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(2011) 02 DEL CK 0510

In the Delhi High Court

Case No : Writ Petition (C) 8580 of 2010

Gurnam Singh APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 3 AD 208

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : V.V. Rao, for the Appellant; Saroj Bidawat, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner, Gurnam Singh was a Constable with Border Security Force. He was attached to the 105th Bn. which was detailed for duties at Murshidabad in the State of West Bengal.

2. On 12.1.2009 a civilian named Kartik Mondal, lodged a complaint with the Commandant of the Battalion against the Petitioner alleging that on 5th January 2009, the Petitioner approached him at his shop and abused and threatened to kill him and his son if he failed to give Rs.35,000/- to the Petitioner. The complaint reads as under:

Complainant: Kartik Mondal S/o Late Monohar Mondal of Vill. Biswanathpur, P.O.K.D. Para, P.S. Lalgola, Dist. Murshidabad, West Bengal. Respected Sir, With due respect I beg to state that I am a poor Footpath Businessman. I live with this business. But on 05.01.2009 a BSF Constable suddenly attacked on me and use the slag language, I come to know that he is under Khandua BSF camp''s Constable name: Gumnam Singh. The Bn. No. 105. He barborougly claimed 35,000/- (Rupees Thirty five thousand) only from me. Other wise you and your son will get great lession. I will entangle you with a false case or I shall murder you. So, I therefore ardently request to you to take necessary action against him. And let me live peacefully. Yours faithfully Kartik Mandal 12.01.09

3. The complaint exhibited during trial as "Ex.L has been reproduced by us verbatim and hence the grammatical, syntax and the spelling errors.

4. It is apparent that the complaint related to extortion and the allegations being serious, required a probe. A preliminary inquiry was held to investigate the matter. During the inquiry, with reference to the service book of the Petitioner it was noted that when he joined service, Petitioner gave his residential address to be Village Jounmohr under jurisdiction of P.S. Ajnala, District Amritsar, Punjab and that Amrit Mondal had deposited Rs.15,000/- on 4.8.2008 at the Berhampore Branch of the State Bank of India and Rs.14,000/- on 26.8.2008 with the Jiyaganj Branch of the State Bank of India for being credited in Account No. 10734663685 maintained by the State Bank of India Ajnala Branch, which account was in the name of one Pradhan Singh. As per Amrit Mondal Petitioner had handed him over Rs.35,000/- requiring him to deposit the same with any branch of State Bank of India in Account No. 10734663685 so that through the Core Banking System the money could be credited in the account of Pradhan Singh but he had deposited, in two instalments, only Rs.29,000/- and had spent the rest when his wife delivered a baby and hence the Petitioner was wanting Rs.6,000/- to be returned.

5. During preliminary inquiry, various documents surfaced and which we note were exhibited during the Summary Security Force Court proceedings. In brief, the documents were, a computer generated printout "Ex.P obtained from the Lalbagh Branch of the State Bank of India evidencing that account No. 10734663685 maintained with the State Bank of India, Branch Ajnala (Branch Code being No. 1259) was in the name of one Pradhan Singh and that on 4.8.2008, and on 26.8.2008 vide two receipts, "Ex.U, a sum of Rs.15,000/- and Rs.14,000/- was deposited with the State Bank of India Berhampore Branch and Jiyaganj Branch respectively, (both in the State of West Bengal) and the money was credited in account No. 10734663685 at Branch Code No. 1259 i.e. in the account of Pradhan Singh at the State Bank of India, Branch Ajnala. Further documents were, a written statement, sent via fax by the Assistant Sub-Inspector P.S. Ajnala, purported to be of Pradhan Singh acknowledging Rs.29,000/- being credited in his account No. 10734663685 as entered in his passbook; photocopy whereof was exhibited as "Ex.V, which shows the said two amounts being credited in the account of Pradhan Singh. Another document, "Ex.S was the statement recorded by ASI Darshan Singh and as made to him by Pradhan Singh in Gurmukhi, translated copy being "Ex.S-1, as per which according to Pradhan Singh, Amrit Lal Mondal had returned the money to him as he had lent Rs.29,000/- to Amrit Lal Mondal, when he i.e. Pradhan Singh was a transporter and used to make visits to West Bengal, Assam and Guwahati. It be noted that as furnished by the Petitioner, when he took employment, his residence was in village Jounsmuher within the jurisdiction of PS Ajnala.

