

(2011) 02 DEL CK 0278
In the Delhi High Court
Case No : Writ Petition (C) 4625 of 2002

Jaipal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Border Security Force Act, 1968 — Section 46
Prevention of Corruption Act, 1988 — Section 7

Citation : (2011) 02 DEL CK 0278

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

Bench : Division Bench

Advocate : Kartar Singh, for the Appellant; Tanu Goswami, for Maneesha Dhir, for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner Jai Pal Singh was enrolled in BSF as a constable on 1.7.1969 and earned promotions and as of the year 1998 had earned the rank of a Sub Inspector. He was attached to 131st Bn BSF on 26.12.1998. In the year 2000 he was deployed at BOP Bhatgachi, Nadia as Post Commander of "E" Coy, 131st Bn BSF. As per the prosecution one SI Jaibir Singh unearthed a cattle smuggling racket at the BOP Bhatgachi in which it further surfaced that Petitioner had been giving safe passage to smugglers.

2. The Commandant of the Battalion ordered Record of Evidence to be drawn up and detailed Asstt. Cmdt. S.K Majumdar, 131st Bn BSF to prepare the Record of Evidence. The Record of Evidence and Additional Record of Evidence was prepared on the basis of which it was prima facie established that the allegations against the Petitioner of giving safe passage for cattle and salt smuggling were substantiated. The Record of Evidence was considered by the Commandant and finding prima facie material to frame a charge against the Petitioner, the Commandant framed the following charges against the Petitioner:

First Charge Bsc Act Sec 46 Committing a Civil Offence That Is to Say Being a

Public Servant Agrees to Accept From Any Person For Himself Any Gratification Whatever Other Than Legal Remuneration as a Reward For Showing In Exercise of His Official Function, Favour to Any Person Punishable U/S 7 of Prevention of Corruption Act, 1988 In that he, While deployed at BOP Bhatgachi, as post Comdr of ?E? Coy 131 Cn BSF, between 16 Aug? 2000 to 18 Aug? 2000, accepted a sum of Rs.250/- (two hundred and fifty only) through CT R. Ayyanar ?E? Coy of 131 Bn BSF which was accepted from the smuggling for allowing them safe passage for smuggling of goods (Cattle Heads), from India to Bangladesh from the area of BOP Bhatgachi.

Second Charge BSF ACT Sec ? 46 Committing a Civil Offence That is to Say being a Public Servant Agrees to Accept From Any Person for Himself Any Gratification as a Reward for Showing in Exercise of his official functions, favour to Any Person ? Punishable U/S 7 of Prevention of Corruption Act, 1988 In that he, While deployed at BOP Bhatgachi, as post Comdr. Of ?E? Coy of 131 Bn BSF on 26 Aug? 2000, accepted a sum of Rs.500/- (five hundred only) through CT R. Ayyanar ?E? Coy of 131 Bn BSF which was accepted from smugglers for allowing them safe passage for smuggling of goods (Cattle) and Salt) from India to Bangladesh from the area of BOP Bhatgachi.

3. A Security Force Court was convened and proceedings were held. At the trial 8 prosecution witnesses and 4 additional prosecution witnesses and 2 court witnesses were examined to prove the charge.

4. A verdict of guilt being returned against the Petitioner, vide order dated 23.11.2001 Petitioner was directed to undergo RI for 6 months and pay fine in sum of Rs. 1,000/-. Additionally, Petitioner was dismissed from service. Statutory petition dated 27.11.2001 against the penalty order filed by the Petitioner was dismissed and the conviction was confirmed. Revision Petition filed before the Central Government was rejected vide order dated 28.6.2002. And needless to state we have in our lap the instant writ petition wherein the Petitioner challenges the original penalty order dated 23.11.2001, the Appellate Order dated 16.1.2002 and the Revisional Order dated 28.6.2002.

5. Before noting the relevant facts it may be noted by us that since the Appellate and the Revisional Orders are non-speaking orders, vide judgment and order dated 16.1.2006 the writ petition was disposed of directing the Appellate Authority to dispose of the Appeal filed by the Petitioner against the order dated 23.11.2001 by giving reasons, which order has been set aside by the Supreme Court vide order dated 18.11.2010 and this is the reason why the writ petition stands restored for adjudication on other pleas urged.

6. Since all and sundry pleas have been urged in the writ petition, before noting the evidence we may briefly note the submissions which were urged at the hearing of the writ petition. We shall be dealing with the submissions as and when the relevant evidence is noted for the reason the conventional approach of noting the submissions urged, followed by noting the relevant evidence and then

dealing with the submissions would render the decision fairly prolix. Thus, we begin by noting the submissions which were urged:

I. That the no roll call was conducted on 16th and 18th August 2000 when the bribe was alleged to have been paid to the Petitioner as per the testimony of Ct.R. Ayyanar PW-3 and this disproves the testimony of said witness.

II. That the Petitioner was on patrolling duty with Ct. Kishan Chand on 27th August 2000 from 09:30 hours and thus the question of the Petitioner giving safe passage to any smugglers on said day does not arise.

