

(2011) 08 DEL CK 0314
In the Delhi High Court
Case No : Writ Petition (C) 1199 of 1998

M.S. Dabas

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Border Security Force Act, 1968 — Section 108, 113, 117(2)
Border Security Force Rules, 1969 — Rule 45B, 48
Constitution of India, 1950 — Article 226

Citation : (2011) 08 DEL CK 0314

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; Romil Pathak, for Ashwani Bhardwaj and Bhupinder Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Appointed as a constable with Border Security Force in the year 1976 and attached to the 55th Battalion, the Petitioner earned a promotion to the rank of Sub. Inspector (Clerk) in the year 1993. Pursuant to secret information received in December 1995 by SI Sunil Kumar who was working in the Vigilance Branch that the Petitioner had secured recruitments for 3 persons, namely, Sucha Singh, Sunder Singh and Raj Kumar in BSF in lieu of money received by him, a preliminary enquiry was conducted by SI Sunil Kumar.

2. During the course of the preliminary enquiry apart from the Petitioner, 6 persons named Sunder Singh, Sucha Singh, Raj Kumar, Rajpal, Ct. Rajesh and Nk. Inder Pal Singh were examined.

3. Sunder Singh and Sucha Singh stated that the Petitioner got them recruited in BSF for a consideration of Rs. 30,000/-each and Raj Kumar stated that the Petitioner got him recruited for a consideration of Rs. 25,000/-which was paid by his uncle Rajpal who likewise made a statement confirming what was said by Raj Kumar. Ct. Rajesh stated that he had introduced Sucha Singh, Raj Kumar and Raj

Pal to the Petitioner who secured employment for Sucha Singh and Raj Kumar by taking a sum of Rs. 30,000/- and Rs. 25,000/- respectively from them. Nk. Inderpal Singh stated that Sucha Singh was his wife's cousin and he had introduced him to Ct.Rajesh, who in turn introduced Sucha Singh to the Petitioner from whom Petitioner took Rs. 30,000/- for securing employment in BSF.

4. As per the Petitioner, a fact not denied by the Respondents, the Petitioner was taken into custody by the vigilance branch in the morning of 11.01.1996 and remained in the custody of the vigilance branch all day throughout and was confined in the room of the vigilance branch during the intervening night of 11th and 12th January, 1996. In the morning of 12.1.1996 being produced before Additional DIG, Vigilance, M.Zia-u-allah Petitioner made a confessional statement Ex.S in which he purportedly admitted having received Rs. 30,000/-each to secure employment for Sunder Singh and Sucha Singh and Rs. 25,000/-to secure employment for Raj Kumar.

5. Since incriminating evidence surfaced implicating the Petitioner, the commandant of the battalion to which the Petitioner was attached drew up a charge sheet and complying with Rule 45B of the BSF Rule 1969 directed record of evidence to be prepared. Deputy Commandant Wajid Ali was detailed as the Recording Officer for preparing the Record of Evidence.

6. Sucha Singh, Sunder Singh, Raj Kumar, Raj Pal, Ct.Rajesh and Nk.Inder Pal Singh were examined and made statements identical to the one they had made during preliminary inquiry before Inspector Sunil Kumar, who also made a statement that on 12.1.1996 statement Ex.S was made by the Petitioner before the Additional DIG, M.Zia-u-allah in the presence of two independent persons, SI M.S.Bisht and Ct.Shyaji Ramina.

7. In compliance with Rule 48 of the BSF Rules 1969, Petitioner was given an opportunity to make a statement and he made the statement Ex."R", wherein he stated that on 11.01.1996 he was brought to the "G" (vigilance) department by Inspector Sunil Kumar and other officers and was forced to make a statement, which statement he alleged had not been produced. He further stated that on 12.01.1996 he met M.Zia-u-allah and made the statement Ex."S" before him and that he told M.Zia-u-allah that he had paid a sum of Rs. 60,000/-to S.R.Singh in respect of the recruitment of Sucha Singh, Sunder Singh and Raj Kumar.

