
(2011) 05 DEL CK 0116
In the Delhi High Court
Case No : Writ Petition (C) 7244 of 2010

Indu Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
CRPF Act, 1949 — Section 11(1)
Evidence Act, 1872 — Section 3

Citation : (2011) 05 DEL CK 0116

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

Bench : Division Bench

Advocate : Rekha Palli and Punam Singh, for the Appellant; Jyoti Singh and Amandeep Joshi, for the Respondent

Judgement

Pradeep Nandrajog, J.—In the year 2009 the Petitioner was working as a Head Constable (Radio Operator) with Central Reserve Police Force (herein after referred to as the "CRPF") and was attached with 1st Signal Battalion.

2. On 30.10.2009 the Petitioner was informed that she has been promoted to the post of Assistant Sub-Inspector and that she is required to submit her health card with the department so that further action could be taken and formal orders released pertaining to her promotion.

3. Petitioner claims that happy as she was on learning that she had earned a promotion, which would not only enhance her status but would give her additional finances to bring up her children as unfortunately she had been widowed at a young age, at about 3:00 PM on 30.10.2009, she was proceeding towards the administrative block to obtain her health card and as she was climbing the stairs in the administrative block to proceed to the room on the first floor wherefrom she had to obtain her health card, SI M.J. Prakash behaved inappropriately with her inasmuch as he patted her on the back and, having an innuendo, said: "Indu you are looking very smart these days. You are being very

warm towards your colleagues. Why don't you think about me? You are a widow. You are entitled to a full life." Petitioner claims to have responded that he should not speak like that. I am here to work and I behave properly with everybody. At that SI M.J. Prakash tauntingly said that she was making a sham of being a chaste woman and calling her a bitch and the product of an illicit relationship. He said that if she could flirt with others why not him. She gave a complaint in writing complaining as aforementioned on 30.10.2009 itself.

4. A counter complaint was lodged by SI M.J. Prakash on 30.10.2009 at about 02.30 P.M. in which he wrote that without any provocation or cause, all of a sudden, upon seeing him the Petitioner hurled abuses at him, assaulted him with her PT shoe and threatened him with dire consequences. Since he was oblivious of the cause for which he was assaulted by the Petitioner he asked the Petitioner why she did so and she responded by saying that she did so to teach him a lesson as he had assailed her character before one SI T.P. Ratnam whom he had met during election duty in Arunachal Pradesh. As per SI M.J. Prakash, notwithstanding he having clarified to the Petitioner that he had indulged in no loose talk regarding Petitioner with SI T.P. Ratnam, Petitioner continued to hurl abuses at him while assaulting him with her PT shoe.

5. Taking cognizance of both complaints, the Commandant of the Unit directed a preliminary inquiry to be made on both the complaints, which were in the nature of cross complaints. It is apparent that some incident involving the Petitioner and SI M.J. Prakash admittedly took place as this was the common substratum of both the complaints, but what was the thing which triggered the incident and what acts were committed by whom required to be enquired into.

6. Pending the inquiry, on 25.11.2009, the Directorate General, CRPF issued an office order directing that the promotion of the Petitioner to the post of Assistant Sub-Inspector be kept in abeyance pending inquiry on the cross complaints made by the Petitioner and SI M.J. Prakash.

7. An Inquiry Officers was appointed to record evidence and submit a report on the cross complaints. The Inquiry Officer examined not only the Petitioner but even SI M.J. Prakash as also two other persons, namely, S.M. Ravindran Nair and Ct. Mohd. Imran.

8. In her examination, the Petitioner reiterated the contents of her complaint dated 30.10.2009. Additionally, she stated that SI M.J. Prakash had inappropriately behaved with her on one or two earlier occasions but she ignored the same. However, it be noted that she made an important admission stating that since SI M.J. Prakash had provoked her by assailing her character, she had hit him with her PT shoe.

9. SI M.J. Prakash stood by her version as per his written complaint.

10. SM Ravinderan Nair deposed that on 30.10.2009 at about 03.00 P.M. he was standing near the stairs of the reception when he heard some voices suggesting

a quarrel upstairs. After a while, SI M.J. Prakash came downstairs and told him that the Petitioner had assaulted him. When he asked the Petitioner whether it was true, she told him that she quarreled with SI M.J. Prakash as he had assailed her character but denied having assaulted him.

11. Ct. Mohd. Imram deposed that on 30.10.2009 at about 03.00 P.M. he was sitting on the reception when he saw SI M.J. Prakash going upstairs. After sometime he heard a quarrel from upstairs upon which he went there and saw that the Petitioner was holding a PT shoe in her hand and that SI M.J. Prakash was standing in a defensive position and questioning the Petitioner why had she assaulted a Senior Officer.

