

**(2014) 04 DEL CK 0112**  
**In the Delhi High Court**  
**Case No : WP (C) No. 1505/2003**

Brijesh Kumar Shukla

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 23-04-2014

**Acts Referred:**

Border Security Force Act, 1968 — Section 46, 53, 55, 74(2), 75(1)  
Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 170

**Citation :** (2014) 04 DEL CK 0112

**Hon'ble Judges :** Pradeep Nandrajog, J; Jayant Nath, J

**Bench :** Division Bench

**Advocate :** Anil Gautam, Advocate for the Appellant; Sachin Dutta and Mr. Vineet Tayal, Advocate for the Respondent

**Final Decision :** Disposed Off

## **Judgement**

Pradeep Nandrajog, J.—On April 04, 1987 the petitioner was enrolled as a Constable in Border Security Force. Thereafter, on December 29, 1993 the petitioner was sent on deputation to Central Bureau of Investigation.

2. The case set by the department against the petitioner is that in the month of September, 1995 an information was received at the Vigilance Department of the Railway Board that by impersonating himself as an official of the Vigilance Department of Railway Board a person is frequently managing to travel to and fro between New Delhi and Ahmedabad in Magadh Express or Prayag Express without purchasing ticket. In view thereof a surprise check was conducted in Magadh Express on September 15, 1995 and the petitioner was caught travelling without a ticket. On being caught the petitioner impersonated to be a Vigilance Inspector of the Railway Board; namely: "Mr. Srivastava".

3. M. Ahmed, Inspector, Vigilance Directorate, Railway Board conducted an investigation into the matter and prepared an investigation report, concluding therein as under:-

Based on the above fact brought out in the report, it was found that Shri B.K. Shukla working as Police Constable in CBI, intentionally impersonating as V.I./ Railway Board and willfully tried to cause a monetary loss to the Railways. Shri B.K. Shukla had tried to cheat the Railway Administration and indulged in fraudulent activities by trying to impersonate as a Vigilance Inspector/Railway Board and caused a loss of revenue to the Railways.

4. In view of the aforesaid investigation report prepared by Inspector M. Ahmed, CBI repatriated the petitioner to BSF on December 28, 1995.

5. On January 25, 1996 an offence report was put up before the Commandant of the 173rd Bn. BSF to which the petitioner was attached. The offence report listed the allegation that on September 15, 1995 while traveling in Magadh Express the petitioner had impersonated himself to be Mr. Srivastava, Vigilance Inspector, Railway Board. The record would evidence that after hearing the petitioner with respect to the offence report the Commandant directed preparation of Record of Evidence.

6. At the Record of Evidence eight witnesses were examined by the prosecution; viz. Subedar/Clerk M.N. Shenoy PW-1, B.N. Mishra PW-2, Ajay Bhargava PW-3, Vinita Bhargava PW-4, M. Ahmed PW-5, Ramoli Singh Meena PW-6, M.P. Singh PW-7 and Shafi Khan PW-8.

7. Subedar/Clerk M.N. Shenoy PW-1, stated facts regarding the deputation of petitioner to CBI and his repatriation to BSF.

8. B.N. Mishra PW-2, Superintendent of Police, CBI stated facts regarding the receipt of the afore-noted investigation report prepared by Inspector M. Ahmed by CBI.

9. Ajay Bhargava PW-3, stated that on September 15, 1995 in the company of his wife he was travelling in Magadh Express in a AC Sleeper Coach. As the train departed he came out of his compartment and stood in the gallery near the washroom adjacent to the door of the coach. The petitioner came running and entered the Coach. The petitioner was looking nervous, sweating profusely and breathing very fast at that time. Immediately thereafter the conductor and other Railways officials came in the coach and asked the petitioner to produce the ticket. The petitioner replied that he was unable to purchase the ticket since there was very heavy rush at the ticket counter. The petitioner informed that he had to visit Allahabad in an emergent situation because his wife was admitted at a hospital and had to undergo a major operation. The petitioner requested the conductor, TT and other officials to let him travel till the next station where he would get down and purchase a ticket for travelling in the general compartment of the train. However, the officials did not agree to the request of the petitioner and asked him to immediately get down from the train or else they would charge a penalty from him. On this, the petitioner stated that his life would be endangered if he were to jump from the train. Ultimately, the officials asked the petitioner to pay a sum of Rs. 535/- towards cost of ticket from Delhi to Aligarh

