
(2013) 09 DEL CK 0366
In the Delhi High Court
Case No : Writ Petition (C) 5887 of 2005

Ex-Const. Jagdish

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Delhi Police Act, 1978 — Section 21
Penal Code, 1860 (IPC) — Section 384

Citation : (2013) 09 DEL CK 0366

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Manpreet Kaur, for the Appellant; Sushil Dutt Salwan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On February 24, 2002, ASI Om Prakash PW-2, on duty at P.S. Rajouri Garden was handed over DD No. 22, Ex. PW-2/A, wherein the Duty Officer had recorded that through wireless message he had received information that Rs. 500/- and a mobile phone was snatched from a person proceeding from Rajouri Garden to Punjabi Bagh. He conducted investigation and recorded action taken as per DD No. 27, Ex. PW-2/B, that under the flyover at Raja Garden crossing he had met one Rajat Mittal who confirmed to him of being robbed of Rs. 500/- and a mobile phone by a person posing as a policeman on a motorcycle; number whereof he could not remember. That Rajat Mittal refused to give anything in writing and pursue the matter any further. On February 27, 2002, ASI Mohd. Mushtaq PW-1, recorded FIR No. 129/2002 Ex. PW-1/A, for offence punishable u/s 384 IPC on the statement made by one Baljeet Singh who had come to the Police Station and had brought along with him the petitioner, as per which statement the petitioner had tried to extort Rs. 1000/- from Baljeet Singh; threatening to implicate him for an offence and that Baljeet Singh had refused to succumb to the petitioner's pressure and had brought him to the Police Station.

2. The fact of the petitioner being brought to the petitioner by Baljeet Singh stands recorded in the FIR, Ex. PW-1/A.

3. On August 06, 2002 a Summary of Allegations was served upon the petitioner under the Delhi Police (Punishment & Appeal) Rules, 1980, which reads as under:-

A case FIR No. 129/2002 u/s. 384 IPC PS Rajouri Garden was registered against Const. Jagdish Chander, No. 1463/N28861412 on the complaint of Sh. Baljit Singh s/o. Sh. Harcharan Singh r/o. Vill. Tihar Jail. He was arrested in this case on 27.02.2002.

During the investigation of the above said case it was also found that a DD No. 22 dated 24.02.2002 regarding snatching of a mobile phone and Rs. 500/- near ESI Hospital was lodged at PP Raghbir Nagar, PS Rajouri Garden for further necessary action. ASI Om Prakash along with Const. Jasbir Singh, No. 2169/W reached at the spot, where one Sh. Rajat Mittal s/o Sh. Dharmendar Mittal r/o. 15/60, Punjabi Bagh met them and narrated that at about 08:30 P.M. he was coming from R.K. Puram by his car No. DL-6C-H-4414. When he reached on Raja Garden flyover one motorcyclist came from his backside. The rider who was in the Police Uniform and pretended himself from Traffic Police flagged to stop his car and told that he had jumped a red light, so he would be challaned. He got the complainant down from the car. When the complainant tried to make a telephonic call at his residence, the above said policeman snatched his mobile phone and also took Rs. 500/- from him as challan money and directed him to come under the fly-over, where an ACP is standing there to challan him. When he went under the fly-over, none of them was found present there. The ASI insisted him to give his statement in writing for which he denied and gave his phone number only to inform him in case his above said mobile phone and money were recovered from the accused concerned. The complainant categorically refused to get the case registered by merely informed the police. However, when the second case came to notice, the earlier complainant Rajat Mittal was called in the police station and was asked to identify the accused. He categorically stated that Const. Jagdish Chander, No. 1463/N i.e. the accused in case FIR No. 129/2002 u/s. 384, IPC PS Rajouri Garden was the same person who had extorted mobile phone and Rs. 500/- from him on 24.2.2002. On repeated assurances only he agreed to come to PS Rajouri Garden along with his uncle and identified the accused. Again he categorically stated that he wanted no police action and would not give anything in writing.

The above act on the part of Const. Jagdish Chander No. 1463/N amounts to gross misconduct and is unbecoming of a police officer which renders him liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980 u/s 21 of Delhi Police Act, 1978.

4. As required by the Delhi Police (Punishment & Appeal) Rules, 1980, the department led evidence and examined eleven witnesses.

