

(2013) 04 DEL CK 0044
In the Delhi High Court
Case No : WP (C) 407 of 2011

Ram Singhasan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Citation : (2013) 199 DLT 634 : (2013) 2 LLN 643

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Avnish Ahlawat and Ms. Latika Chaudhary, for the Appellant; Jatan Singh, Advocate for R-1 and Ms. Zubeda Begum, Advocate for R-2 to R-4, for the Respondent

Judgement

Pradeep Nandrajog, J.—The above-captioned two writ petitions challenge the judgment and order dated January 06, 2010 passed in OA No. 2769/2008 and OA No. 2770/2008, dismissing both Original Applications filed by Ct. Banwari Lal and Ct. Ram Singhasan. Four Constables and one Head Constable of Delhi Police; namely, HC Munshi Lal, Ct. Surinder Singh, Ct. Ram Singhasan, Ct. Shrimant and Ct. Banwari Lal were informed by a memorandum dated February 22, 2005 that on the indictment listed therein an inquiry would be conducted under the Delhi Police (Punishment & Appeal) Rules 1980 and that Insp. Ravinder Kumar would be functioning as the Inquiry Officer. The order reads as under:-

Office of the Dy. Commissioner of Police: New Delhi Distt. Delhi

It is alleged against HC Munshi Lal No. 408/ND (PIS No. 28891382) Consts. Surender Singh No. 590/ND (PIS No. 28883811), Ram Singhasan No. 1303/ND (PIS No. 28960229), Shrimant No. 1296/ND (PIS No. 28950278) and Banwari Lal No. 766/ND (PIS No. 28890768) that while posted as PS Con. Place, they were detailed for night patrolling duty on the night intervening 1/2.01.05. During their patrolling duty they stopped a motorcycle No. UP-14 U-8187 at Outer Circle, Connaught Place near Minto Road when the riders Mr. Bhupender Tiwari and Varun Gupta were talking to a TSR to enquire about way to ITO. The policemen

made Varun to sit in the TSR with a constable in which a girl was already sitting. Another constable took the motorcycle and made Bhupinder to sit on the pillion seat. After driving for about half an hour, they stopped at a dark area and threatened put the motorcyclist in Jail. Later the remaining three policemen also reached there and demanded all the money they have. The policemen then took Rs. 8000/- from Varun Gupta and Rs. 6000/- from Bhupinder.

The above act on the part of HC Munshi Lal No. 408/ND Consts. Surender Singh No. 590/ND, Ram Singhasan No. 1303/ND, Shrimant No. 1296/ND and Banwari Lal No. 766/ND amounts to gross misconduct, indiscipline and dereliction in the discharge of their official duties, which render them liable to be dealt with departmentally.

Now, therefore, I, Ajay Kumar, Addl. Dy. Commissioner of Police, New Delhi District New Delhi with the prior approval of Jt. C.P./NDR, Delhi under rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980 do hereby order that HC Munshi Lal No. 408/ND, Shrimant No. 1290/ND and Banwari Lal No. 766/ND be dealt with departmentally under the provision Delhi Police (Punishment & Appeal) Rules 1980 by Insp. Ravinder Kumar, D-2471, who will complete the DE by holding proceedings on day to day basis and submit the findings expeditiously.

(Ajay Kumar)

Addl. Dy. Commissioner of Police:

2. Formalizing the memorandum dated February 22, 2005, which contains the summary of allegations, the inquiry officer re-penned the summary of allegations as under:-

Summary of Allegation

You are alleged that you, i.e. Munshi Lal No. 408/ND, Ct. Surender N590/ND, Ct. Ram Singhasan No. 1303. ND, Ct. Shrimant No. 1296/ND and Ct. Banwari Lal No. 766/ND that while posted as P.S. Connaught Place you were detailed for night patrolling duty on the night intervening 01/02-01-2005. During the patrolling duty you stopped a motorcycle No. UP-14-U-8187 at outer circle, Connaught Place near Minto Road when the riders Mr. Bhupender Tiwari and Mr. Varun Gupta were talking to a TSR to enquire about way to ITO. You made Mr. Varun to sit in the TSR, with a Constable in which a girl was already sitting. Another constable took the motorcycle and made Bhupinder to sit on the pillion seat. After driving for about half an hour, you stopped at a dark area and threatened put the motorcyclist in jail. Later the remaining three policemen also reached there and demanded all the money they have. You then took Rs. 8,000/- from Mr. Varun Gupta and Rs. 6,000/- from Mr. Bhupinder.