8. Considering the record of evidence, a decision was taken that the Petitioner be tried by a General Security Force Court and a charge sheet was issued against the Petitioner listing 3 articles of charges, which read as under:

CHARGE SHEET

The accused No. 760028975 ST/CLK Mukhtiar Singh Dabas of 55 Bn. BSF attached to 25 Bn. BSF is charged with:

FIRST CHARGE

BSF ACT

SEC: 41 (e)

ACCEPTING FOR HIMSELF A GRATIFICATION AS A MOTIVE FOR PROCURING ENROLMENT of A PERSON

In that he,

at New Delhi, in between March '95 and Aug '95, while working as SI/CLK in Training Dte at FHQ accepted a sum of Rs. 30,000/-(Rupees Thirty Thousand only) from No. 95455480 Rect/Ct Suchcha Singh, a gratification as a motive for procuring enrolment of the said Rect/Ct Suchcha Singh in BSF.

SECOND CHARGE

BSF ACT

SEC: 41 (e)

ACCEPTING FOR HIMSELF A GRATIFICATION AS A MOTIVE FOR PROCURING ENROLMENT of A PERSON

In that he,

at New Delhi, during Aug. '95 while working as SI (Clerk) in Training Dte at FHQ accepted a sum of Rs. 30,000/-(Rupees Thirty Thousand only) from No. 95455479 Rect/Ct Sunder Singh a gratification as a motive for procuring enrolment of the said Ct. Sunder Singh in BSF.

THIRD CHARGE

BSF ACT

SEC: 41 (e)

ACCEPTING FOR HIMSELF A GRATIFICATION AS A MOTIVE FOR PROCURING ENROLMENT of A PERSON

In that he,

at New Delhi, in between March 1995 and Sept. 1995 while working as SI (Clerk) in Training Dte at FHQ accepted a sum of Rs. 25,000/-(Rupees Twenty Five Thousand only) from Shri Rajpal, resident of Nangal Dewat, a gratification as a motive for procuring enrolment of No. 95455475 Rect/Ct.Raj Kumar in BSF.

9. At the trial 13 witnesses were examined by the prosecution.

10. Sucha Singh PW-1, Ct.Rajesh PW-2, Nk.Inder Pal Singh PW-3, Sunder Singh PW-4, Raj Kumar PW-5 and Rajpal PW-6, turned hostile and did not support the case of the prosecution. They resiled from the statements made by them during inquiry and at the Record of Evidence and stated that they were forced to make the statements. On being questioned whether they had made any complaint to

any authority of being forced to make any statement, they admitted that they did not make any such complaint.

11. Dy.Cmdt.Wajid Ali PW-7, deposed that he prepared the Record of Evidence and that No. witness was at any time pressurized by him or any other officer to make a particular statement and that statements made by PW-1 to PW-6 were recorded in his presence during proceedings pertaining to Record of Evidence.

12. Sub.Insp. Sunil Kumar PW-8, deposed that during preliminary inquiry conducted by him PW-1 to PW-6 had made statements which he had correctly recorded and that statement Ex.S i.e. the confessional statement of the Petitioner was voluntarily made by the Petitioner before M.Zia-u-allah.

13. On being cross-examined about the presence of the Petitioner in the G Department on 11.01.1996, he stated (Quote): "It is correct that the accused was brought to my office at about 1000-1100 hrs on 11 Jan 1996 and was kept in "G" office for the night. Myself and my staff and other witnesses and personnel connected with the case stayed for the night at "G" Dte. It is correct that accused was dispatched to 25 Bn BSF Chhawla Camp in the evening of 12 Jan 96 (exact time I do not remember)....We had detained the accused for the night of 11th Jan 96 on the conception that he will not come to the office on 12 Jan 96. I had apprehension that the accused will either desert or approach somebody to save himself. He was detained for night with the permission and guidance of Sh. Ziaulla AD (G). I had No. apprehension that the accused will run away during the day of 11th Jan 96 from the "G" Dte because myself and my staff was present there and it was not possible for him to run away."

14. ASI/Ciph Randhir Singh PW-9, deposed that the statement Ex."R" (made by the Petitioner during Record of Evidence) was voluntarily made by the Petitioner in his presence. SI M.S.Bisht PW-10, deposed that the statement Ex. "S" was voluntarily made by the Petitioner in his presence. Additional DIG (Vigilance) M.Zia-u-allah PW-12, deposed that on 12.01.1996 the Petitioner had voluntarily made the statement Ex."S" before him.