5. ASI Mohd. Mushtaq PW-1, proved the FIR Ex. PW-1/A, reference whereof has been made by us in paragraph 2 above. ASI Om Prakash PW-2 deposed to the facts noted by us in paragraph 1 above and proved DD No. 22, Ex. PW-2/A and DD No. 27, Ex. PW-2/B, contents whereof have been noted by us in paragraph 1 above. HC(W) Satya PW-3 deposed that on March 06, 2002, while posted at HAG Br. West District she had received Memorandum Ex. PW-3/A, which document makes a mention of the petitioner being arrested in FIR No. 129/2002 i.e. Ex. PW-1/A. Inspector M.L. Sharma PW-4 deposed that on February 28, 2002, while posted as the SHO of P.S. Rajouri Garden he had sent the report Ex. PW-4/A to the Assistant Commissioner of Police recording in the report that the petitioner had been arrested in FIR No. 129/2002. HC Dhanbir Singh PW-5 deposed that the petitioner was posted in PG Cell North District on January 15, 2002 and remained posted in said District till he was suspended on February 27, 2002. Inspector Ganga Singh PW-6, deposed that he tried to investigate the matter further with respect to DD No. 22 and DD No. 27 and that he visited the house of Rajat Mittal whose mother told him that her son was under stress because he was being harassed and that they were not interested in pursuing the matter any further pertaining to the incident which took place on February 24, 2002 at Raja Garden flyover i.e. the one in which Rajat Mittal was robbed of Rs. 500/- and his mobile phone by a person posing as a police officer. He deposed that on April 05, 2002 he sent the report Ex. PW-6/A to the superior officers, and we note that the report mentions that neither Rajat Mittal nor his mother were prepared to make a formal statement to the police out of fear. HC Surinder Kumar PW-7 deposed that pertaining to FIR No. 129/2002 he had sent a report Ex. PW-7/A on March 01, 2002. HC Yashpal PW-8 deposed that he was posted as the MT North District Clerk and that as per record no government motorcycle was issued to the petitioner either on February 24, 2002 or on February 27, 2002. ASI Radhacharan PW-9, proved attendance register Ex. PW-9/A evidencing petitioner being posted at the North District PG Cell. ACP Rishi Pal PW-10 deposed that he had submitted the report Ex. PW-10/A, which records that after Baljeet had brought the petitioner at P.S. Rajouri Garden and had got registered FIR No. 129/2002 he i.e. ACP Rishi Pal had summoned Rajat Mittal to his office and had shown petitioner to him and that Rajat Mittal told him that the petitioner was the person who had extorted Rs. 500/- and a mobile phone from him on February 24, 2002 but refused to make any formal statement out of fear. Ct. Hasbeer Singh PW-11 deposed that on February 24, 2002 he had accompanied ASI Om Prakash PW-2 to investigate after DD No. 22, Ex. PW-2/A was recorded at the Police Station.

6. This then is a brief summary of the ocular and the documentary evidence proved during the Summary of Allegations proceedings.

7. As required by the Delhi Police (Punishment & Appeal) Rules, 1980, after considering the evidence recorded during Summary of Allegations the Competent Authority framed a charge, which we find mirrors the Summary of Allegations. As required by the Delhi Police (Punishment & Appeal) Rules, 1980 the petitioner

was granted to opportunity to lead defence evidence. He led none. He denied any involvement in the two incidents dated February 24, 2002 and February 27, 2002.

8. The Inquiry Officer submitted a report dated April 05, 2002, holding that the allegations against the petitioner were established.

9. A word about the report. After noting the Summary of Allegations and the evidence led, under the caption discussion of evidence, the Inquiry Officer relied very heavily upon FIR Ex. PW-1/A which notes that Baljeet Singh had brought the petitioner to the Police Station accusing him of having tried to extort money from him. The Inquiry Officer has treated as proved the incident dated February 24, 2002, as if Rajat Mittal had deposed to the contents of the two Daily Diary entries Ex. PW-2/A and Ex. PW-2/B.

10. After considering petitioner's response to the report of the inquiry, the disciplinary authority levied punishment of dismissal from service upon the petitioner vide order dated August 27, 2003 against which appeal filed was rejected by the appellate authority on December 17, 2003. Challenge by the petitioner to the penalty imposed vide OA No. 597/2004 has failed before the Central Administrative Tribunal, which has dismissed the same vide impugned order dated September 17, 2004.

11. Attacking the report of the Inquiry Officer, learned counsel for the petitioner urged that Rajat Mittal did not lodge any complaint in writing and did not appear as a witness. He never identified the petitioner. That the report Ex. PW-10/A submitted by ACP Rishi Pal PW-10, which records that the petitioner was secretly shown to Rajat Mittal was no evidence because ACP Rishi Pal had not got recorded any DD entry pertaining to Rajat Mittal's visit to his office; in any case, submitted learned counsel for the petitioner that such kinds of evidence was worthy of no credence even at a domestic inquiry. Pertaining to the incident of February 27, 2002, learned counsel urged that having not made a single attempt to produce Baljeet Singh as a witness, no credence could be given to the facts as recorded in FIR No. 129/2002.

12. Let us guide ourselves in law before we reflect upon the evidence led at the inquiry and the attack to the report of the Inquiry Officer.

13. In the decision reported as State of Haryana and Another Vs. Rattan Singh, , the Supreme Court had observed as under:-

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through

case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

14. Materials which are logically probative for a prudent mind are admissible evidence at a domestic inquiry and hearsay evidence which has reasonable nexus and credibility is also admissible evidence at a domestic inquiry. This is the essence of the law declared in Rattan Singh's case (supra).

