

Ram Chander Singh Vs. Uoi and ors.

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Court : Delhi

Decided On : Feb-28-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Border Security Force (BSF) Act - Section 46

Appeal No. : W.P.(C) 2721/2000

Appellant : Ram Chander Singh

Respondent : Uoi and ors.

Advocate for Def. : Mrs.P.L.Gautam; Mr.Bhupinder Sharma, Advs.

Advocate for Pet/Ap. : Mr.Ajay Veer Singh; Ms.Anisha Jain, Advs.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. Having joined as a constable and earned promotion as Head Constable, petitioner was attached with the battalion posted for duties at BOP Kalyani. Duties were assigned to him at the frontier posts. As per the department the petitioner was caught red-handed by the Joint Additional Director (G) Sh.Saroj Kumar Mishra and his team soon after the petitioner had statedly received bribe in sum of

₹400/- on 13.11.1998. It is actually a case of a trap.

2. Complying with the procedures of the BSF Act 1968 Deputy Commandant Sh.S.K.Goel prepared the Record of Evidence and submitted the same to the Commandant, who on perusal of the Record of Evidence framed a charge under Section 46 of the BSF Act as under:-

"BSF ACT COMMITTING A CIVIL OFFENCE THAT SEC-46 IS TO SAY, BEING A PUBLIC SERVANT, ACCEPTING FROM ANY PERSON, FOR HIMSELF, ANY GRATIFICATION WHATEVER, OTHER THAN LEGAL REMUNERATION, AS A REWARD FOR SHOWING IN THE EXERCISE OF HIS OFFICIAL FUNCTIONS, FAVOUR TO ANY PERSON, PUNISHABLE U/S 7 OF PREVENTION OF CORRUPTION ACT, 1988

In that he, at BOP Kalyani, on 13 Nov 98, accepted a sum of ₹400/- (Rupees four Hundred only), from Bhakto Halder S/o Shri Nemia Halder R/o Village Kalyani, Distt.North 24 Pargnas for giving him safe passage for smuggling of the goods across the border, from his area of responsibility."

3. With respect to the charge the petitioner was tried at a Summary Security Force Court presided over by the Commandant and when the Court convened on 21.5.1999, on the charge being read out to him, the petitioner pleaded Not Guilty.

4. 10 witnesses were examined by the prosecution to prove the charge.

5. But before noting the relevant testimony, we would be advised to note the statement made by the petitioner in his defence after the prosecution evidence was led, for the reason much controversy between the parties would stand narrowed down in view of the defence taken by the petitioner. His statement reads as under:-

"Statement of No.84254441 HC Ram Chander Singh of 171 Bn BSF:-

I No.84254441 HC Ram Chander Singh am serving in 171 Bn BSF since 1996 and was performing the duties at BOP Kalyani under sub-sector Haridas Pur since last week of September 1998. During the last week of October 1998 (the exact date is

not known to me), an unknown person came to me (later on I came to know that he was a source of JAD(G) Kalyani) and said some irritative and unbecoming things which pinched me and I thrust him out from my area of responsibility. The said person was threatening me while leaving the place that I would have to face with the unbecoming consequences. On the next very day, JAD(G) Kalyani Sh.S.K.Singh came in BOP Kalyani and said, "Apne us admi ke sath aisa vivhar kion kiya, who mera source tha," I said to him, "Yeh hamari force ko badnam kar raha tha, islie mujhe aisa karna para," On this JAD(G) sent a message to higher HQRs against me and threatened me saying that he would see me in future.