and penalty. The petitioner requested him to lend him a sum of Rs. 500/- stating that he would return the same on his next visit to Delhi. He advanced a loan of Rs. 500/- to the petitioner on humanitarian grounds. Thereafter the petitioner paid a sum of Rs. 535/- to the officials and got down at Aligarh. The petitioner did not impersonate himself as Vigilance Inspector, Railway Board in his presence. Two more persons were travelling without ticket in the coach and got down at Aligarh and Kanpur respectively.

10. Vinita Bhargava PW-4, wife of witness Ajay Bhargava stated that on September 15, 1995 along with her husband she was travelling in Magadh Express in an AC Sleeper Coach. When she and her husband entered the compartment the petitioner was not present. At about 08.00 P.M. her husband got up from his seat and went out of the compartment to visit the washroom. At about 08.30 P.M. her husband returned to the compartment and asked her to give him a sum of Rs. 500/- for advancing a loan to some CBI personnel. She took out Rs. 500/- from her purse and handed over the same to her husband. Thereafter she saw her husband giving said sum of Rs. 500/- to the petitioner. Petitioner handed over a sum of Rs. 535/- to the conductor and asked for a ticket/receipt from him. On this, the conductor replied that he would give him i.e. petitioner a receipt later on. After sometime her husband informed her that the petitioner had got down at Aligarh station. The petitioner did not impersonate himself as a Vigilance Inspector, Railway Board in her presence. The petitioner had introduced himself to her as a Constable in CBI.

11. M. Ahmed PW-5, Inspector (Vigilance), Railway Board stated that he had received an information to the effect that a person is frequently managing to travel to and fro between New Delhi and Ahmedabad in Magadh Express or Prayag Express without purchasing ticket by impersonating himself as a Vigilance Inspector, Railway Board. In view thereof he planned to conduct a surprise check in Magadh Express on September 15, 1995 to ascertain the veracity of the aforesaid information. Accordingly, on September 15, 1995 at about 07.45 P.M. he reached New Delhi Railway Station and began surveillance of Magadh Express. When he reached near AC Sleeper coach of Magadh Express the conductor of said coach informed him that a Vigilance Inspector is travelling in the train and had been allotted berth No. 16. Immediately he and the conductor rushed to the compartment in question and confronted the impersonator who introduced himself as a Vigilance Inspector, Railway Board, New Delhi. He then asked the impersonator to show his identity card or any other document to establish that he is a Vigilance Inspector of Railway Board. The impersonator expressed his inability to show his identity card on the ground that he had not been issued any identity card since he was appointed recently. The impersonator further expressed his inability to show the authority under which he was travelling in the said train. At this he directed the conductor of the coach Sh. M.P. Singh to charge fare along with penalty from the impersonator. The conductor asked the petitioner to pay a sum of Rs. 535/- to him, which amount was paid by the petitioner by borrowing the money from a lady passenger. After sometime

the impersonator took out his identity card which revealed that he was Constable B.K. Shukla of CBI. The identity card of the impersonator was seized by him and a seizure memo was prepared in said regard. He had prepared detailed investigation report of the incident in question and submitted the same to the Director, Railway Board.

12. Ramoli Singh Meena PW-6, Junior Ticket Inspector, Northern Railway, New Delhi Railway Station stated that on September 15, 1995 the petitioner met him at platform No. 6/7 and enquired from him whether he is the Junior Ticket Inspector. The petitioner introduced himself as Vigilance Inspector, Railway Board. The petitioner informed him that he intends to travel to Kanpur by Magadh Express on the said day i.e. September 15, 1995. He requested him to inform the conductor of AC Sleeper coach about his travel plans and that he i.e. petitioner is Vigilance Inspector of Railway Board. Thereafter the train left the platform and he returned to his office.