The above act on the part of HC Munshi Lal No. 408/ND, Ct. Surender No. 590/ND, Ct. Ram Singhasan No. 1303/ND amounts gross misconduct, indiscipline and dereliction in the discharge of your official duty which render you liable to be deal departmentally under the provisions of Delhi Police (Punishment & Appeal

Rules-1980).

(Ravinder Kumar)

Inspector

Enquiry Officer

Addl. SHO/Tughlak Road

3. The list of witnesses as also what was intended to be proved through the witness concerned were listed as under:-

4. The list of relied upon documents which was supplied to the five delinquent officers reads as under:-

List of Documents:

1. DD No. 6-A, dated 02.01.2005, P.S. Connaught Place.

2. DD No. 26-A, dated 01.01.2005, P.S. Connaught Place.

3. DD No. 31-B, dated 01.01.2005, PS Connaught Place.

4. Duty Roster dated 01.01.2005, PS Connaught Place.

5. Before the 5 listed witnesses could be examined, immediately upon receipt of the summary of allegations, list of witnesses and list of relied upon documents, the 5 charged officers filed an application dated March 09, 2005 before the Inquiry Officer praying that the 6 documents listed in the application be supplied to the charged officers as the same were necessary for the defence. The application dated March 09, 2005 reads as under:-

To

The Enquiry Officer

Insp. Ravinder Kumar,

Addl. SHO/Tughlak Road,

New Delhi.

Subject: Supply of Documents relevant for getting prepared solid defence.

Sir,

It is requested that the copies of the following documents may kindly be supplied to the delinquents for getting prepared their solid defence:-

1. Copy of order of DE.

2. Copy of order of suspension

3. Copies of statements recorded earlier by Addl. SHO/C Place in his enquiry.

4. Copy of complaint of Mr. Bhupinder Tiwari and/or Varun Gupta and/or Khan and/or Chauhan or of Ct. Dharum Raj No. 2375/PCR or of Akhilesh having Cell No. 9810118788.

5. Copies of proceedings conducted by ASI Tara Chand including the D.D. Entry of his arrival recorded from D.D. No. 26A Dt. 01.01.2005 P.S. Con. Place.

6. Copy of any other(s) documents prepared/got prepared or order(s) issued/got issued by Disc. Authority or Appellate Authority prior to ordering D.E. against the applicants/delinquents.

Delinquents.

6. The Inquiry Officer has admittedly received the application in question but for unexplainable reasons passed no order on the application and for unexplainable reasons we find that the 5 charged officers did not press for a decision on the application.

7. The inquiry proceeded. The 5 witnesses were examined, and as reflected in the report of the inquiry officer where we find the reproduction of the summary of evidence recorded by the inquiry officer, the examination-in-chief and cross-examination of the 5 prosecution witnesses reads as under:-

PW-1. Shri Varun Gupta S/o Shri Arjun Gupta R/o K/959 sector 23 Sanjay Nagar, Ghaziabad (U.P.), Age 25 years.

He stated that on 01.01.2005 at about 6.00 PM he along with his friend Mr. Bhupinder Tiwari came to Connaught Place to purchase Air ticket for Lucknow (U.P.). At that time, the counter for ticket was closed. At about 9.00 PM, he along with his friend was present at outer circle Connaught Place and was enquiring to TSR about way to Ghaziabad (U.P.). In the meantime, 3-4 policemen got down from a Auto rickshaw and one of the policeman told him that he was teasing a girl as she was already sitting in the TSR. Two policemen made him to sit in the TSR & took to a dark area, (unknown area). Another constable took his motorcycle No. UP-14-U-8187 and made Mr. Bhupinder Tiwari to sit on the pillion seat and brought him to same place. He did not know the place as the Auto rickshaw parked between two buses. As he got down from Auto rickshaw, the girl was still sitting in it. His friend came there after 5-7 minutes later. The policemen threatened him with the allegation for teasing a girl and also told that he would not get bail out till 6 months. He requested to release him but the policemen threatened him and asked him how much money he had. Also demand Rs. 80,000/- for releasing him. One of the policeman made his search and took out Rs. 8000/- (16 notes each of Rs. 500/- denomination). His friend was also present nearby him. One of the policeman was searching his friend and took out Rs. 7000/-. As his friend told him that he had to go to Lucknow (U.P.) and asked fare for Lucknow (U.P.). Then policeman returned Rs. 1000 (2 note, each of Rs. 500/- denomination). After then, policemen threatened them to go straight to their destination. He made telephone call to his friend Mr. Atulesh Kumar who