12. In his report dated 03.11.2010 the Enquiry Officer opined that: (i) On 30.10.2009 at about 03.00 P.M. a quarrel took place between the Petitioner and SI M.J. Prakash on the first floor of the administrative block, cause whereof could not be ascertained as none had seen what triggered the incident, but on the admission made by the Petitioner and the testimony of Ct. Mohd. Imran it stood established that the Petitioner assaulted SI M.J. Prakash with a PT shoe which she was wearing; (ii) Neither the statement of any of the witnesses examined during the enquiry nor the attendant circumstances establish the allegations of eve-teasing leveled by the Petitioner against SI M.J. Prakash; and (iii) The allegations leveled by both the Petitioner and SI M.J. Prakash pertaining to what triggered the incident against each other are not established due to non-availability of any witness in said regards.

13. In view of the directions laid down by the Supreme Court in the decision reported as Vishaka and others Vs. State of Rajasthan and Others, , the Commandant directed that a Sector Level Committee (herein after referred to as the "Committee") be convened to conduct an enquiry into the allegations of sexual harassment leveled by the Petitioner against SI M.J. Prakash. The Deputy Inspector General Police (Admn.) of CRPF, with the approval of the Inspector General Police, constituted a three member committee consisting of Commandant Ms. Neetu D. Bhattacharya, one counselor to be nominated by a Non-Government Organization recognized by the National Commission for Women and Assistant Commandant (Legal) Sh. R.S. Tyagi with Commandant with Neetu D. Bhattacharya as the Chairman of the Committee pursuant thereto one Ms. Kavita a counselor from a Non-Government Organization was inducted as a Member of the three member committee.

14. During the course of the enquiry conducted by the Committee, three witnesses were examined; namely, the Petitioner, SI M.J. Prakash and Assistant Commandant Adyanta.

15. In their examination before the Committee, the Petitioner and SI M.J. Prakash deposed in sync with their statements recorded by the Enquiry Officer. Additionally, the Petitioner deposed that two-three days prior to the incident in question she had orally complained to Assistant Commandant Adyanta about the

misbehavior of SI M.J. Prakash with her. On being questioned by the Committee about the cause of his being assaulted by the Petitioner, SI M.J. Prakash stated that he had advised one SI Ratnam who was boasting that the Petitioner had gifted a T-shirt to him to not have such alliance with the Petitioner as he was a married man, which probably was not to the liking of the Petitioner and as he could fathom, this was the reason why the Petitioner assaulted him.

16. Assistant Commandant Adyanta deposed that two days prior to the incident in question, in an agitated and an angry as also in a distressed state of mind, the Petitioner had visited his office and enquired about the whereabouts of SI M.J. Prakash from him and when he told her that SI M.J. Prakash was away from election duty, Petitioner left his room almost in tears.

17. On 14.06.2010 the Committee submitted its report opining as under:

...OPINION

The Committee has examined in detail the charges of sexual harassment leveled by HC/RO (M) against SI/T M.J. Prakash. Going through the pros and cons of the case the following is opined by the committee:

1. It has been admitted by both parties that on 30/10/09, HC/RO Indu Singh beat SI.TM.J. Prakash with PT shoes. The immediate cause of provocation is not clear. While he alleges that she resorted to this action because she was teased by SI/TM.J. Prakash, he states that he had arrived only the previous day in Delhi and HC/RO Indu Singh was may be taking revenge for his comments.

2. HC/RO Indu Singh in her statement had said that she had complained about the malintentions of the SI/T to her OC but could not produce any witness to this effect. The OC firmly denies this.

3. However, there is no circumstantial/direct evidence to prove that SI/TM.J. Prakash said any derogatory comments towards HC/RO Indu Singh.

(Emphasis Supplied)

18. Considering the report and forming the opinion that it stood established that the Petitioner had indeed assaulted a superior officer i.e. SI M.J. Prakash and since the Committee had opined that the Petitioner could not prove her version of being sexually harassed, the Commandant issued a charge sheet dated 28.08.2010 listing two articles of charge as under:

ARTICLE-I

That on 30/10/2009 a complaint has been received from No. 891020049 SI/TM.J. Prakash of this unit intimating that No. 900880206 HC/RO (M) Indu Singh of this unit has been misbehaved, insulted, abused and beaten him by her P.T.shoe. Accordingly, Shri. Om Hari, D/Comdt. of this unit has been ordered to conduct a Preliminary Enquiry by this office. Shri Om Hari, D/Comdt. has submitted Preliminary Enquiry report duly completed in all respects to this office.