13. M.P. Singh PW-7, stated that on September 15, 1995 he was working as conductor of AC Sleeper Coach of Magadh Express. On said day at about 08.00 P.M. R.S. Meena Junior Ticket Inspector came to him and asked him to accommodate a Vigilance Inspector of Railway Board upto Kanpur upon which he allotted berth No. 18 to said Vigilance Inspector. Thereafter the train embarked upon its journey. At about 08.05 P.M. Vigilance Inspector M. Ahmed came from pantry car and sat on a berth. During the course of checking of tickets of passengers he informed M. Ahmed that another Vigilance Inspector was travelling in the berth. Immediately thereafter M. Ahmed confronted the petitioner and asked him to show his identity card. When it was confirmed that the petitioner was not the Vigilance Inspector M. Ahmed directed him to charge fare from Delhi to Aligarh along with penalty from the petitioner. Accordingly, he charged a sum of Rs. 535/- from the petitioner. After few minutes the petitioner showed his identity card to him and M. Ahmed which revealed that the petitioner was a Constable in CBI. Inspector M. Ahmed seized the identity card of the petitioner and prepared a seizure memo in said regard.

14. Shafi Khan PW-8, stated that on September 15, 1995 he was performing duty of waiter in Magadh Express. On said day when he entered AC Sleeper coach to serve dinners to the passengers he saw one CBI personnel engaged in a conversation with the conductor of the coach and M. Ahmed, Vigilance Inspector of Railway Board. The conductor and inspector informed him that the CBI personnel is travelling without a ticket. The conductor and the inspector charged the fare and penalty from said person in his presence. The CBI personnel had shown his identity card in his presence which card was seized by Inspector M. Ahmed. The CBI personnel had enquired from him the price of vegetarian meal but did not take the same. The CBI personnel did not impersonate himself as a Vigilance Inspector of Railway Board in his presence. He does not remember the name of the CBI personnel. Two more persons who were travelling without ticket were charged by the conductor and inspector on said day.

15. In his defence, the petitioner examined three witnesses viz. Kundan Lal Verma DW-1, Bal Govind DW-2 and Bhawani Fer DW-3.

16. Kundan Lal Verma DW-1, stated that on September 15, 1995 he was standing in a queue at the booking counter of New Delhi Railway Station to purchase a ticket for traveling from New Delhi to Kanpur. The petitioner was standing behind him in the queue. He started talking to the petitioner. During the course of their conversation the petitioner informed him that he had to urgently go to Allahabad as his wife was admitted in the hospital and had to undergo a major operation. They remained standing in the queue for about an hour but their turn did not mature. At about 08.00 P.M. Magadh Express was about to depart upon which they left the queue and hurriedly got into AC sleeper coach of said train. As soon as they got into the coach the conductor present there told them to jump out of the train or else he would charge heavy penalty from them. In the meantime a Vigilance Inspector of Railway Board came there and asked him to pay a sum of Rs. 350/- or else he would have to face dire consequences. Due to fear he paid a sum of Rs. 350/- to the conductor but no receipt was issued by the conductor. The petitioner refused to pay the sum unless a receipt is issued to him. After sometime the petitioner requested a person to lend him a sum of Rs. 500/- to him in order to enable him to pay fare from Delhi to Aligarh along with penalty to the Railway officials. The aforesaid person handed over a sum of Rs. 500/- to the petitioner who in turn paid a sum of Rs. 535/- to the conductor. The petitioner got down at Aligarh railway station at the asking of the aforesaid Railway officials. When he was getting down at Kanpur junction he again requested the conductor to issue him a receipt but he refused to do so. Instead, he took him to the exit gate and asked ticket collector deployed there to let him go and he got out from there.