came to Minto Road near Mosque (Masjid) immediately and met them. He made telephone call to Police Control Room. After sometimes, police officers came there and they brought them to P.S. Connaught Place. In the police station T.I.P. of jawans was made and later the policemen returned Rs. 14000/- to them. They signed some paper and left the P.S. Connaught Place.

Cross-examined by Shri Gambhir Singh Rana defence assistant on behalf of all the delinquents.

Q. 01. How much time you stayed in P.S. Connaught Place?

Ans. About 12 to 12:15 am during the night (about 1:30 hours).

Q. 02. From 6:00 pm to 12 midnight where you were present?

Ans. At about 6:00 they came to Delhi and made outing at India Gate ate food & ice cream. At about 9:00 pm they were asking to TSR about way to Ghaziabad.

Q. 03. Who approached you and how much time you were there?

Ans. At about 9:15 pm they were approached and kept them till 11 or 11:15 pm.

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PW-2 CT. Shiv Dan Singh No. 482/ND. (Chitha Munshi) P.S. Connaught Place, New Delhi.

He stated that he is working as "Chitha Munshi" of P.S. Connaught Place. He brought "Chitha" (Duty Roster) of dated 01/02.01.2005. According to duty Roster, CT. Surender Singh No. 590/ND and H.C. Munshi Ram No. 408/ND were detailed for patrolling duty from Minto Road to Bara Khamba Road. Ct. Ram Singhasan No. 1303/ND was detailed for patrolling duty from Regal to Panchkunya Road, CT. Banwari Lal No. 766/ND was on patrolling duty from Bara Khamba Road to Regal and CT. Shrimant No. 1296/ND detailed for reserve night duty. As Ct. Ashok No. 565/ND was remained absent on that day so CT. Shrimant No. 1296/ND was sent for patrolling duty from Regal to Bara Khamba Road in place of CT. Ashok No. 565/ND. Similarly, Head Constable Harender No. 841/ND was on duty rest so CT. Ram Singhasan No. 1303/ND was performing duty in his place as Night Reserve. After checking the copy of duty Roster marked exhibit PW-2/A.

Opportunity was given to all delinquents for cross-examination.

Cross-examination -Nil-

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PW-3 ASI Tara Chand No. 1589/ND P.S. Connaught Place New Delhi.

He stated that on the intervening night 01/02.01.2005 he was performing his duty as Emergency Officer from 8 P.M. to 8 A.M. At about 12.37 A.M. he received DD No. 26 A for enquiry. He along with CT. Satpal No. 485/ND rushed to the spot

near petrol pump-T-Point, Minto Road where S.I. Ajay Kumar, Night Checking Officer was already present there. One complainant Atulesh Kumar R/O C-2 Sarvodaya apartment Sahiba Bad (Ghaziabad) U.P. told him that his two friend namely Mr. Bhupinder Tiwari S/o Shri L.B. Tiwari r/o 24/1, Sector 14, Indra Nagar Lucknow (U.P.) and Mr. Varun Gupta S/o Shri Arjun Das Gupta R/o K-959 Sector 23, Sanjay Nagar, Ghaziabad (U.P.) who were present at outer circle with their motorcycle No. UP-14-U-8187 and were asking the way to Ghaziabad (U.P.). At the same time five policemen came there and they made enquiry to both and ultimately took out Rs. 14000/- from them. ASI Tara Chand further stated that he brought them to P.S. Connaught Place in Gypsy & Produced before A. SHO/Connaught Place. He recorded their statements. DD No. 26-A is marked Exh. PW-3/A. SHO/Connaught Place himself did further proceedings. NO recovery of Rs. 14000/- made before him.

Opportunity was given to all delinquents for cross-examination.