6. It is apparent that the evidence which surfaced during inquiry was strictly not in conformity with the complaint of Kartik Mondal, but was that Kartik Mondals

son utilized the Core Banking System of the State Bank of India to deposit Rs.15,000/- on 4.8.2008 and Rs.14,000/- on 26.8.2008 by using deposit slips at Berhampore Branch of the State Bank of India and Jiyaganj Branch of the State Bank of India, which money was credited in Account No. 10734663685 in the name of Pradhan Singh maintained by the State Bank of India Ajnala Branch and that the Petitioner and Pradhan Singh were residents of neighbouring villages falling within the jurisdiction of PS Ajnala and a stated explanation by Pradhan Singh which required a further probe. There were traces of Petitioner allegedly acquiring ill gotten wealth and transmitting the same to his friend Pradhan Singh. Accordingly, the Commandant of the Unit took a decision that Record of Evidence be drawn up and for which the Deputy Commandant of the Battalion was deputed to do the needful. The Record of Evidence proceedings were conducted in the presence of the Petitioner and statements of various persons including Amrit Kumar Mondal and his father Kartik Mondal were recorded. The tentative charge sheet drawn up against the Petitioner before initiating the Recording of Evidence was drawn up as under:

CHARGE SHEET

The accused No. 910074548 Const Gurnam Singh of "B Coy, 105 Bn BSF, is charged with:

BSF ACT - COMMITTING A CIVIL DEFENCE, THAT IS 1968 SECTION - 46 TO SAY CRIMINAL, MISCONDUCT FOR HAVING BEEN AS PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES DISPROPORTIONATE TO HIS KNOWN SOURCES OF INCOME FOR WHICH HE CANNOT SATISFACTORILY ACCOUNT FOR, AN OFFENCE SPECIFIED IN SECTION 13(1)(e) OF THE PREVENTION OF CORRUPTION ACT, 1988 PUNISHABLE u/s 13(2) OF THE SAID ACT In that he, while deployed at BOP DMC "B" Coy of 105 Bn BSF, had allegedly sent Rs. 15,000/- (Fifteen thousand) only on 04/08/2008 and Rs. 14,000/- (Fourteen thousand) only on 26/08/08 in favour of Sh. Pradhan Singh (Account No. 10734663685 of SBI Ajnala Code No. 1259) through some local contacts, which is disproportionate to his known source of income which he could not satisfactorily account for

7. During the proceedings pertaining to Record of Evidence, 6 witnesses were examined, testimony whereof we need not note inasmuch as, as would be evident hereinafter, after considering the Record of Evidence, the Commandant decided to convene a Summary Security Force Court, where witnesses deposed and it was this testimony which became the evidence to be considered in respect to the charge.

8. The Record of Evidence was submitted to the Commandant who decided that in view of the gravity of the incriminating evidence the matter could not be disposed of in a summary manner and hence convened the Security Force Court, and as per the BSF Act, being the Commandant, functioned as the Court.

9. In order to prove the charge levied against the Petitioner, 4 witnesses were

examined by the prosecution and to refute the charge, 1 witness was examined by the Petitioner in defence.