17. Bal Govind DW-2, stated that on September 15, 1995 he was standing in a queue at the booking counter of New Delhi Railway Station to purchase a ticket for traveling from New Delhi to Aligarh junction. He remained standing in the queue for about an hour but his turn did not mature. When Magadh Express was about to depart he left the queue and hurriedly got into AC sleeper coach of said train. The petitioner and one another person also got into AC sleeper coach of said train. As soon as they got into the coach the conductor and a Vigilance Inspector of Railway Board present there told them to jump out of the train or else he would charge heavy penalty from them. The aforesaid officials scolded and abused them and threatened them they would hand them over to the police or magistrate or levy heavy penalty upon them. Ultimately the aforesaid officials directed him to pay a sum of Rs. 250/- upon which he requested them to reduce the amount as he was a man of limited means. The aforesaid officials then asked him to pay a sum of Rs. 200/-, which sum was paid by him but no receipt was issued to him. When he got down at Aligarh junction the conductor accompanied him to the exit gate and he was allowed to go by the ticket collector deployed at the exit gate at the instance of conductor.

18. Bhawani Fer DW-3, stated that the petitioner is known to him since last five years. On September 15, 1995 the petitioner came to him and requested him to lend him a sum of Rs. 10,000/- for the treatment of his wife. He advanced a loan of Rs. 5,000/- to the petitioner.

19. The Record of Evidence was placed before the Commandant on January 06, 1997 and considering the same he opined that the petitioner should be tried at a Summary Security Force Court and for which he drew up a charge-sheet dated January 31, 1997 and served the same upon the petitioner on the same day. The charge-sheet reads as under:-

The accused No. 87009342 Constable Brijesh Kumar Shukla of 173 Bn BSF is charged with:-

BSF Act 1968 Section 46

Committed A Civil Offence That is To Say, Personating A Public Servant Punishable U/S. 170 IPC

In that he,

while on deputation to CBI, on 15 Sept" 95 impersonated himself as Shri Srivastava, Vigilance Inspector, Railway Board, while travelling in train No. 2392 Dn Magadh Express.

20. Thereafter the petitioner was tried by a Summary Security Force Court. Vide order dated February 11, 1997 the SSFC held the petitioner guilty of the charge framed against him and sentenced him to undergo rigorous imprisonment for eighty-nine days in Force Custody.

21. After the petitioner had undergone forty-eight days imprisonment, vide order dated March 31, 1997 Deputy Inspector General set aside the proceedings of SSFC including its finding and sentence. It was directed that the petitioner be re-tried by the Summary Security Force Court.

22. The record would reveal that the re-trial of petitioner commenced on December 13, 2000 and the petitioner pleaded "Not Guilty" to the charge at the arraignment.

23. The re-trial commenced and six prosecution witnesses were examined out of eight who were examined during Record of Evidence proceedings. But, in a different order. The order in which the prosecution witnesses were examined by the prosecution at the trial is as follows: Ajay Bhargava PW-1, Vinita Bhargava PW-2, Ramoli Singh Meena PW-3, M.P. Singh PW-4, Shafi Khan PW-5 and B.N. Mishra PW-6. In essence, the witnesses deposed in harmony with their depositions at the Record of Evidence but with the following alterations:

(i) Ajay Bhargava PW-1, only deposed the facts relating to his advancing a loan in sum of Rs. 500/- to the petitioner in his testimony at the trial.

(ii) Vinita Bhargava PW-2, expressed her inability to identify the person who had

taken a loan in sum of Rs. 500/- from her husband.

(iii) Inspector R.S. Meena PW-3, was unable to identify the person who had introduced himself as Vigilance Inspector, Railway Board to him on September 15, 1995 due to passage of time but "suspected" that the petitioner was the person who had introduced himself as Vigilance Inspector, Railway Board to him on September 15, 1995.

(iii) M.P. Singh PW-4, expressed his inability to identify the passenger who was travelling without fare and impersonated himself as Vigilance Inspector, Railway Board on September 15, 1995 due to passage of time but stated that the name of said passenger was Shukla.

(iv) Shafi Khan PW-5, expressed his inability to identify the passenger who was travelling without fare on September 15, 1995 but stated that the name of said passenger was Shukla.

