

Bachittar Singh Vs. Uoi and ors.

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Court : Delhi

Decided On : Jan-08-2014

Judge : Pradeep Nandrajog

Appellant : Bachittar Singh

Respondent : Uoi and ors.

Judgement :

\$~25 to 28 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision: January 08, 2014 W.P.(C) 3538/2001 GURDEV SINGH Represented by: Petitioner Mr.H.S.Dahiya, Advocate versus U.O.I. & ORS. Represented by: Respondents Ms.Richa Kapoor, Advocate with Ms.Saahila Lamba, Advocate and Mr.A.K.Arora, Assistant Commandant, CISF W.P.(C) 3540/2001 BALWINDER KUMAR Represented by: Petitioner Mr.H.S.Dahiya, Advocate versus U.O.I. & ORS. Represented by: Respondents Ms.Richa Kapoor, Advocate with Ms.Saahila Lamba, Advocate and Mr.A.K.Arora, Assistant Commandant, CISF W.P.(C) 3541/2001 ANGREJ SINGH Represented by: Petitioner Mr.H.S.Dahiya, Advocate versus U.O.I. & ORS. Represented by: W.P.(C) No.3538/2001 & conn.matters Respondents Ms.Richa Kapoor, Advocate with Ms.Saahila Lamba, Advocate and Mr.A.K.Arora, Assistant Commandant, CISF Page 1 of 9 W.P.(C) 3628/2001 BACHITTAR SINGH Represented by: Petitioner Mr.H.S.Dahiya, Advocate versus U.O.I. & ORS. Represented by: Respondents Ms.Richa Kapoor, Advocate with Ms.Saahila Lamba, Advocate and Mr.A.K.Arora, Assistant Commandant, CISF CORAM: HON'BLE MR. JUSTICE

PRADEEP NANDRAJOG HON'BLE MR. JUSTICE JAYANT NATH PRADEEP NANDRAJOG, J.

(Oral) 1. Heard learned counsel for the parties.

2. It is not disputed by the petitioners that on February 04, 1998 they were attached to the CISF Unit at Bhillai and were working as constables. It is also not in dispute that on May 02, 1998 a charge memo was issued to all the four writ petitioners alleging identical charges, being two in number, containing identical statement of imputation as also list of relied upon documents and names of witnesses except proposed PW-4. Insp.K.C.Sharma was proposed to be examined as PW-4 pertaining to the charge sheet issued against petitioner Angrej Singh. Insp.Vijay was proposed to be examined as PW-4 pertaining to the charge sheet issued against the three other writ petitioners.

3. The two Articles of Charge, which we note are concededly identical except name of the petitioner corresponding to the charge sheet issued, read as under: (We have noted the two charges pertaining to Ct.Angrej Singh):

Article-I of the Charge Force No 961402637 Constable Angrej Singh on 4-2-98 during engagement ceremony of the son of Shri Santosh Singh, BSP employee at 5A Sarak No.13, Sector-2, indulged in undesirable behavior which shows gross indiscipline.

Article-II of the Charge Force No 961402637 Constable Angrej Singh on 4-2-98 at about 10:40 hrs in the night again went with other Force personnel and indulged in beating/breaking at the residence of Shri Santosh Singh, BSP employee at 5A Sarak No.13, Sector-I. For this act, a criminal case was lodged against the Constable in Bhilai Police Station. By this conduct Constable Gurdev tarnished the image of the Force.

4. The statement of imputation in support of the two Articles of Charge reads as under:

Article-I of the Charge Force No 961402637 Constable Angrej Singh on 4-2-98 participated in the engagement ceremony of the son of Shri Santosh Singh, BSP

employee after going at 5A Sarak No.13, Sector-2. On this occasion the Constable indulged in undesirable behavior there which shows gross indiscipline. Article-II of the Charge Force No 961402637 Constable Angrej Singh on 4-2-98 at about 10:40 hrs in the night again went with other Force personnel and indulged in beating/breaking at the residence of Shri Santosh Singh, BSP employee at 5A Sarak No.13, Sector-I in which Satinder Singh relative of Santosh Singh received injuries and broke the glasses of car of another relative Shri Tirlok Singh standing outside the residence. For this punishable act of the Constable, Shri Tirlok Singh lodged a report in Bhilai Police Station. On the basis of this the local police registered a criminal case against the Constable. By this conduct Constable tarnished the image of the Force.

5. For reasons unknown separate inquiries were held notwithstanding commonality of allegations of acting in concert against the petitioners.

6. Of the 5 proposed witnesses to be examined, PW-1 Trilok Singh did not turn up at either 4 inquiry proceedings and thus he was not examined. We may note that on his statement FIR641998 PS Bhilai was registered.

7. The FIR in question has been proved at each inquiry as Ex.1 on the testimony of the police station incharge examined as PW-3. The FIR under Section 154 Cr.P.C. registered on the statement of Trilok Singh records that the incident in respect whereof the complaint was made took place at the residence of Santosh Singh. Briefly stated, the FIR records an engagement ceremony of the son of Santosh Singh at which petitioners who were present and were known to the complainant. It records that petitioners indulged in undesirable activities and thus were told to leave. They returned at around 10:40 PM armed with lathis and rods and entered the tent erected for the guests to assemble for the engagement ceremony, which was over by then. They damaged the tent using foul language. They assaulted one Satinder Singh, a relative of the complainant and Santosh Singh. They smashed the windscreen of the car belonging to Trilok Singh. We highlight that the FIR is registered on the day of the incident itself i.e. February 04, 1998.