15. To understand the application of the law declared in Rattan Singh's case (supra), it would be better if we note the fact that the High Court had held in favour of Rattan Singh, a conductor with Haryana Roadways, who was charged with taking the full fare from the passengers but not issuing them any tickets; and the evidence was the testimony of Chaman Lal the Inspector of the Flying Squad. The passengers who had been charged the full fare but whom tickets were not issued were not examined and their statements had not been recorded by Inspector Chaman Lal.

16. The Supreme Court held that the testimony of Chaman Lal that when found without tickets, the passengers told him that Rattan Singh had taken full fare from them but had not issued any ticket to them was held credible evidence at a domestic inquiry to prove the guilt of Rattan Singh because notwithstanding Chaman Lal's testimony being hearsay it had a reasonable nexus with the facts sought to be proved and was credible.

17. In the instant case the gravamen of the allegations against the petitioner pertains to both incidents which took place on February 24, 2002 and February 27, 2002.

18. As regards the incident of February 27, 2002; the FIR No. 129/2002, Ex. PW-1/A, has been proved by the author thereof ASI Mohd. Mushtaq. The FIR records that Baljeet had come to the Police Station and had brought along with him the petitioner and had stated before ASI Mohd. Mushtaq that the petitioner had tried to extort Rs. 1000/- from him under threat of implicating him for having committed an offence. Inspector M.L. Sharma PW-4 has deposed to having sent the report Ex. PW-4/A on February 28, 2002 pertaining to petitioner being arrested in FIR No. 129/2002 and HC(W) Satya PW-3 has deposed to having received the Memorandum Ex. PW-3/A in connection with petitioner being arrested in FIR No. 129/2002. Thus, there is sufficient and credible evidence contained in contemporaneous record as also through the mouth of ASI Mohd. Mushtaq that the petitioner was arrested in FIR No. 129/2002; being brought to the Police Station by Baljeet who made a statement before ASI Mohd. Mushtaq that Baljeet had brought the petitioner to the Police Station because petitioner was attempting to extort Rs. 1000/- from him.

19. Tested on the anvil of the principles of admissible and creditworthy evidence at a domestic inquiry as enunciated in Rattan Singh's case (supra) it has to be held that as regards the incident of February 27, 2002 the indictment stands proved.

20. Neither counsel could throw any light on why Baljeet Singh was not examined as a witness during inquiry for the reason the record throws no light thereon. Whether Baljeet Singh was not traceable or he had refused to appear at the inquiry? We are clueless.

21. As regards the incident of February 24, 2002, the only evidence would be the testimony of ASI Om Prakash PW-2 and the two DD entries No. 22 and 27, Ex. PW-2/A and Ex. PW-2/B recorded at P.S. Rajouri Garden on February 24, 2002. The said evidence would at best establish that a person named Rajat Mittal was accosted by a person in police uniform who extorted Rs. 500/- and a mobile phone from Rajat Mittal. Thus, at best the incident of extortion in which Rajat Mittal was the victim stands proved. The evidence pertaining to petitioner's being the one who extorted Rs. 500/- and a mobile phone from Rajat Mittal would be the testimony of ACP Rishi Pal PW-10 and his report Ex. PW-10/A.

22. The question which arises for consideration would be: Whether Ex. PW-10/A would fall within the category of evidence held admissible, reliable and creditworthy by the Supreme Court in Rattan Singh's case (supra)?

23. We think No.

24. The reason being that ACP Rishi Pal had not taken the precaution of recording Daily Diary entries pertaining to Rajat Mittal's presence in his office at P.S. Rajouri Garden. There is no written record, signed by Rajat Mittal, that he identified the petitioner at the Police Station. It may be true that the police was handicapped because Rajat Mittal refused to make any statement in writing regarding petitioner's identification as the police officer who extorted Rs. 500/-

and a mobile phone from him. It may be that the police was severely handicapped due to Rajat Mittal not co-operating; may be out of fear. But pertaining to an incident which took place on February 24, 2002, deposition by a witness that three days later Rajat Mittal told him something about the incident or something relevant to the incident would be hearsay evidence lacking reasonable nexus with the incident and thus credibility being seriously in doubt.

25. We truncate the indictment pertaining to the incident of February 24, 2002 in which Rajat Mittal was the victim and a person in police uniform had extorted Rs. 500/- and a mobile phone from him for the reason the evidence simply establishes the incident but not the identity of the police officer who was the wrongdoer.

26. But, the indictment pertaining to February 27, 2002, would be sufficient to dismiss a police officer for the reason if a police officer is found extorting money from public after putting fear in the mind of the victim of false implication for having committed an offence, such police officers has to be visited with a penalty where he loses his dress and hence the authority to lord over others wearing the dress. Not for the reasons given by the Tribunal, but for the reasons noted hereinabove we dismiss the writ petition but without any order as to costs.