10. PW-1, HC (Min) Atul Kumar deposed that on 13th January 2009 the complaint dated 12.1.2009 "Ex.L was received through Kartik Mondal and that the Commandant required a preliminary inquiry to be held and that communications were sent to the Manager of the State Bank of India Branch Lalbagh and the Superintendent of Police Amritsar to provide information pertaining to account No. 10734663685 stated to be in the name of Pradhan Singh and in particular whether sum of Rs.15,000/- and Rs.14,000/- respectively was transmitted on 4.8.2008 and 26.8.2008 respectively in terms of the deposit slips "Ex.U which were handed over by Kartik Mondal. In response the Manager of the State Bank of India Lalbagh Branch sent a computer generated printout "Ex.P as per which account No. 10734663685 was maintained by the State Bank of India Branch Ajnala in the name of Pradhan Singh R/o Village and Post Office Uggar Aulakh, Tehsil Ajnala and that ASI Darshan Singh then working at PS Ajnala faxed statement "Ex.S in Gurmukhi with its English translation "Ex.S-1 purported to have been made to him by Pradhan Singh along with the investigation report "Ex.T sent by ASI Darshan Singh which was in Gurmukhi and its English translation being "Ex.T-1. Relevant would it be to note that "Ex.S-1 reads as under:

Stated, he is resident of above address. He is Milkman alongwith Agriculturist in job. A few years ago he was transporter in job and had often visit West Bengal, Assam, Guwahati route. He be named friend to one Amrit Mondal r/o Murshidabad and give and take of money was with him. He had to obtain Rs.29,000/- from him that is why he has sent these rupees in his account No. 1073466368 of State Bank of India, Ajnala i.e. Rs.15,000. On 4.8.2008 and Rs.14,000/- on 26.08.2008. He has debited these rupees from his account and used for his own purpose. He did not pay any tax nor he had paid any tax of these rupees. Sd/ Pradhan Singh.

11. As per the further testimony of PW-1, with reference to the service book of the Petitioner, when he joined service he gave his residential address, as entered in the service book as resident of "Village Jounmohr P.O.-Mohr P.S. Ajnala, District Amritsar Punjab

12. Amrit Kumar Mondal PW-2, son of Kartik Mondal, deposed that he had been working with his father who has a shop at Lalgola near BOP, DNC of BSF and had been dealing in torches and repairs and that in the year 2008 the Petitioner had given him a sum of Rs.35,000/- in two instalments, to be deposited in the account of one Pradhan Singh whose name and account number was given to him on a piece of paper by the Petitioner. That for the said job, the Petitioner had promised to pay him Rs.100/-. Out of Rs.35,000/- he deposited only Rs.15,000/- and Rs.14,000/- as per deposit slips Ex.U through the Core Banking System, once from SBI Behrampur and the second time from SBI Jiyaganj and had spent the remaining Rs.6000/- when his wife had a delivery. That the Petitioner had

approached his father i.e. Kartik Mondal and demanded Rs.6000/- to be returned.

13. On being cross-examined by the Petitioner he denied the suggestion put to him that Pradhan Singh was his friend whom he owed Rs.29,000/- and had hence sent the money to him through the Core Banking System. He denied the suggestion that the Petitioner had paid him Rs.1200/- for purchase of 2 torches from his shop near the Border Outpost of BSF and since he had not supplied the torches, the Petitioner was demanding return of Rs.1200/-.

14. Kartik Mondal PW-3, the person who had filed the complaint against the Petitioner and upon which complaint the preliminary investigation was conducted deposed that he had a shop at Lalgola near BOP, DNC BSF and used to deal in torch lights and that along with one Batul the Petitioner had visited his shop on 5.1.2009 and demanded Rs.35,000/- stating that he had given the said money to his son and threatened that he would kill father and son and burn their house if the money was not returned. When he enquired from his son his son told him that the Petitioner had given him Rs.35,000/- to be deposited in the account of one Pradhan Singh in Punjab out of which his son had spent Rs.6,000/- and had deposited only Rs.29,000/- and that since he was threatened by the Petitioner he had lodged the complaint Ex.L.

15. On being cross-examined he denied knowing Pradhan Singh and denied that on 5.1.2009 the Petitioner had merely asked for Rs.1200/- to be refunded on account of stated payment being advanced to his son for purchase of 2 torches.