During the course of Preliminary Enquiry it has been found that No. 900880206 HC/RO (M) Indu Singh of this unit has beaten No. 891020049 SI/TM.J. Prakash of this unit on 30/10/2009 with her P.T.shoe.

2. From this above, it is evident that the said No. 900880206 HC/RO (M) Indu Singh of this unit while functioning as HC/RO has committed an act of misconduct in her capacity as a member of the force which is punishable u/s 11(1) of CRPF Act 1949.

ARTICLE-II

That on 30/10/2009 Subedar Major 1 Signal BN vide his ION No. M.V.1/09-SM dated 30/10/2009 has forwarded an application which was submitted by No. 891020049 SI/TM.J. Prakash of this unit intimating that No. 900880206 HC/RO (m) Indu Singh of this unit has been misbehaved, insulted, abused and beaten him by her P.T.shoe. Accordingly, Shri Om Hari, D/Comdt. has been ordered to conduct a Preliminary Enquiry by this office. During the course of Preliminary Enquiry, No. 900880206 HC RO (M) Indu Singh of this unit has submitted an application dated 30/10/2009 regarding eve teasing and sexual harassment by No. 891020049 SI/TM.J. Prakash which was received in this office on 03/11/2009. Accordingly, her application along with PE report forwarded to the Northern Sector level complaint committee through IGP, Northern Sector, New Delhi. The Committee has thoroughly gone through all the evidence/documents and finally submitted its report which revealed that allegation made by No. 900880206 HC/RO (M) Indu Singh of this unit against No. 891020049 SI/TM.J. Prakash regarding eve teasing and sexual harassment have not been established.

2. From the above, it is evident that No. 900880206 HC/RO (M) Indu Singh has made a false allegation against No. 891020049 SI/TM.J. Prakash of eve teasing and sexual harassment only to shield herself from the complaint made by No. 891020049 SI/TM.J. Prakash earlier on 30/10/2009. As such No. 900880206 HC/RO (M) Indu Singh of this unit while functioning as a HC/RO has committed an act of misconduct in her capacity as a member of the Force which is punishable u/s 11(1) of CRPF, Act 1949.

(Emphasis Supplied)

19. Aggrieved by the issuance of the charge sheet dated 28.08.2010 to her and not releasing her promotion order to the post of Assistant Sub-Inspector, the Petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India.

20. Whereas learned Counsel for the Petitioner took pains to argue that the Petitioner, a lady who was widowed would not assault anybody and especially a superior male officer without there being any provocation and thus since there was a word of mouth spoken by the Petitioner V a word of mouth spoken by SI M.J. Prakash, there was no reason to disbelieve the Petitioner and thus there was a good enough reason for the Petitioner to do what she did i.e. beat the

scoundrel i.e. SI M.J. Prakash with her PT shoe so that he remembers a lesson of his life. Thus, learned Counsel urged that the charge sheet pertaining to Article 1 of the charge sheet be quashed as also Article 2 of the charge sheet, which Article of the charge sheet was additionally questioned on the ground that merely because somebody cannot make good the allegation raised does not necessarily mean that the allegation was false. Per contra, learned senior counsel for the Respondents Ms. Jyoti Singh urged that no mala fides was alleged against the officer issuing the charge sheet and it was not a case of there being no material on which the charge sheet was drawn and thus counsel urged that this Court would not, at this stage, interdict the due process of law and thus counsel urged that let an inquiry be completed so that truth can be determined.

21. It is well settled by a series of decisions that while exercising jurisdiction under Article 226 of Constitution of India the High Court would not ordinarily quash a charge sheet issued to a delinquent employee. However, at the same time, it is equally well settled that in rare and exceptional cases the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason is found to be wholly illegal.

22. The question which begs our consideration is: Whether the present case falls in the category of rare and exceptional cases where this Court should quash the charge sheet issued to the Petitioner?

23. Let us first consider charge No. 2 framed against the Petitioner.

24. A reading of the charge sheet issued to the Petitioner shows that the gravamen of the charge No. 2 is that the Petitioner had leveled "false" allegations of eve-teasing and sexual harassment against SI M.J. Prakash as opined by the Committee.

25. This is incorrect. In its report dated 14.06.2010 the Committee has opined that the Petitioner has not been able to prove the allegations of eve-teasing and sexual harassment leveled by her against SI M.J. Prakash. It is apparent that the Disciplinary Authority has equated the expression "the Petitioner has not been able to prove allegations leveled by her against SI M.J. Prakash" with the expression "the Petitioner has leveled false allegations against SI M.J. Prakash".