III. That the testimonies of CW-1 and CW-2 were not considered by the Court and this has vitiated the findings.

IV. That the deposition of the prosecution witnesses on 30.08.2000 is contrary to their testimony at the time of additional evidence recorded on 23.04.01.

V. That the proceedings of the Security Force Court were conducted in an arbitrary manner and suffered from procedural irregularities being PW-2 being recalled by the Court and examined; Petitioner not being supplied record of the proceedings despite several requests.

VI. That the Court ignored the attendance register and the patrol duty register and ignored the fact that the prosecution had not proved its case beyond reasonable doubt.

VII. That the Petitioner has been given harsher punishment than the other co-accused.

7. We now proceed to note the relevant evidence, and while so doing, would be highlighting the features thereof, keeping in view the contentions which have been urged by the Petitioner. We shall be noting the testimony of the prosecution witnesses not in the sequence in which they were examined but by rearranging the same for this would facilitate a discussion on the contentions urged. Ct.R. Ayyanar PW-3 deposed that on 4 occasions cattle smugglers and on one occasion salt smuggler had come to the BOP and talked to the accused. On some occasions they had talked to him and the sentry on duty as well. That on 16th August 2000, 16 cattle had crossed over through Gate No. 3 between 09:00 to 10:00 hours and the smugglers had paid Rs. 1600/- . On that day he had been on duty from 06:00 hours to 12:00 hours at OP gate No. 1 and when he returned to the BOP, one post personnel had handed over Rs. 1600/- to him. On 18th August 2000, 26 cattle had crossed the fence of gate No. 3 in between 09:00 hours to 10:00 hours and the smugglers had paid Rs. 2600/- out of which Rs. 1300/- had been handed over to him by the accused and the rest by Ct. Rakesh Kumar (Additional) PW-2 and on 25th/26th August 2000 about 59 cattle and salt had been smuggled through the half submerged gate under water in the river during night time and he had received Rs. 5000/- from smuggler Sunil for cattle and Rs. 400/- for salt smuggling. That he used to distribute the amount amongst all BOP personnel including the Petitioner SI Jai Pal Singh. On 27th August 2000

he had gone to Chapra to make phone call to his family and he had no idea about the contract on that day. That he used to make entries in the duty registers because he was the General Duty Clerk and as per which on 16th August 2000, Ct. Kishan Singh PW-7 and Ct. Rakesh Kumar Additional PW-2 and Ct. Suresh Kumar PW-8 were on duty in the morning of 16th and 18th August 2000.

8. Relevant would it be to note that on being cross-examined as to when on 16th and 18th August 2000 bribe was distributed, Ct.R. Ayyanar replied that it was during evening roll call. Relevant would it be to further note that no suggestion was given to the witness that on said two dates no evening roll call was held. Relevant would it also be to note that the Petitioner never sought production of the roll call registers.

9. Thus, the first plea urged that no roll call was conducted on 16th and 18th August, 2000 and this belies the testimony of Ct.R. Ayyanar is a submission in the air and has no foundation to stand on.

10. Rakesh Kumar addl. PW 2 admitted that from 10th to 26th August 2000 he had received Rs. 900/- from Ct.R. Ayyanar PW-3 and deposed in sync with him with regards to the smuggling incident that took place on 16th and 18th August 2000. He further deposed that on the intervening night of 25th/26th August 2000 his duty had been at the camp from 24:00 hours to 03:00 hours, while at duty at about 02:30 hours he had seen two country boats filled with salt bags and some cattle swimming across the river through half submerged gate No. 4. He deposed that the following morning, Ct.R. Ayyanar PW-3 had collected Rs. 5000/- for crossing cattle and Rs. 400/- for crossing salt and distributed the same amongst all BOP personnel including the Post Commander. He further deposed that on 27th August 2000 he was detailed for patrolling duty from 07:30 hours to 09:30 Hours with Ct. Kishan Chand PW-7 and after returning to the camp had reported to the Petitioner SI Jai Pal Singh and then had gone to take rest in the barracks. At about 10:00 hours, Sub Inspector Jaibeer Singh came to the BOP and had told the one's who were present at the BOP to go to the village and seize the cattle which had come from outside. He along with others went to the village and seized 20 heads of cattle and brought them to camp at about 14:00 hours. At 14:30 hours Adj. Subhash Chandra reached BOP and asked all of the post personnel to give in writing as to what had happened on that day. Thereafter he searched their belongings and returned.

11. Ct. Kishan Chand PW-7 corroborated what was deposed to by Ct. Rakesh Kumar and additionally stated that he received Rs. 2200/- as bribe money sometimes from Ct.R. Ayyanar PW-3 and sometimes from Petitioner SI Jai Pal Singh. He further deposed that on 27th August 2000, he was on patrolling duty with Ct. Ramesh Chandra Addl. PW 2 from 07:15 hours to 09:30 hours and that after they returned he proceeded on patrolling duty with the Petitioner SI Jai Pal Singh.

