
(2012) 08 DEL CK 0359
In the Delhi High Court
Case No : Writ Petition (C) 4997 of 1998

EX. Const. Kalu Ram

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Border Security Force Act, 1968 — Section 117(2), 40
Constitution of India, 1950 — Article 226, 227

Citation : (2013) LabIC 6

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Romil Pathak, for Dr. Ashwani Bhardwaj, for the Appellant; Amrit Pal Singh, Advocate and Ms. Gurjinder Kaur, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 7692/2012 (Delay)

For the reasons stated in the application, the application is allowed. Delay of 241 days in filing CM No. 7691/2012 is condoned.

CM No. 7691/2012

For the reasons stated in the application order dated August 03, 2011 dismissing the writ petition in default is recalled and the writ petition is restored for hearing today itself.

WP (C) No. 4997/1998

1. The petitioner has challenged the finding of guilt pertaining to committing acts prejudicial to good order and discipline of the Force i.e. an offence punishable u/s 40 of the BSF Act, returned by the Summary Security Force Court and award of sentence of dismissal from service. In a nutshell, the case set up by the prosecution against the petitioner was that on 17.09.1997 the petitioner was

employed as a Constable with Border Security Force and was attached with the 84th Bn. deployed at BOP Maldakhand. On 17.09.1997 along with Naik B.R. Murmu and Const. G. Palani Chamy, the petitioner was detailed to perform Naka duty at Naka No. 3. During the course of his duty, the petitioner along with Const. G. Palani Chamy left Naka No. 3 and went to village Dhol where he consumed country made liquor. While the petitioner and Const. G. Palani Chamy were returning to Naka No. 3 from village Dhol the petitioner fought with Const. G. Palani and fired a shot in the air from the self-loaded rifle issued to him.

2. The charges which were framed against the petitioner read as under:

1st CHARGE

AN ACT PREJUDICIAL TO GOOD

ORDER AND

DISCIPLINE IN THE FORCE

in that he, on 17 Sept 1997 at 1930 hrs while on naka in area BOP Maldakhand left his place of duty and Remained absent for about Four and Half hrs till returned for duty at about 2400 hrs.

2nd CHARGE

AN ACT PREJUDICIAL TO GOOD ORDER

AND

DISCIPLINE

In that he, On 17 Sept 1997 in between 1730 hrs to 2300 hrs Consumed country made liquor in nearby village Dalgaon (Advasipara) while absenting himself from naka duty and while returning to his place of duty indulge in hand to hand fight with CT G PalaniChamy and in that process one round From his 7.62 Rifle Butt No.511 Registered No.CT-0163 got fired in the air inadvertently.

3. After conducting hearing of the charge as per Rule 45 of the BSF Rules 1968, the Commandant directed Record of Evidence to be prepared at which 8 witnesses were examined.

4. HC Chajju Ram PW-1, deposed that on 17.09.1997 at about 05.45 P.M. he detailed the petitioner, Naik B. Murmu and Const. G Palani Chamy to perform Naka duty at Naka No. 3 and at about 06.00 P.M. the petitioner, Naik B.R. Murmu and Const. G. Palani Chamy left BOP and proceeded towards Naka No. 3. On the next day i.e. 18.09.1997 at about 07.30 A.M. he called the fall-in of all the jawans and found that the petitioner was missing. When he made enquiries from Naik B.R. Murmu and Const. G Palani Chamy about the whereabouts of the petitioner they told him that the petitioner is present at Naka No. 3 and would come later. In the meantime Const. Deepak Kumar and Const. Govind Singh returned from Naka No. 1 and informed him that the petitioner had left his SLR

at Naka No. 1 on 18.09.1997 at about 07.00 A.M. despite their protests and had gone towards Dhol village. He immediately reported the matter to the Coy Commander who directed him to detail a patrol party to look for the petitioner, which directions were followed by him. At about 11.25 A.M. the patrol party returned with the petitioner.

5. Naik Sauna Soren PW-2, deposed that on 17.09.1997 at about 06.00 P.M. he had issued a SLR and fifty rounds to the petitioner. On 18.09.1997 at about 11.30 A.M. Const. V. Jaychand returned the SLR and 49 out of the 50 rounds issued to the petitioner to him. On 18.09.1997 Commandant S.K. Chaudhary inspected the rifle issued to the petitioner and directed him to clean the said rifle.

