
(2010) 05 DEL CK 0236

In the Delhi High Court

Case No : R.A. 205 of 2010 in Writ Petition (C.) No. 243 of 2002

Jiya Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0236

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Arun Bhardwaj, for the Appellant; Aditya Madan, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

RA No. 205/2010 & CM No. 6694/2010

1. The petitioner/applicant has sought a review of order dated 1st February, 2010 passed in WP(C) No. 243 of 2002 titled as Sh. Jiya Ram v. Union of India, dismissing the writ petition filed by the petitioner and upholding the order of the Tribunal dated 12th September, 2001 passed in OA 1844/1999 dismissing his application seeking setting aside of the order of punishment dated 20th October, 1997 and the orders passed by the Appellate Authority and the Revisional Authority. The petitioner has also sought a condonation of delay in filing the application for review on the ground that he had applied for the certified copy on 1st February, 2010, which was given to his counsel on 16th February, 2010 and because of personal reason, he wanted to change his counsel, however, he could get the copy of the impugned order in the middle of March, 2010 and thereafter he contacted Mr. Arun Bhardwaj, Advocate, who prepared the review application and filed the same on 21st April, 2010. In the circumstances, it is contended that there is sufficient cause for condonation of delay in filing the application for review.

2. While dismissing the writ petition, this Court had perused the testimony of PW-4 Sh. Nanhe Mal, who had categorically implicated the petitioner and other police personnel and in the circumstances, had held that the allegation of the petitioner that it was a case of no evidence was not made out. This Court also perused and relied on the relevant evidence against the petitioner and rejected the plea of the petitioner and held that the testimony of complainant was sound and reliable and could not be ignored. It has also been held that the testimony of the witnesses could not be rejected on the surmises and conjectures as has been raised by the petitioner and culpability of petitioner in picking up the son of the complainant and his helper and releasing them after accepting illegal consideration has been established without any doubt. The false DD entry made at the instance of the petitioner was also considered and it was held that it could not be relied on to absolve the petitioner. This Court had also held that on the basis of preponderance of probability, the inferences drawn by the disciplinary authority and respondents were possible and the Court would not substitute its inferences, in case different inferences can be drawn by the Court, with the inferences drawn by the respondents. In para 22 of the order, it is categorically stipulated that no other grounds except which had been considered and discussed in the order dated 1st February, 2010, were raised on behalf of the petitioner.

3. The petitioner/applicant has sought review of the order dated 1st February, 2010 on the ground that there are mistakes and other errors which are apparent on the face of the record and various material and relevant submissions made by the counsel for the petitioner had not been noticed.

4. The applicant has contended that the Court had erred in holding that another affidavit given by Sh. Nanhe Mal was not accepted as in his subsequent affidavit, he had stated that in the complaint he had given the name of the petitioner as he was angry with the police officers and therefore, the Court should have considered the later affidavit given by PW-4 which supports the contentions of the petitioner. The petitioner/applicant has raised more grounds for review than the grounds raised by the petitioner in his writ petition, which was dismissed by order dated 1st February, 2010.

5. Though at the time of argument on behalf of the petitioner, the emphasis was that there is no evidence against the petitioner, however, while seeking review the emphasis has been that on the basis of the evidence, the inferences as drawn by the Disciplinary Authority and the respondents cannot be drawn and in the circumstances the petitioner/applicant seeks this Court to re-appreciate the entire evidence and to arrive at different findings and conclusions and to substitute the inferences drawn by the Disciplinary Authority and the respondents.

6. The learned Counsel for the petitioner/applicant has contended that other affidavit given by Sh. Nanhe Mal absolving the petitioner by stating that he had given the name of the petitioner in the complaint as he was angry with him has

not been considered by the Court while dismissing his writ petition by order dated 1st February, 2010.

7. The plea of the petitioner is contrary to the grounds raised and the allegation made in the review application as it has been urged in the application for review that this Court has erred in holding to the effect that another affidavit given by Sh. Nanhe Mal was not considered. If the observation of this Court is that another affidavit given by Sh. Nanhe Mal was not accepted, then it cannot be held that the effect of other affidavit given by Sh. Nanhe Mal was not considered.

8. This is no more *res integra* that review proceedings have to confine strictly to the ambit and scope of Order 47 of the Code of Civil Procedure. Under the said provision, an order may be opened for review, *inter alia*, if there is a mistake or error apparent on the face of the record.

9. The learned Counsel for the petitioner has not been able to make out any such error apparent on the face of the record inasmuch as an error which is not self evident and has to be inferred by a detailed process of reasoning and consideration of the evidence and pleas and contentions of the parties can hardly be said to be an error apparent on the face of record justifying the Court to exercise its power of review. In exercise of power of review, it is not permissible for an erroneous decision to be re-heard and corrected as a review petition has a limited purpose and cannot be allowed to be an appeal in disguise. A review cannot be sought merely for fresh hearing or argument or for correction of an erroneous decision taken earlier. The power of review has to be exercised only for correction of a patent error of law or fact, which stays in the place without any elaborate argument being needed in establishing it.

10. While dismissing the petition by order dated 1st February, 2010, the testimonies of Sh. Nanhe Mal/complainant PW-4, his son Sh. Subhash Chand, PW-5, Sh. Krishan Pal, helper of the complainant, PW-6 and Sh. Vinod Kumar, another son of the complainant, PW-7 recorded before the Disciplinary Authority, were considered. The testimonies of the witnesses and complainant, recorded before the Inquiry Officer, were perused as the counsel for the respondent had pointed out slight variation regarding identification of two of the persons involved in the matter. It was noticed that the petitioner had been contending that they were not identified whereas, it transpired from the perusal that though they had been identified as the persons present at the time of incident but their names were not correctly identified. Thus, it was inferred by the Court that it cannot be held that those persons were not identified by the complainant. In the circumstances, this Court had held that the case of the petitioner is not where the testimonies of any of the witnesses had been rejected on surmises and conjectures but the inferences had been drawn on the basis of preponderance of probabilities. If another inference may be feasible or possible, that would not lead to a conclusion that there are patent illegalities in the order of the Disciplinary Authority and consequently, the writ petition, after considering all the facts and circumstances and the grounds raised before this Court, was

dismissed. It was held that the evidence as noticed and discussed was sufficient to demonstrate the culpability of the petitioner. The learned Counsel for the petitioner cannot contend that there is no evidence against the petitioner and on the basis of re-appreciation of evidence, which is not within the jurisdiction of this Court, it cannot be held that the order dated 1st February, 2010 suffers from such patent illegality or such errors which are apparent on the face of the record.

11. In the entirety of facts and circumstances, therefore, there are no such patent errors in the order impugned before us, which requires to be corrected in exercise of jurisdiction of power of review by this Court. Consequently, the application of the petitioner/applicant is without any merit and it is liable to be dismissed. The application is, therefore, dismissed. Application for condonation of delay is also disposed of. However, the parties are left to bear their own costs.