Vasco, a public servant, obtained for himself Rs.10,000.00 (Rupees ten thousand only) from Sh.Suresh Yadav, a gratification other than the legal remuneration, as a reward for having passed payments of two Running account Receipts, as per the following details in favour of M/s.Pushpa Engineering Works pertaining to Contract Agreement no. CWE/N/V/01 of 2003-2004. Running Account Receipt Voucher No. Amount Paid Date of Payment 59/10/01/1029 Dated 26 Jun 03 Rs.2,30,000.00 19 Jul 03 59/10/01/1124 Dated 20 Dec 03 Rs.5,58,000.00 30 Dec 03 Second Charge Army Act Section 69 COMMITTING A CIVIL OFFENCE THAT IS TO SAY, BY ABUSING HIS POSITION AS A PUBLIC SERVANT, OBTAINING FOR HIMSELF PECUNIARY ADVANTAGE, CONTRARY TO SECTION 13(2) READ WITH SECTION 13(1) (d) (ii) OF THE PREVENTION OF CORRUPTION ACT, 1988, In that he, at Goa, between January 2003 and 07 Jan 2004, which came to the knowledge of the authority competent to initiate action on 07 January 2004, while being the Garrison Engineer (Naval works), Vasco, by abusing his position as a

public servant, obtained for himself an amount of Rs.2,500.00 (Rupees Two thousand five hundred only) from Shri TUK Nair, a registered Contractor with Military Engineering Services. The accused/applicant did not plead guilty and stated that it would be wrong to state that he received Rs.10,000/- as bribe. Railway tickets were handed over to him by PW1 Sh. Suresh Kumar Yadav and the entire case has been fabricated against the applicant. The evidence of Micro Cassette was also planted against him. No recovery of the amount of Rs.90,100/- was made by the CBI from his residence. A note of this fact may be taken that the charge no.2 could not be established so the accused/applicant was exonerated from that charge.

5. Prosecution in the support of its case examined Sh.Suresh Kumar Yadav (PW1) who is the son of the Proprietor of the firm M/s.Pushpa Engineering Works. It was stated by him that he was looking after the affairs of that firm by virtue of holding the Power of Attorney vide Exh.14. The firm was awarded work order on 19.04.2003 for the construction of compound wall of 33 KV Station and the work was completed by them. In the month of June 2003, the first bill (Running Account Receipt) to the tune of Rs.2.50 Lacs was presented for payment to the office of accused/applicant. Against this bill the payment was made to the firm in the month of July 2003 by cheque amounting to Rs.2.30 Lacs. Another Running Account Receipt Bill voucher no.59/10/01/ 1029 dated 26.06.2003 for the Contract Agreement no.CWE/N/V/01 dated 2003-2004 was submitted by the firm and against this bill an amount of Rs.2,52,850/- was received. Another Running Account Receipt amounting to Rs.5,80,000/- in respect of the construction of the Compound Wall was submitted on 20.11.2003 against which payment of Rs.5,58,019/- was released to the firm after deducting Sales Tax and Income Tax amount. Sh. Shriram Yadav (PW2) after coming from the office of the accused/applicant told his son (PW1 Sh. Suresh Kumar Yadav) that the accused/applicant was demanding some bribe which was against his conscience as for the last forty years he had not given any amount towards the bribe. He told his son to decide what to do. The witness further stated that after hearing his father, he lodged the complaint with CBI mentioning all the facts with regard to the demand of bribe. Sh.Ram Avtar Yadav and Sh.Sheikh both CBI Inspectors asked for the proof of such demand of bribe. As per their advice the witness went to the

office of the accused/applicant with one panch witness and recorded the conversation of making the demand of the bribe which was to the effect that :
Witness - Daddy ne mujhe bheja hai.

Apne Yaad Kiya Tha. Daddy ne bola hai kuch mang rahe ho.

Accused - Jo Teri Marzi Hair kar Dena.

Witness - Kitna Karna Hai?

Accused - Jitni Teri Marzi utna kar dena.