6. Naik B.R. Murmu PW-3, deposed that on 17.09.1997 he along with the petitioner and Const. G. Palani Chamy were detailed to perform Naka duty at Naka No. 3 and at about 06.00 P.M. they left BOP and reached Naka No. 3 at about 06.30 P.M. Naka No. 3 was to remain open till 10.00 P.M. however the petitioner and Const. G. Palani Chamy did not return to the Naka position till about 10.45 P.M. upon which he went towards Naka No. 2 to make enquiries about the whereabouts of the petitioner and Const. G. Palani Chamy where Const. Satwinder Singh told him that he had seen the petitioner and Const. G. Palani Chamy going towards Naka No. 1 between 07.30 to 07.45 P.M. He returned back to his Naka position and about 11.30 P.M. left the Naka position to BOP to report the absence of the petitioner and Const. G. Palani Chamy to the Coy Commander. On his way to BOP he heard that the petitioner and Const. G. Palani Chamy had returned to the Naka position. When he made enquiries from the petitioner and Const. G. Palani Chamy about their absence from Naka position they told him that they had gone to Dhol village to consume country made liquor. He had also heard a sound of firing when he was returning from Naka No. 2. When he made enquiries from the petitioner and Const. G. Palani Chamy about the sound of firing heard by him they told him that the said sound was the sound of crackers burst by the civilians. On the next day i.e. 18.09.1997 at about 05.50 A.M. he left the Naka position to go to BOP leaving behind the petitioner and Const. G. Palani Chamy.

7. Const. G. Palani Chamy PW-4, deposed that that on 17.09.1997 he along with the petitioner and Naik B.R. Murmu were detailed to perform Naka duty at Naka No. 3 and at about 06.00 P.M. they left BOP and reached Naka No. 3 at about 06.30 P.M. At about 06.40 P.M. he and the petitioner left the Naka position and went to Dhol village where they consumed country made liquor. At about 10.30 P.M. they left the village to go to Naka position. On their way to Naka position he told the petitioner to move quickly upon which the petitioner got annoyed with him and slapped him. When they were passing through the fields he heard a sound of firing upon which he turned back and saw that the petitioner was weeping and saying that one shot got fired from his SLR. When they reached Naka No. 3 Naik B.R. Murmu made enquiries from them upon which they told him that they had gone to Dhol village and consumed country made liquor there.

Regarding the sound of firing they told him that said sound was the sound of crackers burst by the civilians. On the next day i.e. 18.09.1997 at about 06.00 A.M. he told the petitioner to wake up and return to the BOP upon which he told him that he had left his water bottle at Dhol village and that he also wants to look for the empty cartridge. He told the petitioner to quickly return to the BOP and left from Naka position.

8. Const. Satwinder Singh PW-5, deposed that on 17.09.1997 he was performing Naka duty at Naka No. 2 when at about 07.30 P.M. the petitioner and Const. G. Palani Chamy had come to Naka No. 2 and told him that they are going towards Naka No. 1. At about 11.25 P.M. he heard the sound of firing coming from Dhol village. 15-20 minutes thereafter the petitioner and Const. G. Palani Chamy came to Naka No. 2 and told Naka Commander that the firing sound was the sound of the crackers burst by the civilians.

9. Lance Naik Bijender Singh PW-6, deposed that on 18.09.1997 he was detailed in the patrol party entrusted with the task of tracing the petitioner. They found the petitioner in a drunken condition in house in Dhol village. When the patrol party asked the petitioner to accompany them to the BOP he refused to do so upon which they went to the Coy Commander and reported the matter to him. Thereafter the Coy Commander and the patrol party went to the house where the petitioner was sitting and at that time the petitioner accompanied them to the BOP.

10. Mansoor Alam PW-7, a resident of Dhol village, deposed that on 17 or 18 September 1997 at about 10.00 P.M. he was going to a mosque to offer prayers when he saw two BSF jawans going towards Naka No. 1. After about two seconds he saw that the two jawans were quarrelling with each other. The two jawans kept on quarreling with each other for about an hour. After sometime he heard the sound of firing and within five minutes thereafter the two jawans went from there. On the next day i.e. 18.09.1997 his elder brother found a water bottle lying in the field. The villagers also found an empty cartridge from the fields and handed over the same to Coy Commander.