8. Santosh Singh PW-2 deposed in similar language at the 4 inquiry proceedings and we note that he did not name the petitioners but confirmed that an incident (as per the two charges and as elaborated in the statement of imputation took place), in that, he deposed that 4 CISF Jawans had created trouble at the engagement ceremony of his son. In the inquiry proceedings against Angrej Singh and Bachitter Singh he stated that he knew all four and they used to visit his house. But, in the inquiry proceedings against the other two petitioners he denied said fact.

9. Insp.K.C.Sharma PW-4 examined in the inquiry proceedings pertaining to Angrej Singh and Insp.Vijay PW-4 examined in the three inquiry proceedings against the other 3 petitioners deposed that the respective petitioner was under their charge and that at the time of the incident none of them was on duty.

10. HC Babu Lal Sharma PW-5, a Head Constable of CISF deposed that on February 12, 1998 Santosh Singh had confirmed to him of the involvement of the petitioners at the unfortunate incidents in his house.

11. The petitioners did not examine any witness in defence but took a stand of denial. They denied having visited house of Santosh Singh. As per them they did not know Santosh Singh. They denied having created any ruckus as alleged.

12. In 4 near identically worded reports, the Inquiry Officer held that from the fact established by the testimony of PW-4 was that the four delinquents were not on duty and thus they could be present at the house of Santosh Singh. Referring to the testimony of HC Babu Lal PW-5, the Inquiry Officer has opined that the same established the involvement of the petitioners. With reference to the FIR Ex.1 proved by PW-3, in the four inquiry reports the Inquiry Officer highlighted the fact that not only the incident but even names of the petitioners were recorded therein. The Inquiry Officer has thereafter highlighted that all petitioners were Punjabis and so were the complainant and Santosh Singh, from which an inference of comradeship has been inferred.

13. Taking a serious view of the incident the Disciplinary Authority levied penalty of dismissal from service which was been upheld by the Appellate Authority as also

by the Revisional Authority.

14. We note that before the Revisional Authority decided the revisions, the petitioners were acquitted at the criminal trial because of the fact that Trilok Singh and another eye witness relative turned hostile. Santosh Singh was not examined.

15. The first contention of the learned counsel for the petitioner is that the second Article of Charge cannot be an indictment for the reason merely alleging that the delinquent is an accused in an FIR is no indictment.

16. We agree. To allege against somebody that he/she is named as an accused in an FIR is worthless. The indictment at a domestic inquiry has to be with reference to the acts of omission or commission alleged as wrongs.

17. But it takes the petitioners nowhere. If Article 1 of the charge is established, that would mean that the indictment was correct.

18. It is then urged that the Article 1 of the Charge Sheet is vague and that the statement of imputation does not cure the defect.

19. We have reproduced hereinabove in para 3 the two Articles of Charge and the accompanying statement of imputation.

20. We would only highlight that the statement of imputation pertaining to Article 1 of the Charge only brings out the time and place of the occurrence further informing that the wrong alleged was indulging in undesirable behaviour. But the statement of imputation accompanying Article 2 of the Charge gave the particulars of the acts committed and stated to be constituting the wrong. Thus, on a meaningful reading of the statement of imputations, notwithstanding that the statement of imputation giving the details pertains to the second charge, it has to be held that the petitioners were made aware of the acts attributed to them.

21. It is then urged that it is a case of no evidence for the reason Santosh Singh PW-2 has not stated a word of the petitioners involvement. He has only deposed to the incident. It is urged that as held in the decision reported as (2009) 2 SCC570Roop Singh Negi Vs. PNB & Ors., even at a domestic inquiry the contents

of an FIR, unless proved through the mouth of the author thereof, i.e. the person making the complaint cannot be treated as proved.

22. From the facts noted hereinabove, even with respect to the truncated testimony of Santosh Singh it stands proved that an incident of vandalism took place in his house and the perpetrators were CISF Jawans. He does not name them.

23. We then have the testimony of PW-3, the Police Station Incharge who recorded the FIR and proved the same as Ex.1.

24. As already highlighted by us the FIR was registered on the statement of Trilok Singh the same day when the incident took place. The incident took place at 10:40 PM on February 04, 1998. The FIR has been registered before the midnight evidenced by the fact that the date of the FIR is February 04, 1998. Unfortunately, the time when FIR was registered has not been noted.

25. Statements made by a person to a third person soon after an incident, but with no gap of time are akin to contemporaneous utterances and are admissible as *res gestae* evidence through the deposition of the one who heard the utterance. Statements made after some gap which cease to be *res gestae* are hearsay evidence and thus inadmissible as per the law of evidence. But, as held in the decision reported as (1977) 2 SCC491 *State of Haryana & Anr. VS. Rattan Singh*, at a domestic inquiry there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. In paragraph 4 it was observed as under:

It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is

objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

26. It is true that in Roop Singh Negis case, pertaining to a domestic inquiry the contents of an FIR unless proved through the mouth of the maker were held inadmissible. But on facts it has to be noted that the contents of the FIR were not even in the nature of hearsay evidence. The FIR pertained to a statement made by the Manager of the Bank that some drafts not issued by the Branch were encashed.

27. Thus, we would be guided by the decision of the Supreme Court in Rattan Singhs case with respect to the testimony of PW-3 who registered the FIR Ex.1 soon after the incident on the statement made by Trilok Singh.

28. We have already referred briefly to the contents of the FIR.

29. We hold that there is sufficient evidence against the petitioners.

30. We highlight that the petitioners were constables working with CISF and the act of indiscipline shown by them are serious. They indulged in hooliganism and physical violence.

31. It may be true that the petitioners were acquitted at the criminal trial but the same was on account of witnesses turning hostile. It is trite that mere acquittal at a criminal trial is no ground to set aside findings at a domestic inquiry.

32. The writ petitions are dismissed but without any orders as to costs. (PRADEEP NANDRAJOG) JUDGE (JAYANT NATH) JUDGE JANUARY08 2014 mamta

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