This conversation which took place on 05.01.2004 was found to be not sufficient. Again same exercise was done on 06.01.2004 wherein the following dialogues took place between PW1 Sh.Suresh Kumar Yadav and accused/appellant:

Witness - Daddy se 2% ki baat hui thi wah ham utan nahi de sakega. Accused - Kitna de sakte ho?

Witness - 1 % se jada nahi de sakte.

Accused - Station policy 2% dene ki hai.

Witness - Mai 1 % se jada nai de sakta.

Accused - Kitna hota hai.

Witness - Maine Do RAR liya hai. Ek

Rs.2.20 ka tha aur dusra Rs.5 ka tha.

Accused - Yeh tho 7 ho gaya.

Witness - 7 ho gaya. Uska kitna banta hai.

Dekh lo sahib. Mai Rs. 10,000 de dunga.

Accused - Thik hai. Yeh baat kisi ko nahi

batana ki 1 % liya hai. Nahi to

baki log bhi kam dega.

Having felt satisfied from such conversation, steps for affecting the trap were taken on 07.01.2004. This witness reached at the CBI office, Panaji and met with CBI Inspector namely Sh. Ram Avtar Yadav and Sh. Sheikh. After some time the witness namely Sh. Mulgaonkar and Mr. Shenoy (panchs) reached the office. Ten currency notes each of Rs.1000/- denomination total (10x1000 = Rs.10,000/-) was given to CBI Inspector Mr. Sheikh. CBI Inspector applied Phenolphthalein powder on all the ten currency notes each of Rs.1000/- with the help of cotton wad. All these currency notes were thereafter kept in his pocket. He was also briefed not to touch these notes before passing it to the accused/applicant and thereafter the signal was to be given to the raiding party. He entered in the room of the accused/applicant and switched on the Micro Cassette recorder where the following conversation was recorded:

Witness - Namestey sahib

Accused - Namstey

Witness - Mai Rs.10,000/- laya hun. (Maine Rs.10,000/- sahib ko diye)

Accused - Aise mat laya karo. Lifafa mein dal kar diya karo.

Witness - Sahab bare note nahi the. Is liye aise he le aya.

Accused - Theek hai.

After handing over the smeared currency notes of Rs.10,000/- the signal was given to the raiding party which entered into the room of accused/applicant and made the recovery of that amount from the pocket of the shirt worn by him. His right hand was also washed in the solution prepared with Sodium Bicarbonate and it turned pink. The shirt which the accused/applicant was wearing, its pocket was also got dipped into that solution and that also turned to be pink. The search Memo was prepared at the spot and the micro cassette which was displayed on 07.01.2004 was also sealed.

6. The statement of PW1 Sh.Suresh Kumar Yadav gets corroboration from the tape recording version and also from the statement of PW2 Sh. Shriram Yadav. It is clear that the demand of the bribe was made by the accused and the amount of Rs.10,000/- towards the illegal gratification was accepted by him by using his official position. However, arguments were made from the side of accused/ applicant that there is no evidence on record to show that this demand of the money was made by the accused/applicant for clearing the pending bills. Running Bills were already passed and there could be no reason for the accused/applicant to ask the money. As we have noticed from the aforesaid conversation and also the passing of the money and acceptance of money by the accused/ applicant, it would itself be sufficient to infer that in connection with the official work the accused/applicant misused or abused his official position and received Rs.10,000/- in bribe. Receipt of the money whether before or after the execution of work would not be material. The purpose for which the demand was made was not so remote with the duty of the accused/applicant. He had cleared two Running bills of the Complainant (PW1) for which PW2 Sh. Shriram Yadav was asked by the Cashier of the Department of the accused/applicant to see the accused/appellant. There accused/ applicant also told him to send his percentage through his son. Such evidence on record would clearly establish that such demand was made by the accused/applicant for the work for which part payment was released by him. The acceptance of the amount would also fall in misconduct as was explained by the Apex Court in the case of Dhaneshwar Narain Saxena Vs. Delhi Administration, AIR 1962 SC 195. Identical view was referred by the Apex Court in the case of CBI, AHD, Patna Vs. Braj Bhushan Prasad, AIR 2001 SC page 4014 which reads as under:

34. What is the main offence in the charges involved in all these 36 cases? It is undisputed that the main offence is under Section 13(1) (c) and also Section 13(1) (d) of the PC Act. The first among them is described thus: A public servant is said to commit the offence of criminal misconduct- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so. The next offence is described like this: A public servant is said to commit the offence of criminal misconduct-(d) if he, (i) by corrupt or illegal means, obtains for

himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

35. We have no doubt in our mind that the hub of the act envisaged in first of those two offences is dishonestly or fraudulently misappropriates. Similarly the hinge of the act envisaged in the second section is obtains for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means.

