

Ram Chander Vs. Uoi and ors.

Ram Chander Vs. Uoi and ors.

SooperKanoon Citation : sooperkanoon.com/954439

Court : Delhi

Decided On : Jan-24-2013

Judge : Pradeep Nandrajog

Appellant : Ram Chander

Respondent : Uoi and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on :January 15, 2013 Judgment Pronounced on : January 24, 2013 + WP(C) 3205/2001 RAM CHANDER Petitioner Represented by: Ms.Avnish Ahlawat, Advocate and Ms.Latika Choudhary, Advocate. versus UOI & ORS. Respondents Represented by: Mr.Sachin Chopra, Advocate and Mr.Anuj Tyagi, Advocate and Mr.Sarvpreet S.Chawla, Advocate for R-2, 3 and 4. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE VEENA BIRBAL PRADEEP NANDRAJOG, J.

1. The petitioner was charge-sheeted on the allegation that while detailed for duty at Air India Gate No.3 Departure, Terminal-II, IGI Airport in the intervening night of 11th and 12th August 1994 he had extorted `200/- from Hakim Singh and Jagdish Singh and had permitted them unauthorized entry without any valid tickets held by them into the precincts of the Airport. At the inquiry 10 witnesses were examined by the prosecution.

2. Insp.Gayatri Prakash PW-7 deposed that he was on duty at Terminal-II of IGI Airport and was in-charge of Gate No.10 and 11 on the intervening night in question and at around 05:00 AM saw 2 Sikh gentlemen standing in a queue without any boarding pass. On enquiry they told him that they gave `200/- to a Sub Inspector at the Entry Gate. He informed the Control Room of said fact and soon SI Kulwant Singh came to the spot and took the two Sikh gentlemen with him. Soon thereafter the Assistant Commissioner Police Shift asked him about the incident. SI Kulwant Singh PW-1 corroborated Insp.Gayatri Prakash when he deposed that when he was posted in the Police Control Room at IGI Airport at around 05:35 AM on August 12, 1994 Insp.Gayatri Prakash informed the Control Room that two persons named Hakim Singh and Jagdish Singh were standing near Gate No.10/11 without a passport, entry-pass or boarding-card. He reached the spot and enquired from the two gentlemen who told that they gave `200/- to the petitioner for the illegal entry. He took the two gentlemen to the Control Room where Insp.Gian Chand questioned them and produced them before the ACP Shift. Jagdish Singh gave the written complaint Ex.PW-1/A and Hakim Singh gave the written complaint Ex.PW-1/B. The ACP called the petitioner who admitted the incident and produced two notes of `100/each and expressed regrets. Insp.Gian Chand PW-10 corroborated SI Kulwant Singh PW-1 by deposing that he was on duty as the in-charge of the Control Room and that SI Kulwant Singh was also on duty who brought Hakim Singh and Jagdish Singh to the Control Room and on enquiry by him they stated of having given `200/- to the petitioner for unauthorized entry into the precincts of the Airport. Shri Pratap Singh, ACP, PW-2 corroborated SI Kulwant Singh PW-1 by deposing that he was on duty at the Airport and that Hakim Singh and Jagdish Singh were brought to him who gave writings Ex.PW-1/A and Ex.PW-1/B implicating the petitioner. The petitioner admitted before him of having extorted `200/- from the two Sikh gentlemen and produced two notes of `100/- each which were seized by him vide Ex.PW-2/A. HC Durgesh Dutt, PW-3 deposed that he was the Reader of PW-2 and corroborated PW-2 with respect to the seizure memo Ex.PW-2/A. HC Ramanand PW4 deposed that he was on duty as the Chitta Munshi and recorded DD Entry No.2, Ex.PW-4/A pertaining to the incident and that the duty roster Ex.PW-4/B showed petitioner and HC Chiranji Lal being detailed for duty at Gate No.3. HC Sumer Singh PW-5 deposed of having

deposited the money which was seized in the Malkhana. Insp.Amarjit Singh PW-6 deposed that he was called by the ACP Shift In-charge and had witnessed `200/- being produced by the petitioner. He corroborated PW-2 regarding confession made by the petitioner. Hakim Singh PW-8 and Jagdish Singh PW-9 also deposed facts as per the indictment and fully corroborated the other witnesses of the prosecution.

3. With respect to the evidence noted herein above and the fact that Hakim Singh and Jagdish Singh supported the prosecution version and admitted of having made an illegal entry into the precincts of the Airport after paying `200/- to the petitioner and there being documentary evidence in the form of the duty register evidencing that petitioner and HC Chiranji Lal were at the Entry Gate, one would wonder as to what the petitioner could possibly argue.

4. But, the petitioner has two strings in his bow from which he shoots two arrows.

5. The first is that the seizure memo Ex.PW-2/A does not bear his signatures and thus it is urged that the seizure is tainted. The second arrow which he shoots is that the Inquiry Officer had exonerated him and that without recording a Note of Disagreement and serving the same upon him for his response, the Disciplinary Authority could not have opined to the contrary as per the law declared by the Supreme Court in the decisions reported as 1998 (7) SCC 8.Punjab National Bank & Ors. v. Kunj Behari Mishra and 1999 (7) SCC 73.Yoginath D Bagde v. State of Maharashtra & Anr.

6. Before finding out whether the two arrows shot by the petitioner reach their target and demolish the same, we would note that taking a serious view of the lapse which had an element of culpability in the form of a positive act of extracting `200/-, may be by way of bribe to permit unauthorized entry in the precincts of the Airport, the Disciplinary Authority levied penalty of dismissal from service upon the petitioner. Appellate remedy failed. So did the challenge before the Central Administrative Tribunal.