15. The Petitioner did not lead any evidence in defence. He however submitted a written statement before the GFSC wherein he denied having made any confession or having ever received any money to secure employment in BSF. He stated therein that he was falsely implicated at the instance of Insp.Sunil Kumar because he had not provided details of cases pending against one S.N.Marwah to Insp.Sunil Kumar. He stated that after being detained in the G department he was tortured the entire night and was forced to make a statement to Insp.Sunil Kumar, which was not to the satisfaction of Insp.Sunil Kumar and therefore he was taken to the office of M.Zia-u-allah and was forced to make the statement Ex.-S.

16. The GSFC returned a verdict of guilt qua all 3 charges and vide sentence order dated 09.12.1996, levied the following sentences upon the Petitioner:

- (i) forfeiture of ten years of service for the purpose of promotion;
- (ii) forfeiture of ten years of service for the purposes of increased pay and pension and
- (iii) severe reprimand.

17. The record of the case was forwarded to the Inspector General, BSF for the purposes of the confirmation of the finding and sentence of the GFSC in terms of Section 108 of the BSF Act. Vide order dated 04.12.1996 the Inspector General, BSF in exercise of his power u/s 113 of the BSF Act, directed the GFSC to consider revising the sentence of forfeiture of ten years of service for the purpose of promotion as he was of the opinion that the said sentence was too harsh. Vide order dated 09.12.1996 the GFSC modified the sentence to that of forfeiture of two years and ten months of service for the purpose of promotion. The record of the case was again forwarded to the Inspector General for the purposes of confirmation of the finding and sentence of the GFSC, which were confirmed vide order dated 01.01.1997.

18. Aggrieved by the finding and sentence awarded by the General Security Force Court which stood confirmed by the Inspector General, the Petitioner preferred a petition u/s 117(2) of BSF Act to the Directorate General BSF, which petition was rejected vide order dated 31.07.1997.

19. The present writ petition accordingly lays a challenge to the conviction and sentence dated 09.12.1996 and the order dated 31.07.1997 rejecting the statutory petition filed by the Petitioner.

20. From the narratives hereinabove noted it is apparent that the incriminating evidence would be Petitioner's confessional statement Ex.-S recorded in the morning of 12th January 1996, which Petitioner admits to have made before Additional DIG (Vigilance) M.Zia-u-Allah, but claims the same to be extracted as a result of being tortured the entire night when he was in the custody of Insp.Sunil Kumar. We also have to take into account the fact that during Record of Evidence the Petitioner made a statement Ex.-R in which he once against confessed to have received money to secure employment for Sucha Singh, Sunder Singh and Raj Kumar. Additionally, we have evidenced that PW-1 to PW-6, even at the stage of Record of Evidence stood by the indictment and stated as told to them to Insp.Sunil Kumar during preliminary inquiry, but at the trial resiled from their statement.

21. As regards PW-1 to PW-6 resiling from their previous statements, it assumes importance to take note of the fact that it was their compulsion to do so for the reason if they had stood by their earlier statements, Sucha Singh, Sunder Singh and Raj Kumar would have lost their jobs as they would have admitted having paid bribe to secure employment. This has to be kept in view.

22. In the decision reported as 112 (2004) DLT 301 (DB) Amar Singh Bhati v. UOI and Ors. with respect to the power of this Court under Article 226 of the

Constitution of India, it was observed:

21. We may state at this stage that we are conscious of our limited power of judicial review of such orders. We are not sitting as Appellate Authority over the findings of the GSFC or the Central Government deciding post confirmation petition/appeal. However, as already pointed out above, even while doing this judicial review if the reasons are available in the findings recorded by the GSFC, the task of the Court is easier. The Court is required, in exercise of its power under Article 226 of the Constitution of India, to examine as to whether in the decision making process, principles of natural justice were complied with and further the order is not irrational, unreasonable or arbitrary and that it is not perverse. However, when there are No. reasons in support of the finding recorded by the GSFC, it is difficult, nay, impossible, to undertake this exercise simply by looking into the order. One will have to look into the records for this purpose. It may be mentioned here that the case of the Petitioner was, which was vehemently argued by learned Counsel for the Petitioner, that the prosecution case was full of contradictions and in fact the material which was inadmissible in law was taken into consideration and if that material is excluded, it was a case of "no evidence".