On 13th November 1998, I was a Guard Commandant at BOP Kalyani ex BOP-171 Bn BSF. At about 2035 hrs, while I was sitting in the barrack, at C. Peru Mal the sentry came in the barrack and apprised me that some civilian came at the BOP gate and wanted to see me for giving me some necessary dak. So, I went outside from the barrack with the sentry and contacted that person whom I was not knowing earlier. He gave me one envelope saying that the same I should hand over to JAD(G) as that was containing some important letter for him. I saw the said envelope with the torch light and on the said envelope it was written JAD(G) Kalyani." I put that letter in the pocket of my uniform shirt. Thereafter, I went in urinal near the BOP gate for urinating. When I was going towards the barrack after urinating, an auto-rickshaw came inside the BOP. Some persons got down from it and Insp.(Vig) Baldev Singh called me as I was in verandah and about to enter the barrack. On hearing his voice, I went to him and saw that Sh.S.K.Singh, JAD(G) HC(G) Bhagwan Singh and two others were also standing at that place. Sentry had gone near the gate at that time. As soon as I reached at the spot, I was surrounded by the said team. Then Insp.(Vig.) Baldev Singh asked me whether I had gone outside the BOP a few minutes ago, I told him in affirmation and gave the envelope to JAD(G) which was handed over to me by the civilian. The cordon which G team had made around me was at a distance of 10x to 15x from me and no other person of the BOP was there when JAD(G) opened the said envelope in darkness. I do not know what was there in the envelope. Thereafter, a paper was produced before me by Insp.(Vig.) Baldev Singh for signature and pressed me to write "yeh 400 rupaiya mere pas se mile hai," I wrote accordingly on that piece of paper and signed, when the said paper envelope was given by me to JAD(G), my

BOP Commander SI Baldev Singh was not present at the spot. Neither the sentry was there nor HC Shaukat Ali Khan who had come from battalion headquarter on that day was there.

At about 2130 hours Insp.(Vig) Baldev Singh asked me for the GD and made some entry in that. Thereafter my Coy Commander Sh.P.S.Gulia, AC came there and as per his order I went to Coy HQ Haridas Pur on the same night along with HC Shaukat Ali Khan hiring a rickshaw van.

On 14th November 1998 JAD(G) S.K.Singh came in Coy HQ and took me to G Base Bangaon at about 12:30 hours, after taking me in G Base Bangaon he locked me inside a room and threatened me for physical torture, he took my confessional statement under pressure and after threatening there on 14.9.1998, At about 15:00 hours, HC (G) Bhagwan Singh left me in my Coy Headquarter Haridaspur on motorcycle. On 15th November 1998 I was sent to Battalion HQ under escort. At Bn headquarter I requested the Adjutant 171 Bn BSF that I wanted to meet my family but I was refused. On 16.11.1998 at about 18:00 hours I was given move order to come to Tagore Villa with escort along with 3 other persons, including me, one L/Nk and 2 constables. On the same day we reached at Tagore Villa at about 22:00 hours. On 17th November 1998 at about 14:00 hours I was placed in Quarter guard of 127 Bn BSF along with other three persons of my battalion. On 18th November I was suspended whereas the order was dated 17.9.1998. I represented against my being placed in quarter guard and thereafter I was brought out of the quarter guard. Then I was kept in the tent in front of quarter guard on 21.11.1998 and 2 guards were placed on the said tent. On 1st December 1998 evening, the guard was removed at about 20:00 hours and I was shifted to other tent near MT park of 127 Bn.BSF, other 3 persons of 171 battalion were sent back to 171 Bn.BSF for few days. Though, I remained the said tent for few days and then shifted the barrack. Now I am living in the jawans barrack."

6. From the statement made by the petitioner, it is apparent that he admitted receiving an envelope, but claimed that he did so for the reason he was told by that somebody that the envelope had to be delivered to the JAD(G) and it contained a letter. He claimed that when he was surrounded by the JAD(G) and

Inspector (Vigilance) Baldev Singh they took the envelope from him and opened it. But being dark he could not see what was recovered from the envelope. That he was forced to put his signatures after writing on a sheet of paper that `400/- were recovered from him.

7. It is in the context of the aforesaid defence taken, we need to note the evidence relevant to the defence and the prosecution in light of the fact that the petitioner admitted having received an envelope from a person unknown to him and projected a reason for so receiving the envelope vis-a-vis the version of the department as laid in the charge and sought to be proved through the testimony of its star witness JAD(G) Sh.Saroj Kumar Singh PW-1.

8. It may be noted at the outset that the petitioner never suggested during cross examination to any witness that he was deputed or authorized to receive Dak (mail) on behalf of either the unit or any officer or jawan in the unit. The petitioner led no evidence in defence to establish the same. This we highlight at the outset for the reason it assumes significance on the question: Why would the petitioner receive an envelope addressed to the JAD(G) and not to him, and especially keeping in view the circumstance under which the envelope was received by the petitioner.