16. Inspector (Min.) K.R. Ashok Kumar PW-4, deposed that he is the Accountant and Cashier attached to the 105 Bn. and that the salary of the Petitioner was regularly credited in Account No. 30185191589 maintained with SBI Lalbadh in the name of the Petitioner and that after perusing Petitioners passbook Ex.V he had prepared the statement Ex."W pertaining to the money deposited and withdrawn from the account of the Petitioner and that at the time when Rs.29,000/- was transmitted through Core Banking System to the account of Pradhan Singh at SBI Ajnala the Petitioner had not made withdrawals totalling either Rs.29,000/- or Rs.35,000/-.

17. Petitioner examined Mohd. Sadiqul Islam in defence as DW-1 who deposed that he was a resident of North Nadibara Para Village and that on a date he could not recollect he had visited the market to purchase vegetables where he saw Petitioner having quarrelled with Kartik Mondal and learnt that the dispute pertained to a sum of Rs.1200/- being demanded by Kartik Mondal from the Petitioner.

18. After evidence was recorded, the Petitioner made a statement in defence which reads as under:

I do not know who is Pradhan Singh. I have not given any money to civilian named Amrit Mondal s/o Kartik Mondal. I had given Rs.1,200/- to the said civilian named Amrit Mondal for purchase of new torch. He neither gave me any receipt of the said money nor handed over torch to me against Rs.1,200/-. Thereafter he was not available in his shop which was found closed for a number of days. On enquiry from the shopkeepers near BOP DMC of BSF camp. I came to know that Kartik Mondal, the father of Amrit Mondal owns a shop at Lalgola. I, in order to recover my Rs.1,200/- from Amrit Mondal went to the shop of Kartik Mondal at Lalgola and asked for Amrit Mondal''s whereabouts. Kartik Mondal said he was not there. I told Kartik Mondal to direct Amrit Mondal either to return my money i.e. Rs.1,200/- or make him to meet me.

19. The Court returned a verdict of "Guilt. The Commandant further held that in view of the verdict of guilt, the Petitioner be dismissed from service and with respect to the penalty noted that though never levied any penalty for the 18 years and 4 months service rendered by the Petitioner till 22.10.2009 i.e. the date of the sentence, was proceeded against twice for having committed offences under the BSF Act.

20. Challenging the verdict of "Guilt and the punishment imposed, learned Counsel for the Petitioner urged 6 submissions as under:

(i) That the Court has given no reasons to sustain the verdict of guilt.

(ii) That the Charge framed against the Petitioner was vague and suffered from a misjoinder as the name of the person who effected the transfer on behalf of the Petitioner was not stated and further since money was remitted to Pradhan Singh on 2 different dates, 2 different charges should have been framed.

(iii) That the Commandant did not comply with Rule 45(1)(a) and (b) of the BSF Rules 1969 inasmuch as material witnesses were not examined.

(iv) That the complaint made by Kartik Mondal was a vague accusation and did not disclose the story stated by the complainant during the court proceedings thereby leading to a reasonable/logical inference that the story recited during the Court proceedings was an afterthought to frame the Petitioner.

(v) That it was not satisfactorily established that the Petitioner was in possession of the amount said to have been deposited on his behalf and no relation was shown to exist between the Petitioner and Pradhan Singh, the beneficiary of the money deposited.

(vi) Lastly it was urged that the excellent service record of the Petitioner was not kept in mind while awarding the harsh sentence of dismissal from service upon the Petitioner.

21. The first contention urged has to be negated in view of the decision reported as Union of India (UOI) and Another Vs. Dinesh Kumar, wherein it was held that in view of Rule 117(2) and Rule 149 of the BSF Rules 1969 neither the Appellate Authority nor the Court holding Summary Trial has to give reasons for its decision.