24. Record would evidence that the petitioner made a statement of defence stating therein that on September 15, 1995 he went to New Delhi Railway Station to catch a train to Allahabad. He went to the ticket counter to purchase the ticket but could not purchase the same because of a long queue at the counter as a result whereof he was constrained to board Magadh Express without a ticket since he had to urgently go to Allahabad to attend to his ailing wife. On boarding the train he was met by the conductor who insisted that he cannot travel in the train without purchasing a ticket. He i.e. petitioner informed the conductor about the circumstances which led him to board the train without purchasing ticket but to no avail. The conductor was very angry and asked him to jump from the train. Thereafter he requested one Bhargava to lend him a sum of Rs. 500/- since he was not carrying sufficient money with him, which request was acceded to by Bhargava. He informed the conductor that he is working in CBI and showed his identity card to him. Thereafter another railway official by the name of Khan came there and took his identity card and told him that his identity card is not bearing a valid date. The said railway official asked him to give money to him or else he should get down from the train. At this, he paid a sum of Rs. 535/- to the conductor but he i.e. conductor did not issue a receipt to him. The aforesaid railway officials did not return his identity card to him despite several requests made by him in said regard.

25. Petitioner called upon one defence witness at the trial viz. Balgovind who deposed in harmony with his statement at the Record of Evidence with the addition that a passenger had paid a sum of Rs. 500/- to the petitioner to enable him to pay fare and penalty to the railway officials. The petitioner was issued ticket after he had paid the fare and penalty to the railway officials and handed over his identity card to the said officials.

26. Vide order dated December 14, 2000 the SSFC held the petitioner guilty of the charge framed against him and awarded the sentence of dismissal from service, which finding and sentence was approved by the Deputy Inspector

General on January 31, 2001.

27. The statutory petition filed by the petitioner challenging the finding and sentence of SSFC was rejected by the competent authority vide order dated June 28, 2001.

28. Aggrieved by the aforesaid, the petitioner has filed the present petition under Article 226 of Constitution of India.

29. In support of the present petition, learned counsel appearing for the petitioner had advanced following three submissions:-

A The petitioner could not have been tried second time by the Summary Security Force Court for the same offence in view of the prescription contained in Section 75(1) of BSF Act, 1968 that when any person has been acquitted or convicted of an offence by a Security Force Court or by a criminal court he cannot be tried again for the same offence by a Security Force Court.

B Section 74(2) of BSF Act, 1968 prescribes that an officer holding the Summary Security Force Court shall not ordinarily try a person without first obtaining sanction from the officer empowered to convene a Petty Security Force Court in said regards. In the instant case, the officer holding the (second) Summary Security Force Court was required to take sanction from the Deputy Inspector General before trying the petitioner for the second time but the same was not done. Counsel argued that the act of the officer holding second Summary Security Force Court of not obtaining sanction from the Deputy Inspector General before trying the petitioner for second time has vitiated the second trial of the petitioner.

C The finding of guilt of petitioner returned by the Summary Security Force Court is based on "no evidence", in that, no reasonably prudent person would have arrived at the conclusion that the petitioner had committed the offence with which he was charged in view of evidence led by the department/prosecution at the trial.

30. In order to deal with the first submission advanced by the petitioner, it would be necessary for us to note Section 75(1), BSF Act, 1968 and the same reads as under:-

(1) When any person subject to this Act has been acquitted or convicted of an offence by a Security Force Court or by a criminal court or has been dealt with u/s 53 or section 55, he shall not be liable to be tried again for the same offence by a Security Force Court or dealt with under the said sections.

(Emphasis Supplied)

31. As already noted by us hereinabove, vide order dated March 31, 1997 the Deputy Inspector General had set aside the proceedings including finding and sentence of the Summary Security Force Court which had tried the petitioner for the first time.



32. Respondents do not have with them the record concerning the first trial of the petitioner. Even the order dated March 31, 1997 passed by the DIG setting aside the first trial and directing fresh trial is not available with the respondents. Counsel appearing for the respondents stated that the first trial was set aside by the DIG probably for the reason that except for the officer who had prepared Record of Evidence in the instant case no other person was examined by the prosecution/department at the first trial.

33. We are thus constrained to decide the first submission in the aforesaid backdrop. The submission overlooks the fact that a second trial is prohibited if at the first trial a person is acquitted or convicted. In the instant case, the first trial was found to be suffering from some irregularity and was thus set aside by the DIG. Thus, Section 75(1) of BSF Act, 1968 is not attracted in the instant case.