11. Inspector P.N. Laha PW-8, Coy Commander of 84th Bn. deposed facts which are irrelevant.

12. The Recording Officer provided an opportunity to the petitioner to cross-examine the witnesses examined by the prosecution but the petitioner did not avail of the said opportunity and did not cross-examine any of the witnesses of the prosecution. The petitioner also did not make a statement in terms of Rule 48(3) of the BSF Rules despite being provided with an opportunity in said regard.

13. After consideration of the record of the evidence, the Commandant ordered the convening of a Summary Security Force Court to try the petitioner and frame the same charge which was framed before Record of Evidence was prepared.

14. At the trial, the petitioner pleaded guilty to the charges framed against him.

After complying with the provisions of Rule 142 of the BSF Rules, 1969 the Summary Security Force Court recorded the plea of guilt admitted by the petitioner.

15. In view of the plea of guilt admitted by the petitioner, vide order dated 07.10.1997 the Summary Security Force Court convicted the petitioner. In view of the facts that the petitioner was convicted five times for various offences since his enrollment and that his general character was found to be unsatisfactory the Summary Security Force Court awarded the sentence of dismissal from service to the petitioner.

16. Aggrieved by the finding and sentence of the Summary Security Force Court the petitioner filed an appeal u/s 117(2) of the BSF Act, 1968 before the competent authority, which appeal was dismissed and dismissal thereof was communicated to the petitioner on 11.08.1998.

17. Aggrieved by the aforesaid, the petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India.

18. It is most relevant to note that in the present petition the petitioner has stated that a round was fired from his rifle in the night of 17.09.1997 due to mechanical fault of the rifle issued to him.

19. The petitioner has assailed the finding and sentence of the Summary Security Force Court primarily on the ground that the plea of guilt allegedly taken by the petitioners is vitiated as the document containing the plea of guilt of the petitioner does not bear the signatures of the petitioner and as a result thereof the finding of the Summary Security Force Court also stands vitiated for the same is based upon the plea of guilt allegedly taken by the petitioner.

20. In the decisions reported as Ex. L/NK Vimal Kumar Singh Vs. Union of India (UOI) and Others, and Ex. Naik Subhash Chander Vs. Union of India (UOI) and Others the plea of guilt taken by the petitioners therein was held to be vitiated as the document containing the plea of guilt of the petitioners did not bear the signatures of the petitioners. On the other hand in the decisions reported as Chokha Ram Vs. Union of India (UOI) and Another, and Diwan Bhai Vs. Union of India and Others it was held that plea of guilt taken by the petitioner therein cannot be held to be vitiated on the ground that the document containing the plea of guilt of the petitioners does not bear the signatures of the petitioners when there is no specific legal requirement to obtain signatures of a charged officer on the plea of guilt taken by him.

21. In view of the above legal position, it cannot be universally laid down that the plea of guilt taken by a charged officer would stand vitiated in every case where the document containing the plea of guilt of the charged officer does not bear the signatures of the charged officer. What would be the effect of non-bearing of signatures of the charged officer in document containing the plea of guilt by him on the veracity of the plea of guilt taken by him depends on facts

and circumstances of each case.

22. In the instant case it could well be argued that the over-whelming evidence emerged against the petitioner in the Record of Evidence. Despite being given an opportunity the petitioner did not rebut the evidence appearing against him inasmuch as the petitioner did not cross-examine any of the witness of the prosecution. The petitioner did not make any statement before the Recording Officer in terms of the provisions of Rule 48(3) of the BSF Rules to explain the evidence appearing against him. The silence of the petitioner in the Record of Evidence proceedings is a very strong pointer to the fact that the petitioner had nothing to say in his defence. That being the position, it is a good possible argument that the petitioner had no alternative but to plead guilty at the trial.

23. One fact needs to be highlighted as informed by Learned Counsel for the respondents. Even Ct. G. Palani Chamy was charged for deserting the Naka duty and consuming country made liquor during duty hours and at the inquiry against him the petitioner appeared as a witness; and just as Ct. G. Palani Chamy deposed against the petitioner of both going to the village and consuming liquor while on duty, the petitioner likewise deposed against G. Palani Chamy. Counsel states that it is a case of two culprits nailing each other.

24. We simply highlight that in the instant writ petition, as noted in para 19 above, the petitioner admits a round being fired from his rifle but claims that it was the result of a mechanical fault. But, the petitioner does not explain as to in what circumstances he cocked the rifle. Only when the rifle is put in a cocked position can a bullet be fired. We dismiss the writ petition but refrain from imposing any costs.