22. The second plea is rejected for the reason the purpose of a charge is to

contain such details as the foundation of the accusation wherefrom a reasonable person can reasonably understand the nature of the accusation and the offence stated to have been committed. The charge against the Petitioner with the statement of imputation makes it clear that the allegation against him was of having sent Rs.29,000/- through a local contact to Pradhan Singh (in account No. 10734663685) and that said sum was in excess to the known source of the income of the Petitioner and the Petitioner had not satisfactorily explained said amount being with him. In a case of the kind different charges for different sums recovered, possessed or transmitted by a person on different dates have not to be framed and thus we hold that the charge neither suffers from any misjoinder, nor is vague. We do not understand the logic of the third submission for the reason Rule 45(1)(a)and(b) of the BSF Rules 1969 read as under:

45. Hearing of the charge against an enrolled person - (1) The charge shall be heard by the Commandant of the accused -

(a) the charge and statement of witness if recorded shall be read over to the accused. If written statements of witnesses are not available, he shall hear as many witnesses as he may consider essential to enable him to determine the issue;

(b) the accused shall be given an opportunity to cross-examine the witnesses and make a statement in his defence.

23. It is apparent that the Rule pertains to the stage of the recording of the Summary of Evidence and assuming it relates even to the Court Proceedings, merely requires the hearing of the witnesses and an opportunity given to the accused to cross-examine the witnesses and thereafter make a statement in defence.

24. In the instant case after the Petitioner made his statement in defence, he had examined a defence witness and therefore it cannot be even argued that the Petitioner was not given a reasonable opportunity to examine his witnesses.

25. As regards the fourth plea, it has to be kept in mind that Kartik Mondal was a petty shopkeeper, operating from a small shop and was thus not possessed of good communicative skill. His complaint was that the Petitioner was threatening him and his son for not paying him Rs.35,000/- and the testimony of Kartik Mondal and his son Amrit Mondal also centers around Rs.35,000/-. It be noted that in the testimony, the father and son spoke about Petitioner handing over Rs.35,000/- to Amrit Mondal to be remitted to Pradhan Singh and Amrit Mondal remitting only Rs.29,000/- and appropriating Rs.6,000/-. It is possible that he who typed the complaint on behalf of Kartik Mondal did not understand what Kartik Mondal was requiring to be complained about. The language of the complaint, which we note is in English language and has been typed on a typewriter brings out the poor communicative skills of whosoever typed the same.

26. At the heart of the matter is the issue whether it has been satisfactorily

proved that Rs.29,000/- deposited by Amrit Mondal with the Behrampur and Jiyaganj branch of SBI and through the Core Banking System credited in the account of Pradhan Singh was the ill-gotten wealth of the Petitioner for the reason the testimony of PW-4 clearly establishes that during the period Rs.29,000/- was transmitted to the account of Pradhan Singh the Petitioner was not possessed of Rs.29,000/-.

27. At the backdrop of the issue, the Petitioner''s defence that having wanted to purchase a torch, which we were given to understand during hearing of the writ petition was in fact a rechargeable battery operated torch, the Petitioner claimed to have advanced Rs.1,200/- to Kartik Mondal who admittedly was a shopkeeper operating from a footpath and the claim of the Petitioner that Kartik Mondal neither sold him a torch nor returned Rs.1,200/-, which he demanded and by way of retaliation, Kartik Mondal and his son framed him.

28. Now, evidence conclusively establishes Rs.29,000/- being deposited in the account of Pradhan Singh with the Ajnala Branch of SBI and the money being transmitted through the Core Banking System from the Behrampur and Jiyaganj branches of SBI, both branches being in Murshidabad i.e. the place where the unit of the Petitioner was stationed and where Kartik Mondal and Amrit Mondal resided.

29. But the question would be, whether there is sufficient evidence or even evidence of a highly probable quality to probablize that this money was handed over by the Petitioner to Amrit Mondal.