34. In dealing with the second submission advanced by the petitioner, we reiterate that vide order dated March 31, 1997 the Deputy Inspector General had set aside the proceedings including finding and sentence of the Summary Security Force Court which had tried the petitioner for the first time and directed that the petitioner be re-tried by the Summary Security Force Court. When the DIG had already ordered that the petitioner be re-tried by the Summary Security Force Court while setting aside the first trial of petitioner where was the occasion for the second Summary Security Force Court to obtain sanction from DIG to try the petitioner for a second time? It is a case of a re-trial. Thus, in law there is only one trial and not two trials. In such a situation, taking sanction from DIG by the Summary Security Force Court before trying the petitioner for the second time was nothing but a useless formality and would have served no purpose whatsoever.

35. That takes us to the third submission. The charge leveled against the petitioner is that on September 15, 1995 the petitioner impersonated himself as Vigilance Inspector, Railway Board while travelling in Magadh Express.

36. At the trial, six witnesses were examined by the prosecution viz. Ajay Bhargava PW-1, Vinita Bhargava PW-2, Ramoli Singh Meena PW-3, M.P. Singh PW-4, Shafi Khan PW-5 and B.N. Mishra PW-6.

37. The first two witnesses examined by the prosecution viz. Ajay Bhargava PW-1 and Vinita Bhargava PW-2 have deposed not a word about the alleged impersonation of petitioner in their statements recorded at the trial. (In fact, the aforesaid two witnesses who were travelling in the same compartment of train as the petitioner stated that the petitioner had not impersonated himself as Vigilance Inspector, Railway Board in their presence in their statements recorded at the Record of Evidence).

38. The third witness examined by the prosecution viz. Inspector Ramoli Singh Meena PW-3, was unable to identify the person who had introduced himself as Vigilance Inspector, Railway Board to him on September 15, 1995 due to passage of time but "suspected" that the petitioner was the person who had introduced

himself as Vigilance Inspector, Railway Board to him on September 15, 1995.

39. The fourth witness examined by the prosecution viz. M.P. Singh PW-4, expressed his inability to identify the passenger who was travelling without fare and impersonated himself as Vigilance Inspector, Railway Board on September 15, 1995 due to passage of time but stated that the name of said passenger was Shukla. Likewise, the fifth witness examined by the prosecution viz. Shafi Khan PW-5, expressed his inability to identify the passenger who was travelling without fare on September 15, 1995 but stated that the name of said passenger was Shukla. The statement of sixth (last) witness examined by the prosecution viz. B.N. Mishra PW-6, related to the receipt of the afore-noted investigation report prepared by Inspector M. Ahmed by CBI.

40. From the aforesaid brief analysis of the testimony of the witnesses examined by the prosecution/department at the trial it is clearly evident that none of the witnesses of the prosecution have clearly stated that the petitioner had impersonated himself as Vigilance Inspector, Railway Board while travelling in Magadh Express on September 15, 1995. Mere "suspicion" cannot take place of proof. (We note that Inspector M. Ahmed had stated in his statement recorded at the Record of Evidence that the petitioner had impersonated himself as Vigilance Inspector, Railway Board while travelling in Magadh Express on September 15, 1995. However, Inspector M. Ahmed has not been examined by the prosecution/department at trial. In view of omission of prosecution/department to examine Inspector M. Ahmed at the trial, the statement of Inspector M. Ahmed recorded at the Record of Evidence has no value.)

41. Aforesaid being the position, the irresistible conclusion which emerges is that the prosecution/department has failed to establish the charge framed against the petitioner that he i.e. petitioner had impersonated himself as Vigilance Inspector, Railway Board while travelling in Magadh Express on September 15, 1995. As a necessary corollary thereof, we dispose of the writ petition setting aside the penalty of dismissal from service inflicted upon the petitioner. We direct the petitioner to be reinstated in service with 50% back wages to be paid to him. Other consequential benefits shall be granted.

42. No costs.