

Krishna Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-10-2005

Judge : Barin Ghosh, J.

Appeal No. : C.W.J.C. No. 1107 of 2000

Appellant : Krishna Singh

Respondent : State of Bihar and ors.

Disposition : Petition dismissed

Judgement :

Barin Ghosh, J.

1. Heard learned counsel for the parties.

2. One Devanti Devi reported to the Rampur Police Station on 8.3.1992 that she has been robbed of her ear-ring, one black and white television made by Salora Company, one fan, one tape recorder and gold chain by the petitioner on the threat of revolver in his hand. On the basis of this information a First Information Report was submitted and accordingly Rampur P.S. Case No. 25/92 was registered. This information having been brought to the notice of disciplinary authority of the petitioner, a disciplinary proceeding was instituted against the petitioner. In the Rampur P.S. Case a charge-sheet was filed on which cognizance

was taken and petitioner having denied the charges the trial commenced. In the department proceeding the petitioner having denied the charges levelled against him in the charge-sheet, an enquiry proceedings started. These were permitted to continue simultaneously. Before the enquiry officer Devanti Devi and her husband Nand Kishore Sao came as prosecution witnesses. Devanti Devi stated in her examination-in-chief that she suddenly awoke up and found somebody wanted to take away her ear-ring with a revolver in his hand. She also stated that in the electric light she identified the petitioner who lived in the Postmaster's room. In cross-examination she stated that she knew him from before and therefore she was able to recognise him in the electric light. Shri Nand Kishore Sao stated in his examination before the enquiry officer that he was sleeping in his shop and his wife Devanti Devi was sleeping in the varandah and she told him that the petitioner having revolver in his hand escaped with her ear-ring. On the basis of this evidence, ignoring the plea of the petitioner to keep the departmental proceeding pending till judgment by the criminal Court, enquiry officer submitted his report and held the petitioner guilty of the charges levelled against him.

3. There is no dispute that on the basis of such finding the petitioner has been punished by way of dismissal from service. Subsequent thereto, the prosecution produced Devanti Devi and Nand Kishore Sao as the only prosecution witnesses before the criminal Court when both the prosecution witnesses were declared hostile by the prosecution. Smt. Devanti Devi in her examination stated that she saw one person snatching her ear-ring but she did not identify the person. She also stated about two others but at the same time stated that she could not identify any of them. Her husband Nand Kishore Sao also stated in his evidence that he did not see nor identify anybody taking away the articles. Before the criminal Court the Investigation Officer was not examined. In such a situation the criminal Court had no other option but to conclude that on the basis of materials before him there is no other alternative but to come to the conclusion that the charges against the petitioner have not been proved beyond reasonable doubt.

4. In the case of *M. Pal Anthony v. Bharat Gold Mines Ltd.*, reported in 1993 (3), SCC 679 there was an allegation that a raid was conducted by few police officers at the residence of the delinquent when gold was recovered during the course of

search and the same was seized. In relation thereto a criminal case was initiated and at the same time a departmental proceeding was also initiated. The departmental proceeding was concluded ex parte. The criminal proceeding was concluded by exonerating the delinquent. The Supreme Court found that the case of the prosecution was thrown out and the delinquent was acquitted. The Supreme Court looked at records and found that the same witnesses were examined in the criminal case as were examined by the enquiry officer but the Court on consideration of the entire evidence came to the conclusion that no search was conducted nor any recovery was made from the residence of the delinquent. In such circumstances, the Supreme Court felt that when the delinquent was acquitted by judicial proceedings with the finding that the raid and recovery at the residence of the delinquent were not proved it would be unjust, unfair and rather oppressive to allow the departmental proceedings to stand. The learned counsel appearing in support of the writ petition submitted that the case of the petitioner is identical to that of the delinquent in the said case dealt with by the Supreme Court and accordingly, applying the same principle as has been applied by the Supreme Court the petitioner should be given appropriate relief.

5. In para 34 of the report of the case, the Supreme Court has found that the finding recorded by the enquiry officer, a copy of which had been placed before the Supreme Court, that the charges framed against the appellant were sought to be proved by a police officer and punch witnesses who had raided the house of the appellant and had effected the recovery. The Supreme Court also that initially witness were examined by the enquiry officer and the enquiry officer relying upon their statements came to the conclusion that the charges were established against the appellant. The Supreme Court recorded that the same witnesses were examined in the criminal case but the Court on consideration of the entire evidence came to the conclusion that no search was made nor any recovery from the residence of the appellant was made. In other words, the Supreme Court found from the records that the witnesses who deposed before the enquiry officer and before the criminal Court gave self same evidence and on the basis thereof the criminal Court came to the conclusion that there was no raid and recovery, but directly opposite stand had been taken in the departmental proceeding and that too in a proceeding which conducted ex parte and, accordingly, the finding of the

enquiry officer would not be just and fair to stand.

6. In the instant case as indicated above two witnesses who came before the enquiry officer gave positive evidence against the delinquent. In cross-examination it was indicated by the principle witness the reason as to how she could identify the petitioner. Unfortunately, she took a totally contrary stand before the criminal Court. Because of her change of stand in a subsequent different proceeding, it would not be prudent to interfere with the finding of the enquiry officer. A judicial review Court can interfere with an action of a authority only when it appears to the judicial review Court that on the materials before him the authority concerned could not come to the conclusion as has been concluded by him.

7. In the instant case, the witnesses who appeared before the enquiry officer gave positive evidence before the enquiry officer upon which the enquiry officer could conclude in the one and the only why how he has conclude the matter. He could not concluded the matter in any other way on the basis of such evidence. He had no knowledge that the self same witnesses will change their stand before the criminal Court. It may be possible that those witnesses are not reliable witnesses for they have gone East before the enquiry officer and gone West before the criminal Court, but on their conduct the conduct of the enquiry officer cannot be adjudged. The writ petitioner had ample opportunity to demonstrate before the enquiry officer that the said witnesses are not reliable witnesses by appropriately cross-examining them. Despite getting the opportunity to cross-examine the witnesses, the petitioner could not bring to the notice of the enquiry officer that it would not be prudent to rely upon the evidence of those witnesses. In such circumstances, as aforesaid, the enquiry officer had one and only option to come to the conclusion as has been concluded by him. He had other option left.

8. In those circumstances, the writ petition fails and the same is, accordingly, dismissed.