23. Now, whether a confession is voluntary or the result of an inducement or an undue pressure, is a question of fact. Thus, our job would be to determine whether at the trial, the question of fact to be decided by the Court was properly considered with respect to the relevant facts and circumstances enwombing the confession and the law applicable.

24. The fact enwombing the confession Ex.-S was the Petitioner being in the custody of Insp.Sunil Kumar since the inducement or an undue pressure, is a question of fact. Thus, our job would be to determine whether at the trial, the question of fact to be decided by the Court was properly considered with respect to the relevant facts and circumstances enwombing the confession and the law applicable. morning of 11th January 1996 and being detained during the night and the confession being made the next morning on 12th January 1996. We find that the law officer, in his advice to the GSFC has rightly drawn the attention of the Court to the law and the relevant facts. This is evident from the advice to the Court, which we quote as under:

In the instant case 2 different versions are before you where the prosecution witnesses have said that they were beaten up threatened and pressure was exercised on them at CGO complex and during RCE. Whereas it has been denied by Sub Sunil Kumar who recorded their statement at CGO Complex and Sh.Wajid Ali, Recording Officer before the court. You may take into account the functioning of "G" Dte of BSF and interest of the witnesses deposing before the Court. A mere assertion by the accused that he was threatened or tortured or inducement was offered to him can be accepted as true without more. However the length of time during which the accused was in custody must be taken into consideration while deciding voluntary nature of his confession statement. About it Sub.Sunil

Kumar has explained why the accused was detained for that night at CGO Complex. If you feel after consideration all the attendant circumstances of the case that such confessional statement was not voluntary you must reject the same and should not act upon it being admissible. In case you are satisfied about the voluntary nature of such confession you can admit it and can act upon it also.

25. It is thus apparent that at the trial, all relevant facts which had a bearing on whether the confession was voluntary or not were brought on record and attention of the Court was drawn to the said facts. The Court returned a verdict of guilt and since the verdict relates to a question of fact and having noted that there is No. taint with respect to the ascertainment of the said fact; highlighting once again that attention of the Court was drawn specifically to the fact that the Petitioner was detained the previous night and that the same had to be considered by the Court while deciding whether the confession was voluntary, it is our compulsion to hold that this Court cannot sit over judgment over the decision of the General Security Force Court.

26. As held in the decision reported as 1985 SCC (Cri) State of U.P. v. N.K. Antony, if evidence of extra-judicial confession comes from the mouth of witnesses who are unbiased and not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that they may have a motive for attributing an untruthful statement to the accused, such extra-judicial confessions can be accepted and can be the basis of a conviction and one need not search for corroboration.

27. That the Petitioner never retraced the confession Ex.-S till the trial commenced is a fact not in dispute. He never wrote to any authority that he was tortured or forced to make a confession. Even at the Record of Evidence he reiterated the confession and never complained to anyone that his statement Ex.-R recorded during Record of Evidence was either incorrect or he was forced to so state. It also assumes importance that PW-1 to PW-6 never complained to any authority after Record of Evidence was prepared that they were forced to make statements against the Petitioner. The Record of Evidence was prepared 23.1.1996. The trial of the Petitioner commenced on 28.5.1996. Between 23.1.1996 till 28.5.1996 PW-1 to PW-6 had enough time to inform that they were compelled to make wrong statements at the Record of Evidence. It was their compulsion to retrace what they had said earlier on for the reason Sucha Singh, Sunder Singh and Raj Kumar may have lost their jobs if before the Court they admitted having secured employment by paying a bribe. We therefore conclude by holding that there is sufficient evidence to sustain the verdict of guilt and within the parameters of jurisdiction of judicial review, not being required to sit in appeal as an appellate court, nothing has been shown which requires us to grant relief to the Petitioner and thus we dismiss the writ petition.

28. No. costs.