9. From the statement of the petitioner, he claims that he was sitting in the barrack and Const.C.Perumal was performing sentry duty and he came to him at the barrack and said that a civilian at the BOP Gate wanted to see him to give him necessary Dak and hence he went from the barrack to the sentry post to receive the Dak.

10. Now, if the petitioner was not authorized nor was he deputed to receive the Dak, we see no reason why would he leave the barrack and go to the sentry gate to receive the Dak, unless he knew that what was to be delivered was for him personally and nobody else.

11. Let us note the testimony of Const.C.Perumal. He deposed that on the day of the incident he was on sentry duty from 19:00 hours to 21:00 hours and at about 20:45 hours someone flashed torch light towards the BOP and he reported the

matter to the petitioner, HC Ram Chander who came out and received an envelope from a civilian on which JAD(G) was written and that after 7-8 minutes the JAD(G) party arrived. He i.e. Const.C.Perumal was asked to summon the post commander. The Coy Commander was also called and after some proceedings, about which he knew nothing, the JAD(G) party along with the petitioner left the BOP at around 22:45 hours.

12. Now, Const.C.Perumals testimony does not bring out that the civilian who handed over the envelope to the petitioner told him to call the petitioner. As per his testimony, he reported to the petitioner a suspicious conduct of a civilian flashing a torch towards the BOP and being a Head Constable, i.e. a Senior Jawan, the petitioner ostensibly coming out to investigate the matter, but accepting an envelope from the said civilian. His testimony also brings out that on the envelope, JAD(G) was written. His testimony also brings out that JAD(G) team came after 7 or 8 minutes.

13. We have noted hereinabove that there is no evidence of the petitioner being deputed to receive the Dak for the unit or any member of the unit. The question would arise as to why did the petitioner received the envelope, which as per him and Const.C.Perumal was to be delivered to the JAD(G). Assuming he did so to facilitate the receipt thereof at the BOP, why did he not immediately hand it over to the Dak Clerk. Why did he retain the envelope with him? Prima facie, the petitioner receiving the envelope, in a suspicious circumstance assumes significance and militates against the innocence of the petitioner.

14. But, what happened to the envelope? Was any such envelope recovered from the petitioner? Or was it that `400/- were recovered from the pocket of the petitioner?

15. Let us note the testimony of the star witness of the prosecution, JAD(G) Sh.Saroj Kumar Singh PW-1. He deposed that he had received information from reliable sources regarding involvement of the petitioner in smuggling activities and when he gave said information to the superior authorities he was instructed to keep close surveillance upon the petitioner and nab him if petitioner facilitated smuggling. While keeping a surveillance upon the petitioner he came to know that

one smuggler named Bhakta Halder in village Kalyani was giving `400/- per week to the petitioner for the purposes of safe passage for smuggling at Indo-Bangladesh border, thus to catch the petitioner red-handed he decided to lay a trap. On 10.11.1998 he discussed the matter with the Addl.DIG and the DIG and obtained the approval from the DIG to lay a trap. He learnt from reliable sources that Bhakta Halder was to hand over `400/- to the petitioner on 13.11.1998 and that he handed over to the source 5 currency notes in denomination of `50/- after noting their numbers to be handed over to Bhakta Halder. On 13.11.1998 he stationed himself along with Insp.Baldev Singh and HC Bhagwan Yadav as also L/Nk.M.G.Chote at about a kilometer away from Kalyani BOP and received information that the money had been handed over to the petitioner. He immediately proceeded to the camp and recovered `400/- from the pocket of the petitioner, which contained 5 currency notes in denomination of `50/- each and these were the ones he had handed over to the source. He prepared the seizure memo on which petitioners signatures were obtained. He deposed that the petitioner admitted his guilt in writing, Ex.P.

16. Relevant would it be to note that no suggestion was given to the witness that the money statedly recovered from the petitioner was inside an envelope on which it was written JAD(G).

17. Insp.Baldev Singh PW-3 corroborated the testimony of PW-1 with respect to facts deposed to by PW-1 in which he had referred to his being associated. He additionally deposed that the Post Commander SI Baldev Singh (PW-6) and HC Shaukat Ali PW-9 were also present when the money was recovered from the petitioner. Relevant would it be to note that no suggestion has been given to PW-3 that the money which was recovered was actually inside an envelope on which JAD(G) was written.