30. In the testimony of Amrit Kumar Mondal and his father it has emerged that they were petty shopkeepers. There is conclusive evidence of Rs.29,000/- being credited to the account of Pradhan Singh and since Amrit Mondal had handed over the deposit slips pertaining to said amount it is apparent that it was Amrit Mondal who had deposited the said sum which got credited in the account of Pradhan Singh. Though not examined as a witness, but as disclosed by him during preliminary inquiry to ASI Darshan Singh he had received the said amount by way of return of the money lent by him to Amrit Mondal and we find that Petitioner has adopted said line of cross-examination while cross examining Amrit Mondal.

31. The issue would be: Whether the line of cross-examination adopted, which is consistent with what Pradhan Singh told ASI Darshan Singh, inspires confidence for the reason we have only two versions, and one of which has to be correct. The two versions are as stated by Amrit Mondal that Petitioner had handed over to him Rs.35,000/- to be transmitted to the account of Pradhan Singh through the Core Banking System out of which he pocketed Rs.6,000/- and transmitted only Rs.29,000/- and the rival version that Amrit Mondal had been lent Rs.29,000/- by Pradhan Singh which he returned when he made the two deposits.

32. It is apparent that out of two versions, the one which is probablized more than the other needs to be accepted.

33. The version of the Petitioner and Pradhan Singh is uninspiring for various reasons; being (i) Amrit Mondal and his father are petty shopkeepers and it would be difficult to believe that Pradhan Singh, a stated transporter, would lend Rs.29,000/- to Amrit Mondal in the absence of any proof of Pradhan Singh having any business dealings with Amrit Mondal. (ii) There is not even an iota of evidence that the two were friends. (iii) No acknowledgment was produced by Pradhan Singh to even remotely suggest his having lent Rs.29,000/- to Amrit Mondal. (iv) Pradhan Singh gave no proof to ASI Darshan Singh of being in transport business or being in Murshidabad at any point of time.

34. That apart, it would be difficult to accept that Amrit Mondal who, if at all returned a loan taken, by depositing the amount with the two branches of the State Bank of India, would retain the deposit slips with him. If he had deposited the amount by way of return of loan, the logical next step would be to send the receipts to the beneficiary as proof of having returned the loan.

35. On the aforesaid reasons, the version of Amrit Mondal returning the loan is highly tenuous. If this be so it is extremely difficult to believe that Amrit Mondal would deposit Rs.29,000/- to wreck vengeance against the Petitioner. Further, how would Amrit Mondal know the 15 digit bank account of Pradhan Singh as also the bank code at Ajnala. It is here that it assumes importance that Petitioner is a resident of a village nearby the village in which Pradhan Singh resides. The evidence highly probablizes that the Petitioner had given said particulars to Amrit Mondal.

36. The testimony of PW-4 conclusively establishes that during the period in question the Petitioner had withdrawals less than Rs.29,000/- from his account and thus there is evidence to highly probablize that the Petitioner had been making illegal money.

37. Complaints by civilians of extortion at the hands of jawans of the Paramilitary Forces are a subject matter of various judicial pronouncements and especially in areas near borders where smuggling and human trafficking takes place and thus we need not expand as to the source of the ill gotten wealth of the Petitioner.

38. Within the parameters of evaluation of evidence at a domestic inquiry, we are satisfied that there is overwhelming evidence to highly probablize the indictment and the defence is extremely shaky.

39. Thus, the 5th contention advanced is rejected.

40. As regards the last plea urged on the proportionality of the punishment, it is true that the instant indictment is the solitary indictment, but it has to be noted that in the past also there were two indictments against the Petitioner which could not be proved.

41. Ill-gotten wealth is acquired in the darkness of secrecy and there is always a cover up and thus it is difficult to repeatedly catch the wrongdoers. That a wrong of being possessed with ill gotten wealth being caught for the first time does not

mean that the wrongdoer indulges in the misdemeanour for the first time.

42. Scope of judicial review on the proportionality of the punishment is limited and unless it is demonstratably shockingly disproportionate to the gravity of the offence, the Court cannot interfere with a penalty which otherwise is within the discretion of the Disciplinary Authority.

43. The writ petition is dismissed.

44. No costs.