7. Now the first arrow. It is true that the seizure memo does not bear the signatures of the petitioner, but there are ample witnesses to prove the seizure.

The two persons from whom the money was extracted, Hakim Singh PW-8 and Jagdish Singh PW-9, as also SI Kulwant Singh PW-1, ACP Pratap Singh PW-2, HC Durgesh Dutt PW-3 and Insp.Amarjit Singh PW-6 have deposed in sync on the seizure. HC Sumer Singh PW-5 has deposed of having taken possession of `200/- and having deposited the same in the Malkhana. It is settled law that a procedural lapse cannot destroy substantive evidence or a fact which is otherwise proved.

8. Now, the second arrow. The petitioner takes help from the ink on the report of the Inquiry Officer. While discussing absence of petitioners signatures on the seizure memo and the credibility of the two victims, Hakim Singh and Jagdish Singh, the Inquiry Officer has penned as under:As regards, the charge that two Sikh gentlemen Sardar Hakim Singh and Sardar Jagdish Singh were allowed entry into the Airport premises without any valid documents through gate No.3, where SI Ram Chander was on duty as per Roster has already been established. This has also been admitted by the defaulter SI during cross examination with the PWs that were they not intercepted by any other authority i.e. Customs/Immigration/IAAI frok (sic) entry gate No.3 up to gate No.10 & 11. Therefore, the charge that the two sikh gentlemen were allowed through Gate No.3 inside the building has been established beyond doubt. The second part of the charge that SI Ram Chander extorted `200 from the two Sikh gentlemen in lieu of their entry into Airport premises has been corroborated by SI Kulwant Singh, Inspr.Amarjeet Singh, HC Durgesh Dutt, Inspr.Gian Chand and Inspr.Gyatri Prakash in addition to the two complainants Sardar Hakim Singh and Sardar Jagdish Singh as well as ACP, Sh.Partap Singh who reported the whole incident to the senior officers. But the point that before when `200 were given by the complaint to SI Ram Chander has not been corroborated by any eye witness except Sardar Hakim Singh and Sardar Jagdish Singh, who are the complainants and hence, they be treated as interested witnesses. The statements of PWs SI Kulwant Singh, HC Durgesh Dutt, Inspr.Amarjeet Singh, Inspr.Gyatri Prakash and even ACP Sh.Partap Singh are partly based on hear say of the complainants except that the defaulter had admitted his guilt before all the above officers voluntarily in the office of the ACP and produced `200 (two notes of `100/- each) from his right pocket of the shirt of the uniform, which is an admission before a police officer and hence has less evidenciary value. The charge, therefore, the SI Ram Chander extorted `200 from

the two Sikh gentlemen in lieu of their entry to the premises has not been fully proved. However, the entry given to the two Sikh Gentleman into the premises by SI Ram Chander through Air India Gate No.3 does not absolve him of the charge and reflects mala fide intention on his part.

9. Now, it is apparent to the reader that while using the ink in the pen and giving expression to his thoughts, the Inquiry Officer has got utterly confused and this explains the frolicking thought which we find manifest in the report.

10. Meaningfully read, the Inquiry Officer has attempted to deal with the submission made before him that the absence of petitioners signatures on the seizure memo discredits the seizure and that where a document gets dented, corroboration should not be sought from the testimony of interested witnesses. But, this is a principle of law based on the Rule of Prudence and Caution used by Courts at criminal trials for serious offences and would have no place at a departmental inquiry. That apart, the Inquiry Officer has also discussed the evidence of other witnesses who were neither interested. We conclude on the subject by holding that notwithstanding the mixed metaphor in the passage above quoted from the report of the Inquiry Officer, it cannot be inferred that the Inquiry Officer had opined that the petitioner was not proved to be guilty. What more clarity could be expressed finally by the Inquiry Officer when he concludes in the last paragraph of the report that the charge was fully proved.

11. The second arrow has obviously been fired from a non- existing second string in the bow and thus it has not even taken off in the direction of the intended destination and hence the question of the arrow striking the target, much less demolishing the same, does not arise.

12. A feeble attempt was made to urge that by not permitting defence witnesses to be examined a prejudice has been caused to the petitioner, in respect of which plea we simply observe that the record of the Inquiry Officer would show that within the time granted to the petitioner to produce defence witnesses, if any desired by him, he did not do so and adopted an obstructive stand resulting in the inquiry being delayed and after the time granted to him to produce defence witnesses had lapsed he moved an application in said regard; which in our opinion

was rightly rejected.

13. Within the jurisprudence applicable to domestic inquiries we find sufficient and credible evidence against the petitioner and would uphold the penalty imposed, but would simultaneously observe that the petitioner had rendered 29 years service. Penalty of compulsory retirement not being a penalty which can be levied under the Delhi Police (Punishment and Appeal) Rules 1980, the Competent Authority ought to have considered sanctioning a Compassionate Allowance under Rule 41 of the CCS (Pension) Rules 1972. The reason is that law requires compassion to be blended with punishment.

14. Dismissing the writ petition with respect to the relief prayed for, we direct the Competent Authority of the petitioner to take into account the fact that petitioner had rendered 29 years service when he was dismissed from service and in light of said fact consider sanctioning a Compassionate Allowance to the petitioner and for which we permit the petitioner to file a detailed representation which would be considered by the Competent Authority and necessary orders would be passed thereon within six weeks of receipt of the application.

15. No costs. (PRADEEP NANDRAJOG) JUDGE (VEENA BIRBAL) JUDGE
JANUARY 24 2013 dk

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