12. Relevant would it be to note that Ct. Shiv Shanker PW-1, Ct. Amar Dam PW-2, Ct. Balbir Singh PW-4, Ct.M.D. Shariff and Ct. Suresh Kumar PW-8, HC Harak Singh Addl. PW-3 and Ct. Vinoy Prakash Addl. PW-4 deposed that even they were the beneficiaries of the bribe money which was distributed by PW-3.

13. Asstt. Cmdt.S.S. Rathore, Addl.PW-1, deposed that on 27th August 2000 he was informed by Sub Insp. Jaibeer Singh that cattle had been smuggled from BOP Bhatgachi at 10:30 hours, and he had immediately reported there. 28 cattle heads had been seized on that day. Thereafter he had enquired about the matter from Petitioner SI Jai Pal Singh and he told him that he doesn't know anything about smuggling as he was on patrolling duty with Ct. Kishan Chand PW-7. He enquired from Ct. Kishan Chand PW-7 as to what had happened that day and was told that even he was on patrolling duty from 07:00 hours to 09:30 hours with some other constables and not with Petitioner SI Jai Pal Singh and that he knew nothing about the matter.

14. The second contention urged that as per the testimony of Ct. Kishan Chand PW-7, on 27.8.2000 Petitioner was on patrolling duty with him and thus there was no question of the Petitioner giving any safe passage to any smuggler, ignores the testimony of PW-7 that the Petitioner and he were on patrolling duty from 9:30 hours and that patrolling was going on round the clock and prior to 9:30 hours Ct. Kishan Chand was patrolling with Ct. Rakesh Kumar Addl.PW-2. Relevant would it be to note that the incident of smuggling on 27.8.2000 was already reported by 10:00 hours. Thus, as is the first plea urged, even the second plea is akin to clutching at the straws.

15. The third plea pertaining to the testimony of CW-1 and CW-2 not being considered, we find it strange that the 2 alleged smugglers namely Sunil Das and Babbar Ali were summoned by the Court as Court Witnesses and surely it was not to be expected that the 2 would admit to be smugglers and paying money to BSF personnel. Thus, their self-serving testimony that they knew nothing about cattle smuggling is neither here nor there.

16. The plea that the testimony of prosecution witnesses recorded on 30.8.2000 is contrary to their testimony recorded on 23.4.2001 is once again a mere plea, without any elaboration. There are no averments in the writ petition as to in what manner the testimonies conflict. No annexures have been filed along with the writ petition to bring home the plea. A bald averment that the depositions are contrary is neither here nor there. Thus, there is no merit in the fourth contention urged.

17. As regards the plea that the proceedings of the Summary Force Court were conducted in an arbitrary manner, evidenced by PW-2 being recalled by the Court and examined further and Petitioner not being supplied record of the proceedings, suffice would it be to state that no material pleadings are to be found and no document has been filed to show that on any particular date a demand was raised that since not already supplied, proceedings of the Court be

supplied to the Petitioner. The plea to this effect and submission based thereon is devoid of any material particulars and hence is rejected. As regards further examination of PW-2, suffice would it be state that we do not find any further examination of PW-2. What has happened is that after prosecution led evidence, it sought to lead further evidence of 4 more witnesses and accordingly Asstt. Cmdt.S.S. Rathore, Ct. Rakesh Kumar, HC Harak Singh and Ct. Vinoy Prakash were examined as Additional PW-1 to Additional PW-4. Suffice would it be to record that it is permissible in law to examine further witnesses till as long the defence statement is not made and defence evidence is not recorded. Though Petitioner has not brought out with clarity any additional statement of existing witnesses being recorded, but assuming this has happened, this would not be an irregularity for the reason law permits additional/further evidence of a witness to be recorded and unless it is shown that lacunas which have been brought out as a result of cross-examination are being filled up, merely because a witness is further examined is neither here nor there.

18. As regards the sixth plea, it is based on no particulars and has not been brought out as to what was exculpatory of the Petitioner in the attendance register or the patrol duty register which has been ignored. The plea that the Court has ignored the attendance register and the patrol duty register is neither here nor there. It is settled law that where a content of a document, and needless to state registers are documents, is sought to be projected as relevant, the same has to be highlighted and relevance brought out.

19. The last plea of the Petitioner being awarded a harsher sentence and the other jawans being imposed with a lesser sentence assumes the culpability of all to be the same. Petitioner ignores the fact that he was the senior most officer at the post. He was the Post Commander. His rank was that of a Sub Inspector. All other officers at the post were junior to him in rank and status. They were Constables and Head Constables. Suffice would it be to state that as the Post Commander, the misdemeanour committed by all would be graver in import against the Petitioner, vis-?-vis the rest.

20. Before concluding we would be failing if we do not note that the pleadings in the writ petition are far from satisfactory; they are most inchoate, confusing and rolled over. The annexures along with the writ petition appear to have been picked up at random and there is no sequence in the annexures and one had to strain one's mind to read between the lines.

21. The writ petition is dismissed but we refrain from imposing costs.