26. Section 3 of the Indian Evidence Act, 1872 defines the expressions "proved", "disproved" and "not proved" as follows:

Proved - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it exists.

Disproved - A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist or considers its non-existence so improbable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

Not proved - A fact is said to be not proved when it is neither proved nor disproved.

27. From the afore-noted definitions of expressions "proved", "disproved" and "not proved" it is clear that when a particular fact is not proved by the party relying upon its existence the same does not become false. It is for the other party to "disprove" such fact to evince to the court that the said fact was false. To the similar effect are the following observations made by the Supreme Court in the decision reported as A. Abdul Rashid Khan (Dead) and Others Vs. P.A.K.A. Shahul Hamid and Others,

There is difference between "not proved" and "false". Merely not able to prove cannot be in all cases categorized as false.

28. In view of the above discussion, charge No. 2 framed against the Petitioner is wholly without any basis and thus deserves to be quashed.

29. The gravamen of charge No. 1 framed against the Petitioner is that she had assaulted SI M.J. Prakash with PT shoe on 30.10.2009.

30. As evident from the factual narration noted by us in the foregoing paras, it is evident that the Petitioner had admitted that she had assaulted SI M.J. Prakash with PT shoe on 30.10.2009. While the Petitioner claims that SI M.J. Prakash had provoked her to assault him by eve-teasing and sexually harassing her, SI M.J. Prakash claims that the Petitioner assaulted him without any provocation on his part.

31. It would be important for us to highlight that provocation is not a defence for the charge of an assault. No law permits, howsoever grave may be a provocation, for the person provoked to assault the one who gave the provocation. It may be relevant for the purposes of inflicting the penalty. Even in a case of murder, provocation does not result in no offence being committed; it only results in the offence being lowered in the degree of criminality from one of murder to that of culpable homicide not amounting to murder and thus ex-facie, Petitioner cannot claim that because she was provoked by SI M.J. Prakash, assuming Petitioner's version to be correct, that she had a right to assault him. Of course, she may be entitled to the acts of SI M.J. Prakash, upon proof thereof, to be taken into consideration while levying the penalty upon her.

32. In the instant case, both, the Inquiry Officer as also the Committee had opined that the cause of assault on SI M.J. Prakash by the Petitioner is not clear. For this conclusion, the Inquiry Officer as also the Committee has been influenced by fact that there was no eye witness to the incident at the time it got triggered and that neither Petitioner nor SI M.J. Prakash could justify their version why Petitioner assaulted SI M.J. Prakash.

33. However, we find that two circumstances have emerged from the material on record, which throw considerable light upon a probable cause of assault on SI M.J. Prakash by the Petitioner.

34. The first circumstance which needs to be noted is that on 30.10.2009 i.e. the date of the incident in question, the Petitioner was informed that her name has been approved for promotion to the post of Assistant Sub-Inspector. On that day, presumably the happiness of the Petitioner would have known no bounds and she would have particularly avoided being embroiled in any unpleasant incident on that day. Something drastically unpleasant obviously happened between the Petitioner and SI M.J. Prakash which caused the Petitioner to assault SI M.J. Prakash. The second circumstance which is worth noticing is that 2 days prior to the incident in question; distressed, in a state of anxiety and with anger the Petitioner visited the office of Assistant Commandant Adyanta and enquired about the whereabouts of SI M.J. Prakash from him and upon being told that SI M.J. Prakash was away for election duty, with tears swelling her eyes, the Petitioner walked away.

35. The conduct of the Petitioner has a silent story to tell and who says that silence does not speak. We do not intend to pen down the poem: "A Song of Silence", but would highlight that a ready illustration of silence speaking would be to read consent where a person is bound to speak and remains silent. The fact that the Petitioner was highly agitated when she went to Assistant Commandant Adyanta and enquired about the whereabouts of SI M.J. Prakash evidences that she desired to have an issue got sorted out with the assistance of Assistant Commandant Adyanta pertaining to herself and SI M.J. Prakash and the issue was something which was agitating the mind of the Petitioner. She did not go to simply complain against SI M.J. Prakash for if this was her intention when she visited Assistant Commandant Adyanta she could have lodged the complaint. On being told that SI M.J. Prakash was away for election duty, Petitioner having left in tears also supports the fact that she had wanted Assistant Commandant Adyanta to sort out an issue between her and SI M.J. Prakash. Now, the Petitioner, a lady, was obviously wanting an issue to be sorted out but for which she never wanted to make a written complaint and a lady would normally not like to put a written complaint but have something sorted out verbally on an issue which concerns her womanhood.