Cross examination -Nil-

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PW-4 Inspector Brijinder Singh, A-SHO/Connaught Place New Delhi.

He stated that he was present in the P.S. Connaught Place on the intervening night of 01/02-01-2005. At about 12:37 A.M. one PCR call received to police station Connaught Place. The caller was Atulesh Kumar who reported that his two friends were present at outer circle Connaught place with their motorcycle. Five policemen came there and they took out Rs. 14000/- from his friends and left them at Pragati Maidan, now they were present at Odeon cinema. This information was marked to ASI Tara Chand for enquiry who was emergency officer. ASI Tara Chand reached to the spot where Shri Varun Gupta and Shri Bhupinder Tiwari both found there. They told that they were present at outer circle, Minto Road and talking to a TSR in which a girl was sitting. Five policemen came there and threatened them for legal action and ultimately they took out Rs. 14000/- from both. ASI Tara Chand brought them to P.S. Connaught Place where he himself made enquiry to both. On enquiry, they told that they came to Connaught Place on motorcycle No. UP-14U-8187, while they were asking to a TSR about the way to I.T.O., then five policemen stopped them. Mr. Varun Gupta made sit in the same TSR and Mr. Bhupinder Tiwari made sit on the motorcycle as pillion rider and brought them to Pragati Maidan and took out Rs. 6000/- from Bhupinder Tiwari and Rs. 8000/- from Mr. Varun Gupta. Both had given their written complaints. After verification he called on patrolling staff of P.S. Connaught Place for identification CT. Banwari Lal No. 766/ND and CT. Ram Singhasan No. 1303/ND both were identified by the complaints. He made enquiring which resulted the matter of took out Rs. 14000/- found correct, and both constables told their colleagues names as HC Munshi Lal NO. 408/ND, CT. Shrimant No. 1296/ND and CT. Surender Singh No. 590/ND. According to duty roster, all were on patrolling duty except CT. Ram Singhasan No. 1303/ND. All

the policemen made negotiation with complainant parties and returned their Rs. 14000/-. The complainants give their separate receipts of Rs. 14000/-. He apprised the fact to the senior officer about this incident. Then a detail report was sent by Insp. Ishwar Singh SHO/C. Place to senior officer, which is Exh. PW-4/A.

Cross-examined by Defence Assistant Shri G.S. Rana on behalf of all defaulter/delinquents.

Q. 01. When you reached Pragati Maidan?

Ans. He did not know ASI Tara Chand was dealt with this call.

Q. 02. When you called patrolling staff in P.S. Connaught Place?

Ans. About 2 or 2:30 A.M. in the night.

Q. 03. Any seizure memo prepared for identification?

Ans. No.

Q. 04. Whether you have written statement any one of the five policemen?

Ans. No.

Q. 05. When you released the complainant?

Ans. About 3:30 to 4:00 A.M. in the night.

Q. 06. Any seizure memo prepared of recovered money?

Ans. No.

Q. 07. Whether your statement recorded to this effect previously?

Ans. No.

Q. 08. Whether you sent your own report to this effect?

Ans. No.

Cross-examined by Enquiry Officer.

Q. 01. Whether you conducted this enquiry in your presence?

Ans. Yes.

PW-5 Shri Bhupinder Tiwari S/o Shri L.B. Tiwari r/o H.No. 24/1 sector-14 Indra Nagar, Lucknow (U.P.), Age 27 years.

He stated that on 01-01-2005 he along with his friend Mr. Varun Gupta s/o Shri Arjun Das Gupta R/o K/959, sector-23 Sanjay Nagar Ghaziabad (U.P.) came to Connaught Place from Noida by his motorcycle No. UP-14U-8187 to purchase air ticket for Lucknow. At about 9:00 p.m. he along with his friend was asking to a TSR about the way to Ghaziabad. In the meantime, 4-6 policemen got down from

