

Chandan Singh Vs. Uoi and ors.

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Court : Delhi

Decided On : Sep-22-2011

Judge : Pradeep Nandrajog; Sunil Gaur, Jj.

Appeal No. : W.P.(C) 1600/1998

Appellant : Chandan Singh

Respondent : Uoi and ors.

Advocate for Def. : Ms.Saroj Bidawat, Adv.

Advocate for Pet/Ap. : Mr.Anil Gautam; Mr.Satya Sahrawat, Adv.

Judgement :

1. Briefly noted, with respect to the testimony of Ex.HC Puran Singh who had superannuated as a Head Constable from BSF, the petitioner and Nk.Raj Kumar became friendly with him and started visiting his house in spite of he i.e. Ex.HC Puran Singh cautioning them that being out of bound area, the two should not visit his house. On 30.6.1997 when he i.e. Ex.HC Puran Singh, his wife and children were sleeping, his wife heard sound from the adjoining room where-from business of selling tea was being carried out by him and as he entered the room he saw a man lying on the floor, who he struck with a stick and as the person screamed, from the voice he could recognize that it was Nk.Raj Kumar. At that very moment somebody poked a bamboo from the door and called out the name of Nk.Raj Kumar, he could recognize from the voice that the said person calling for Nk.Raj

Kumar was Chandan Singh, the petitioner.

2. Nk.Raj Kumar and the petitioner Chandan Singh were subjected to a Security Force Court Trial. Both were held guilty and visited with a penalty of dismissal from service.

3. Though there is no evidence, but it appears to be a case where the presence of Ex.HC Puran Singh's second wife, a woman of young age, was attracting Nk.Raj Kumar and the petitioner.

4. Unfortunately for the petitioner he rushed to this Court questioning the penalty levied against him and had he availed the remedy of appeal, he would have got the same benefit as was given to Nk.Raj Kumar, qua whom the penalty was set aside due to a technical error at the trial. For reasons not known, setting aside the penalty due to a technical error at the trial, it was not directed that Nk.Raj Kumar be re-tried. Thus, Nk.Raj Kumar is merrily serving.

5. As regards the writ petitioner, he happened to land up with a lawyer, whose conduct of filing mindless writ petitions has been adversely commented upon in various orders. The mindless writ petition i.e. the instant one, being one amongst at least 40 filed in this Court in which it has been adversely commented upon against the learned counsel, who for reasons best known to him resorted to reckless cut, copy and paste, unmindful of the facts of different cases. Learned counsel for the petitioner concedes that the useless pleadings in the writ petition has compelled this Court to issue Rule and set the writ petition for hearing in normal course. The counsel concerned cheated upon the petitioner by not appearing when the writ petition came up for hearing, resulting in the same being dismissed. It is only while seeking restoration that learned counsel informed the Court, a fact not pleaded in the writ petition, that Nk.Raj Kumar had already been reinstated when he filed the appeal against the sentence imposed upon him.

6. The fact pertaining to Nk.Raj Kumar is conceded to by learned counsel for the respondents.

7. Accordingly, we dispose of the writ petition declaring that petitioner would be entitled to parity with Nk.Raj Kumar, whose role in the episode was graver than that of the petitioner. The technical error in the trial as determined by the Appellate Authority which has resulted in Nk.Raj Kumar being reinstated without being subjected to a re-trial, must enure to the benefit of the petitioner as well. We quash the impugned order dated 12.7.1997 and direct that petitioner should be reinstated in service, but without any back-wages. We deny back-wages for the reason the pleadings in the writ petition are useless, as conceded to by learned counsel for the petitioner. The petitioner never took the plea in the writ petition on which he is succeeding. He never availed the remedy of appeal. He has contributed to the mess.

8. Compliance be made with the instant decision within 8 weeks from today.

9. No costs.

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