37. Thus, when it is certain where exactly the offence under Section 13 of the PC Act was committed it is an unnecessary exercise to ponder over the other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequences ensued.

7. Further from the testimony of the Complainant (PW1), it is evident that the demand of the money was made by the accused/applicant and the same was got recorded in the tape. It was also displayed for the satisfaction of the CBI raiding party. On the basis of such information, the CBI took the necessary legal formalities to lead the trap in presence of panch witnesses as is also corroborated from the statement of CBI Inspector PW8 Sh. Ram Avtar Yadav. The CBI Inspector (PW8) also made demonstration of the Phenolphthalein powder and its reaction with Sodium Bicarbonate. The specific instructions were also given to the Complainant (PW1). Panch witnesses were also independent witnesses to Complainant (PW1). There is enough oral and documentary evidence such as complaint, trap panch, trap money etc. which lends support to the version of the Complainant (PW1).

8. Further the prosecution version also finds support from the testimony of Sh.K. Arvind Shenoy (PW11), one of the panch witnesses who also gave identical statement and told that after getting the necessary instructions from the CBI Inspector, he went near the office of the accused/applicant along with CBI

Inspector and halted at a distance of 50-100 mtrs. The Complainant and Sh. Mulgaonkar went close to the office of the accused/applicant and parked the car. Sh.Suresh Kumar Yadav proceeded towards the office of the accused/applicant and Sh. Mulgaonkar remained seated in the Car. All were waiting for the signal for which the Complainant (PW1) was instructed. The search of the accused/applicant was made and the money was recovered in his presence. Solution of Sodium Bicarbonate was prepared in accordance with instructions of Sh. Ram Avtar Yadav (PW8), then the right hand fingers of the accused/applicant were dipped in the said solution which turned to be light pink. The money was recovered from the pocket of his Shirt (Uniform). Witness also stated that apart from those currency notes of the denomination of Rs.1,000/- each, railway ticket and amount of Rs.600/- were also recovered. Panchnama was also prepared. However, the testimony of the witness was tried to be assailed as being interested witness as his bank was under the pressure of CBI on having being indicted in the past by them. This would not be a ground to brush aside the testimony of this witness.

9. From the testimony of these witnesses it is clear that the recovered currency notes were compared with numbers and denominations of the currency notes in the pre-trap panchnama.

10. It has next been strenuously argued on behalf of the accused/applicant that the tape recording statement has been fabricated and there is no satisfactory evidence on record to attach credence to it. Further there was every possibility of tampering with or erasure of a part of a tape recorded statement and so this conversation cannot be taken on record for construing the demand from the side of the accused/applicant. In this regard it shall be mentioned that tape recorded statement and other documents were kept in safe custody and sealed as is clear from the statement of PW7. The testimony of this witness could not be assailed in cross examination. Such tape recording conversation is admissible in evidence as was held by the Apex Court in the case of Ram Reddy Vs. V.V.Giri 1971 SC Pg.1162 and in Ram Singh Vs. Col. Ram Singh, 1985 (Supp) SCC 611. Here the material question arises as to how far the conversation tallies with the earlier version/sample version of the accused/applicant. In the case of Ram Singh Vs. Col. Ram Singh, 1985 (Supp) SCC 611, Apex court laid down the following

guidelines for placing reliance on the tape recording: A tape-recorded statement is admissible in evidence, subject to the following conditions:

(1) The voice of the speaker must be identified by the maker of the record or other persons recognising his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

(2) The accuracy of the tape-recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.

(3) Possibility of tampering with, or erasure of any part of, the tape-recorded statement must be totally excluded.

(4) The tape-recorded statement must be relevant.