a TSR (Auto Rickshaw) and his friend Mr. Varun Gupta made sit in the same TSR and another constable made him sit on the motorcycle as pillion rider. About 15-25 minutes the constable made round of the Connaught Place on the motorcycle and also threatened him that he would not bail out till six months and brought him in the dark area. The constable on motorcycle told him to take out all the money he had otherwise he would be sent to jail. At that time the Auto Rickshaw was parked about two meters from him. The constable brought him to the same place when the Auto Rickshaw parked where all the policemen were present there. They told him to take out all the money. Also they told his friend the same words. He had Rs. 7000/- in his possession at that time. He had given all the money to one constable and also made request that he had to go to Lucknow. Then the constable returned him Rs. 1000/- (Two note of Rs. 500/- denomination). They had taken out Rs. 8000/- from his friend Mr. Varun Gupta. Then the policemen told the both to go to Ghaziabad (U.P.) "Piche mur kar mat dekhna". After then they left the place and came to Connaught Place where Mr. Varun Gupta made telephone to Mr. Atulesh Kumar and told him the story. Mr. Atulesh Kumar told them to stop there and after half an hour, he reached there at petrol pump near Mosque (Masjid). Then Mr. Atulesh Kumar made call on No. 100 to PCR. After a while many officers reached there and made enquiry to them and brought to P.S. Connaught Place. All the policemen on duty were called in P.S. for identification. They identified three policemen in the police station. They got their money Rs. 14000/- (Rs. 6000 to Mr. Bhupinder Tiwari and Rs. 8000 to Varun Gupta) they signed receipt of the money and left the P.S. as per the order of police officer.

Cross-examination by Shri G.S. Rana Defence Assistant on behalf of all the five delinquents/defaulters.

Q. 01. Where you and your friend reached P.S. Connaught Place?

Ans. About 12 midnight.

Q. 02. How much time you stayed in P.S.?

Ans. At about one or one and a half-hours.

Q. 03. When you left the farmhouse for Connaught Place?

Ans. At about 6 or 6:00 PM.

Q. 04 When you visited before reaching in Connaught Place?

Ans. They went to India Gate; they ate food in Jodhpur House and also ate ice cream then went out for Connaught Place.

Q. 05. How much time you were kept with policemen?

Ans. About 9:15 to 10:15 PM.

Q. 06. When your friend Atulesh Kumar reached to you?

Ans. About 11:00 P.M.

Q. 07. Could you tell the name of policemen?

Ans. No.

Q. 08. Could you identify the policemen?

Ans. No.

8. As per the procedure to be followed, after the summary of evidence was recorded as afore-noted, a formal charge was required to be drawn up by the inquiry officer and he did the same by framing the charge and for which we note he verbatim reproduced the summary of allegations. The charge framed reads as under:-

I, Inspector Ravinder Kumar, enquiry officer, charge you HC Munshi Lal No. 408/ND, CT. Surender Singh No. 590/ND, CT. Ram Singhasan No. 1303/ND, CT. Shrimant No. 1296/ND and CT. Banwari Lal No. 766/ND that while posted for night Patrolling on the night intervening 01/02.01.2005. During your patrolling duty you stopped a motorcycle No. UP-14u-8187 at outer circle Connaught Place near Minto Road. When the riders Mr. Varun Gupta were talking to a TSR to enquire about way to I.T.O. The policemen made Mr. Varun Gupta to sit in the TSR with a constable in which a girl was already sitting. Another constable took the motorcycle and made Mr. Bhupinder Tiwari to sit on the pillion seat. After driving for about half an hour, you stopped at dark area and threatened to put the motorcyclist in jail. Later the remaining three policemen also reached there and demanded all the money they have. The policemen then took Rs. 8000/- from Mr. Varun Gupta and Rs. 6000/- from Mr. Bhupinder Tiwari. The above act on the part of you H.C. Munshi Lal No. 408/ND, CT. Surender Singh No. 590/ND and CT. Ram Singhasan No. 1303/ND and CT. Banwari Lal No. 766/ND amount gross mis-conduct, indiscipline and dereliction in the discharge of your official duties which render you liable for punishment under the provision of Delhi Police (Punishment and Appeal Rules-1980).

9. The charged officers thereafter examined 2 witnesses in defence and since no argument was advanced with respect to their deposition during inquiry, we need not trouble ourselves with penning what they deposed.