36. The twin circumstances have been ignored by all and if we factor in the two, we have strong inferential supportive material to lean in favour of what the Petitioner alleged against SI M.J. Prakash for the reason the probable cause projected by SI M.J. Prakash, is too trivial a thing to so agitate a person as indeed Petitioner was so agitated.

37. What would be the use to have another inquiry on the cause which led the Petitioner to assault SI M.J. Prakash? At the preliminary inquiry and at the inquiry conducted by the Sexual Harassment Committee during which both the Petitioner and SI M.J. Prakash were given an opportunity to cross examine the witnesses, and each other, the exact reason which triggered the incident could not be ascertained and indeed, is incapable of being ascertained with conclusiveness inasmuch as it would be a case of a word of mouth of the

Petitioner against the word of mouth of SI M.J. Prakash.

38. Deviating a bit from the logical sequence in which a judicial decision must reach its destination, we wish to emphasize a matter of importance which has been highlighted in the instant case. Pertaining to the Armed Forces as also the Central Armed Para-Military Forces, the legislature has conferred immense powers upon the Commandant of the Units which they command and in their absence the Deputy Commandant who discharges the duties of a Commandant. So great is the power vested that the Commandant takes cognizance of complaints, investigate the complaint, summarily imposed punishments or issue a charge sheet and direct an inquiry or for that matter even a trial and inflict punishment. The role of the prosecutor and a Judge is vested in the Commandant as the need for utmost discipline is so paramount that the principle of checks and balance is to be ignored. It is trite that greater be the power granted, greater would be the responsibility while discharging the power. Indeed, the Commandants of units, i.e. battalions are rightly said to be the father figure of the battalion personnel. Had Assistant Commandant Adyanta been alive to his responsibilities, the least which was expected was for him to have comforted the Petitioner when she came to his room 2 days prior to the date of the incident and when he saw her in a highly agitated state of mind enquiring about SI M.J. Prakash. We re-emphasize that in his deposition Assistant Commandant Adyanta has himself stated that when Petitioner came to his room she was angry, agitated and in tears and in said state of body and mind she had enquired about the presence of SI M.J. Prakash. A person with ordinary prudence would certainly be required to asked the junior officer as to what was that which troubled the mind and was agitated the Petitioner and surely could have guessed that it had something to do with SI M.J. Prakash and had Assistant Commandant Adyanta been alive to his responsibilities, a clarificatory query or two would have sorted out the issue. The fire in the mind of the Petitioner which was threatening to erupt as a volcano could have been doused by the cool words of comfort and the unfortunate episode which happened 2 days thereafter would not have seen the light of the day.

39. Reverting back to the place wherefrom we transgressed a wee bit i.e. paragraph 37 and requiring the preceding para 38 to be treated, as indeed it is, a detour, we find ourselves with a finding that the charge pertaining to the Petitioner assaulting SI M.J. Prakash has to stand and would obviously be proved in view of the admission made by the Petitioner herself. Provocation not being a defence to a charge of assault and being relevant only to the quantum of punishment, we find ourselves faced with another finding that as in the two past inquiries, the third would result in the same stalemate i.e. the cause of the provocation not being determined with exactness. However, we find ourselves having returned a probable presumptive finding to lean in favour of the version given by the Petitioner, which if accepted, would only relieve the Petitioner from the rigours of a stiffer penalty inasmuch as we have already held that provocation resulting in an assault would be a mitigating factor on the issue of

penalty to be levied. Thus, we are faced with the dilemma whether to permit an inquiry to continue on charge No. 1? The likely fate of the inquiry is as noted hereinabove i.e. in all probability a stalemate on the exact provocation given. If this be so, we note that the Petitioner is a widow at a young age and has children to support. She has undergone the ordeal of an inquiry on the same subject matter twice in the past and the issue has lingered on for 1 year and 61/2 months. The Petitioner who has otherwise earned a promotion to the post of Assistant Sub-Inspector has found the promotion eluding her and she has suffered working as a Head Constable for this period of 1 year and 61/2 months. She has been deprived the salary of a higher post.

40. The aforementioned peculiar and distinctive facts of the instant case, in our opinion, require us to blend justice with law and pass appropriate orders which are fair, just as also legal. Which, in our opinion would be to issue a direction that Article 2 of the Charge stands quashed and Article 1 of the Charge be dropped so that the Petitioner earns her promotion but loses wages for the post of Assistant Sub-Inspector till she stands actually promoted on the principle of: "No work-No pay" but with all other benefits had she been promoted but for the unfortunate incident of 30.10.2009.

41. Ordered accordingly.

42. No costs.