18. HC Bhagwan Yadav PW-4 also deposed to `400/- being recovered from the pocket of the petitioner and even to him no suggestion during cross examination has been given that the money was actually recovered from an envelope on which JAD(G) was written. L/Nk.M.J.Chothe PW-5 deposed that he was at some distance when the stated recovery of `400/- from the petitioner had created a

commotion and hence attracted his curiosity towards the place where the activity was going on and learnt, on being told, that `400/- was recovered from the petitioner. He signed, as a witness, the memo drawn up pertaining to recovery of `400/- from the petitioner. Relevant would it be to note that PW-5 is a witness not to the actual recovery, but was standing at some distance when the recovery was made and was summoned immediately to sign the recovery memo. His testimony is res gestae evidence. But relevant would it be to note that even to him, no suggestion has been given that an envelope was also recovered. Another witness by the name of Baldev Singh i.e. SI Baldev Singh PW-6 has also deposed to have reached when `400/- were recovered from the petitioner, but his testimony shows that like PW-5 even he reached after the recovery was made and is not a witness to the actual recovery. But, akin to the testimony of PW-5, his presence at the spot is when the heat of the moment had not cooled and qua him also, we note, no suggestion given that any envelope was seen by him on which JAD(G) was written or that the petitioner was insisting that in the recovery memo, the recovery of the said envelope be shown. We ignore the testimony of Assistant Commandant Pratap Singh Gulia PW-7 for the reason his testimony reveals that he came to the spot after half hour and has deposed to facts, not in his personal knowledge but what he heard. We also eschew reference to the testimony of one Tapan Dass PW- 8 for the reason even he claims to be at a distance when the money statedly was recovered. He could not be a witness to break the deadlock on whether `400/- were recovered from the pocket of the petitioner or an envelope containing `400/-, on which JAD(G) was written was recovered from the petitioner.

19. Now, the petitioner has not disputed `400/- recovered from him, but claims that he was entrapped; he claims that he innocently received an envelope meant to be delivered to the JAD(G) and little did he know that the same contained `400/-. As per the prosecution, a trap was laid because of secret information received that the petitioner was receiving bribe from smuggler to facilitate smuggling at the border.

20. We do have the testimony of PW-2 the person who gave the money to the petitioner, but we eschew reference to the same inasmuch as it can be possibly be argued that the witness has deposed under pressure for the reason he admitted

being a smuggler. Why would somebody do so?

21. Ignoring the testimony of PW-2, recovery of `400/- admitted by the petitioner and his defence that the money was in an envelope meant to be delivered to the JAD(G) being unsubstantiated, in that, evidence leans against any envelope being recovered and keeping in view the testimony of PW-10 that the petitioner received the money in an envelope on which JAD(G) was written prima facie establishes that the giver of the illegal money, being a conspirator with the petitioner, took defensive action to write on the envelope JAD(G) for the reason if the envelope was intercepted at the spot, a valid defence could be raised that it was meant for delivery to the JAD(G). The fact that after 7 or 8 minutes no envelope was recovered and only `400/- was recovered from the pocket of the petitioner evidences that he knew that the contents of the envelope were meant for him. After receiving the envelope he opened the same, pocketed the money and threw away the envelope. The circumstance under which the petitioner received the envelope, as per his statement and even as per the testimony of PW-10 is highly suspicious conduct of the petitioner. That the petitioner was not to receive the Dak and it was not his duty to do so and even as per him the stated envelope was not addressed to him required the petitioner to answer as to why did he receive the envelope and with reference to his defence, his conduct of receiving the envelope is also a piece of incriminating evidence.

22. To the reader of our decision it may sound a little jarring that we have analyzed the evidence in a degree of detail not expected from a Court exercising writ jurisdiction and thus we make it clear that our endeavour was not to re- appreciate the evidence as a Court of Appeal, but we did so for the reason the defence was of false entrapment and we intended to satisfy our judicial conscious to the truthfulness of what happened for the reason issues of false entrapment are fairly fine in the areas of divergence and those not properly trained in the field of appreciation of evidence may inadvertently overlook fine points, on which the issues actually resolved and are relevant to break the deadlock.

23. The writ petition is dismissed.

24. No costs.

