
(2014) 10 OHC CK 0023
In the Orissa High Court
Case No : Writ Appeal No. 42 of 2014

Kailash Chandra Behera

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 21-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 120(B), 120B, 201, 379, 411

Citation : (2015) LabIC 318

Hon'ble Judges : Amitava Roy, C.J.; Akshaya Kumar Rath, J

Bench : Division Bench

Judgement

Akshaya Kumar Rath, J.—In this Letters Patent Appeal, challenge is made to the judgment dated 22.1.2014 passed by the learned Single Judge in W.P. (C) No. 16707 of 2008. By the said judgment, the learned Single Judge dismissed the writ petition, thereby rejecting the prayer of the appellant to quash the charge-sheet issued by the Senior Divisional Security Commissioner/RPF, East Coast Railway, Khurda Road vide Annexure-8.

2. Adumbrated in brief, the case of the appellant-petitioner is that an F.I.R. was lodged by one S.K. Biswal, Superintendent of Police, C.I.D., C.B., Orissa, Cuttack on 22.4.2008 basing on the news published in a daily newspaper dated 14.4.2008 regarding death of one Biranchi Das, a Judo Coach at Bhubaneswar. The coach was shot dead on the apprehension that he would disclose the name of the officials, who had nexus with pilferaging iron scraps from Mancheswar coach repairing shop. The investigation was done as per the direction of D.G. Police. The Senior Divisional Security Commissioner, East Coast Railway RPF Khurda Road, opposite party no. 3 had also caused a joint inquiry through the Inspector, Inspector Crime Reader and Inspector R.P.F. Mancheswar workshop. They went to Mancheswar workshop along with the Assistant Chief Manager (I)/CRW/Mancheswar, who was in-charge of the scrap iron and found that the stock was intact in the earmark location of the workshop. They submitted a report on 14.4.2008. After the F.I.R. was lodged, C.I.D., C.B. Case No. 20 of 2008 was

registered under Sections 120B/ 379/ 201/ 411 and 414 of the I.P.C. against one Brijlal Agrawal and others. The Dy. Chief Commissioner, East Coast Railway, opposite party no. 2 and Senior Security Commissioner, R.P.F., Khurda Road, CCB, Railway Board, New Delhi also enquired into the matter and submitted a report on 25.4.2008. The matter was again enquired into by OI/CIB Waltire, OC/RPF Waltire and OIC/RPF, Bhubaneswar. They had also submitted a report on 5.5.2008, vide Annexure-4. Both the reports reveal that they could not find any incriminating materials in support of the paper publication. The reports further reveal that "Y" form had not been issued and no report had also been given by the OC/RPF/MCS to Senior DSC/RPF/Khurda with regard to "Y" form, which is meant for lodging of theft report in the railway by the custodian of the property. It is further stated that C.I.D., C.B. failed to collect the evidence against the petitioner and requested the railway authority to register a case under the Railway Protection Force Act, 1957 (hereinafter referred to as " the Act"). Thereafter, the O.I.C., Mancheswar R.P.F. registered a case under Section 3(a) RP(UP) Act and moved an application before the learned S.D.J.M., Bhubaneswar. While the matter stood thus, the department proposed to hold an inquiry against the petitioner under Rule 153 of the Railway Protection Force Rules, 1957. Accordingly, the imputations of statement of charge and imputation of allegation along with charge sheet were supplied to him, vide Annexure-5, on 17.7.2008.

3. Pursuant to issuance of notice, a counter affidavit has been filed by the opposite parties, inter alia, taking the stand that the Railway Protection Force is an Armed Force of the Union and strict service discipline is required in respect of a member of the force under the Act. The force was created to protect the properties of the railways. The scrap materials of the railway constitute the properties of the Railway. A joint inquiry was made by the Assistant Security Commissioner, Railway Protection Force. It was found that in the night of 13.4.2008 two trucks loaded with scrap materials were intercepted by the local police being escorted by the RPF staff on duty with others for safe passage to their destination. A Crime Branch case was registered under Sections 379, 120(B), 411 and 414 of I.P.C. The inquiry report reveals that large number of scrap dealers of Bhubaneswar, Cuttack and nearby areas in connivance with officials of various Government Department including Railways are involved in theft of scrap materials and removing the same in various trucks. Therefore, the authority decided to initiate a departmental proceeding against the delinquent, who was charge-sheeted under Rule 153 of the Railway Protection Force Rules. The competent authority appointed the enquiry officer. The enquiry officer had furnished the enquiry report to the disciplinary authority. It is further stated that pursuant to the direction of the Court dated 26.11.2009, C.B.I. had also enquired into the matter and submitted the charge sheet against other persons where the petitioner was not accused. The C.B.I. enquiry was made during pendency of the writ petition and it is open to the petitioner to take the stands in the Departmental Proceedings since the said facts were not before the inquiry officer while departmental proceeding was initiated.

4. Heard Mr. J.M. Mohanty, learned Senior Advocate for the appellant.

5. Mr. Mohanty, learned Senior Advocate submits that the petitioner is no way connected with the commission of offence. His name does not find place in the F.I.R. He further submits that basing on the statement recorded under Section 161 Cr.P.C. by the police, no departmental proceeding can be initiated against the petitioner.

6. In Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., , the apex Court held that there would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case, unless the charge in the criminal trial is of grave nature involving complicated questions of fact of law. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted, it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct of breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. The strict standard of proof or applicability of the Evidence Act stands excluded. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution has to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of evidence Act. Under the circumstances, what is required to be seen is whether the departmental enquiry would strictly prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

7. We have carefully and meticulously scanned the statement of charges. We find that while the petitioner was duty from 00.00 hours to 08.00 hours on 12/13.4.2008 along with another constable, there was allegation in print media about pilferage of huge quantities of railway scrap materials from Mancheswar Railway workshop. During joint enquiry, it was found that the scrap loaded trucks had been intercepted by SI/LPS/Mancheswar and his driver in the night of 12/13.4.2008 at Dasaraja basti/chhak near Sainik School, Mancheswar when the trucks were escorted by one RPF staff along with RPF Mishra of Mancheswar workshop. During joint enquiry, it was found that Head Constable L.N. Mishra is an accused in Crime Branch Case No. 20/08 and it was suspected that connivance of the petitioner cannot be ruled out. Further the petitioner had failed to prevent theft as well as failed to inform the controlling authority, which amounts to discreditable conduct, corrupt practice, improper use of his position for his personal gain, failure to maintain absolute integrity and devotion to duty.

It is not the case of the petitioner that the authority de hors its power to initiate disciplinary proceeding.

8. In the case of *The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha*, , the apex Court held that the law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet, he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. It is further held that charge-sheet cannot generally be a subject matter of challenge, as it does not adversely affect the rights of the delinquent, unless it is established that the same has been issued by an authority not competent to initiate disciplinary proceedings.

9. Considering the present case on the anvil of the decisions cited supra, we are of the considered opinion that there is no illegality or infirmity in initiating a departmental proceeding against the petitioner and issuing charge sheet.

The writ appeal, being devoid of merit, is dismissed.

Amitava Roy, C.J.

I agree.