10. After recording defence evidence, arguments were heard by the inquiry officer and a report dated May 14, 2005 was submitted, holding guilty all the 5 charged police officers. The findings returned by the inquiry officer read as under:-

Conclusion:-From PW-1, PW-2, PW-3, PW-4 & PW-5 it is very much clear that the amount of Rs. 14000/- were taken out by the policemen namely Hc. Munshi Lal No. 408/ND, Ct. Surender Singh No. 590/ND, Ct. Ram Singhasan No. 1303/ND, Ct. Shrimant No. 1296/ND and Ct. Banwari Lal No. 766/ND from Mr. Varun Gupta and Mr. Bhupinder Tiwari. It is strongly proved since the said policemen returned

the same amount to the complainants on the same night. If they did not do so why they returned the amount of Rs. 14000/- to the complainants. From PW-4 it is very much clear that two constables namely Ct. Banwari Lal No. 766/ND and Ct. Ram Singhasan 1303/ND both were identified during TIP by the complainants in the P.S. there is contradictory statement of PW-4 regarding timing. Since PW-1 and PW-5 stated that they left P.S. at about 1:00 A.M. or 1:30 A.M. whereas PW-4 stated that they left P.S. Connaught Place at about 3:30 A.M. or 4:00 A.M. similarly, there is a contradictory statements of complainants about timing to reach P.S. Such contradictory statements about timing cannot avoid that the incident did not occur.

From the above facts, evidence on file and discussion it is very much clear that the above said policemen took out Rs. 14000/- from Mr. Varun Gupta and Mr. Bhupinder Tiwari by giving them threatening to be sent in jail. However the act of each delinquent/defaulters could not be categorized specifically. It might be possible that both the complainants were remained under fear due to illegal custody of policemen. Two constables namely Ct. Banwari Lal No. 766/ND and Ct. Ram Singhasan No. 1303/ND were identified by the complainants during TIP conducted in police station on the same night. These two constables disclosed the rest of delinquents. During cross examination of DW-2 by the under signed he disclosed the names of the patrolling staff as HC. Munshi Lal 408/ND, Ct. Shrimant 1296/ND, Ct. Banwari Lal No. 766/ND and Ct. Surender Singh No. 590/ND. Hence the charge is substantiated against all the five delinquents/defaulters.

11. Under cover of a memorandum dated June 24, 2005 the report of the Inquiry Officer was furnished to the five charged officers who submitted individual responses on different dates highlighting various points, which we are not noting for the reason the Disciplinary Authority, negated all the points urged and levied penalties upon all five police officers. The Appellate Authority enhanced the penalty after issuing notices. All of them filed Original Applications challenging the penalty imposed which were dismissed by the Tribunal by a common judgment and order dated January 06, 2011. Only two of the five indicted policemen, namely, HC Munshi Lal and Ct. Surender Singh challenged the decision passed by the Tribunal filing writ petitions in this Court which were registered as WP(C) No. 7478/2010 and WP(C) No. 8384/2010. All the technical pleas which were advanced by the two were dealt with and negated, but on facts the two succeeded when the writ petitions were disposed of vide judgment pronounced on December 23, 2010 holding that the said two persons were wrongly held guilty in the absence of any evidence; it was opined that the taint of the present petitioners was used to brush said two persons.

12. We are informed that the matter currently awaits adjudication before the Supreme Court since the Commissioner of Police has challenged the decision of the Division Bench before the Supreme Court.

13. The instant writ petitions were filed by the petitioners after the decision dated December 23, 2010. Because all technical pleas have been considered by

the Division Bench in its decision dated December 23, 2010 and rejected, the two have not urged said points in the writ petition(s) filed by them and this is the reason why we are not burdening ourselves with the same.

14. Contention of the petitioners is that even qua them it is a case of no evidence, as was found by the Division Bench when WP(C) No. 7478/2010 and WP(C) No. 8384/2010 were decided.

15. From the testimony of the five prosecution witnesses it becomes apparent that Varun Gupta PW-1, ASI Tara Chand PW-3, Insp. Brij Singh PW-4 and Bhupender Tiwari PW-5 have deposed facts pertaining to the TIP conducted. Ct. Shiv Dhan Singh PW-2 has proved the record to prove the five police officers being on duty in an around Connaught Place area; facts which are not in dispute.