(5) The recorded cassette must be sealed and must be kept in safe or official custody.

(6) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances.

11. Prosecution examined PW9 Dr. Rajender Singh, Principal Scientific Officer who acquired expertise pertaining to Forensic Voice Identification. He is categorical in his statement that the Micro Cassette Exh.Q1 which is said to be containing the conversation between Sh.S.K.Yadav (PW1) and Major Deepak Bali (accused/applicant) quite agrees with the sample voice of Major Deepak Bali and Sh.S.K.Yadav. There appears to be no reason to disbelieve this Expert witness. The accuracy of the tape-recorded statement which remained in proper custody has already been established. The voice was also audible and has been identified to be of accused/applicant and the Complainant. It is also said that the entire prosecution of the accused was not in accordance with law and because of the personal association of the Complainant (PW1) with PW8 Sh.R.A.Yadav, the entire case has been fabricated. Further CBI Inspector had no authority to register the case. It had come in evidence that CBI Inspector PW8 Sh.Ram Avtar Yadav got approval from the Superintendent Police. However, it is said that such

approval from Superintendent Police authorising him to register the case could not be established. There is no material on record including that of the evidence of the witness to doubt the bonafides of CBI Inspector (PW8). In the matter of Andhara Pradesh Vs. P.V.Narayan, 1971 (1) SCC 183, in which dealing with the provisions of Section 5(1) of the Act of 1947, it has been held by the Apex Court that in case of illegal investigation the court is required to see whether it has resulted in prejudice to the accused. In the matter of State of Chattisgarh Vs. Sardar Mahender Singh Gandhi (Cr.Appeal no.843 of 2001 decided on 21.09.2005, it was held by the Apex Court that a defect or illegality in investigation, however serious, has no direct bearing on competence or the procedure relating to cognizance or trial. Investigation by unauthorised person does not by itself, renders illegal unless serious prejudice is caused to the accused or party is shown and it does not affect the competence or jurisdiction of the court.(See Munnalal Vs. State of U.P., AIR 1964 SC Pg.28). On such analogy the registration process of the complaint if it appears to be without the approval of the Superintendent of the Police, no prejudice has been caused to the accused/applicant. Further it is said that it is the case of CBI investigation but in view of the arrangement made under Section 19 of the Prevention of the Corruption Act, sanction was not taken from the appropriate authority. Even from the material on record it would appear that the proposals were sent to the Ministry of Defence for according sanction but they returned it. In the given circumstances, there is no sanction nor order of sanction was produced which would show the satisfaction of the sanctioning authority before launching prosecution. The prosecution of the accused/applicant must fall because of the manifest defect in prosecution, the entire case is bad ab initio. Suffice is to mention that the arrangement made under Section 19 of the Prevention of Corruption Act, 1988 are not attracted in the matter of army personnel as is provided under Section 25 of the Act.

12. Lastly arguments were also advanced to show that the Charge No.2 was found to be not substantiated. Moreover PW4 Sh.Jaiveer Singh has stated with regard to the misconduct of the Complainant (PW1). The execution of the work by the Complainant/firm was not as per specifications. Numbers of warnings were given to him but he threatened him for dire consequences. Such conduct of the complaint is ascertainable from the defence witnesses namely DW4 MG

Peethambaran who was the Junior Engineer at the relevant time. To the contrary, Brig V.K.Bhatt (DW1) appreciated the working of the accused/applicant. Such statement of the defence witnesses would not be sufficient to brush aside the testimony of prosecution witnesses who remained intact in their version. As regards the plea of reservation tickets and the amount of Rs.600/- which were recovered from the pocket of the accused/appellant were not mixed up with the recovered currency of the denomination of Rs.10,000/-.

13. A careful scrutiny of the evidence lead by the prosecution so far as relates to demand and acceptance of bribe money, the evidence is consistent, cogent and trustworthy. Nothing is elicited in cross examination to disbelieve the evidence of witnesses. In the circumstances, the GCM has taken into consideration all the material placed on record and on appreciation of same has come to the rightful conclusion. We do not find any ground to interfere with the findings of the GCM and punishment so awarded.

14. Accordingly application is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com