16. Let us re-run the evidence and see what emerges against whom. Varun Gupta PW-1 has deposed that at about 6:00 PM on January 01, 2005, accompanied by his friend Bhupender Tiwari (PW-5) he came to Connaught Place to buy air ticket and on finding the counter closed was enquiring at about 9:00 PM from a TSR the way to Ghaziabad when 3-4 policemen got down from an auto-rickshaw of whom 1 threatened to implicate him for teasing a girl who was already sitting in the TSR. 2 policemen made him sit in the TSR and took him to a dark area. Another constable made his friend Bhupender Tiwari sit on the pillion seat and brought him to the same spot. His friend came thereafter 5-7 minutes. The policemen threatened him and demanded Rs. 80,000/- to release him. One policeman searched him and took out Rs. 8,000/-. One policeman searched his friend and took out Rs. 7,000/-. Rs. 1,000/- was returned and the policemen threatened him and his friend to go away. He made a telephone call to his friend Atulesh who came to Minto Road and met them. His friend telephoned the Police Control Room. After sometimes police officers came there and brought them to the police station where TIP of jawans was made and the policemen returned Rs. 14,000/- to them.

17. It may be highlighted that Varun Gupta has not deposed that 5 policemen were present when money was actually extorted. He deposes of presence of two. He only states that at the police station TIP was conducted. He does not state that five policemen were identified at the TIP. He does not state which of the delinquent officers were identified by him and his friend at the police station. Regretfully, no clarifications were sought from him.

18. Bhupender Tiwari PW-5 deposes substantially in sync with his friend Varun Gupta except with a difference; he stated that 3 policemen were identified during TIP in the police station, but does not depose as to which 3 out of the 5 charged officers were identified at the police station during TIP proceedings. Regretfully, no clarifications were sought even from him.

19. ASI Tara Chand PW-3 deposed that on receipt of DD No. 26A he reached the spot where SI Ajay Kumar, Night Checking Officer was present where Atulesh Kumar the complainant told him that his friends Bhupender Tiwari and Varun

Gupta were accosted by 5 policemen who took away Rs. 14,000/- from them and that he brought the 2 victims to the police station and recorded their statements pursuant where to DD No. 26A, Ex. PW-3/A was recorded.

20. Relevant would it be to state that ASI Tara Chand only proved an incident being narrated to him and has not deposed of any delinquent police officer being identified in his presence.

21. Insp. Brijender Singh PW-4 has deposed of the incident being narrated involving 5 policemen and that during TIP, Ct. Banwari Lal and Ct. Ram Singhasan being identified by Varun Gupta and Bhupender Tiwari who returned Rs. 14,000/-.

22. We note that the testimony of PW-4 is in harmony with what has been recorded in Ex. PW-4/A i.e. the complaint lodged vide DD No. 6A by Insp. Ishwar Singh which contains a narration of the TIP conducted in which Ct. Banwari Lal and Ct. Ram Singhasan were named as the ones identified during TIP.

23. It may be true that Insp. Ishwar Singh the author of Ex. PW-4/A has for unexplainable reasons not being examined, but the contents of DD No. 6A (Ex. PW-4/A) being relevant may be noted. They read as under:-

All the night patrolling staff was immediately called and shown to both the above complainants. In front of Addl. SHO CP, both of them identified Ct. Banwari Lal No. 766/NDP and Ct. Ram Singhasan No. 1303/NDP and told that out of 5 policemen these 2 were present. Both the above constables on asking admitted that they have taken the money. Separate statements of all the above were recorded.

24. Suffice would it be to state that whereas PW-1 has only spoken about a TIP being conducted, PW-5 has corroborated the same with additional information that three policemen were identified. PW-4 before whom the TIP was conducted has categorically deposed that only petitioners were identified at the TIP, a fact which is corroborated by Ex. PW-4/A, although its author was not examined.

25. It is thus not a case of no evidence against the petitioners. We highlight that a perusal of the decision dated December 23, 2010 would reveal that qua HC Munshi Lal and Ct. Surender Singh no evidence was found because neither PW-1 nor PW-5 had identified them as two of the five police personnel involved. Whereas PW-1 only said that a TIP was conducted and PW-5 said additionally that three policemen were identified, but failed to state further as to who they were. Left with only the testimony of PW-4, it was noted that as per him at the TIP the petitioners were identified with further statement that said two persons i.e. the petitioners named three more.

26. The plea of the petitioners that no TIP was held, in the absence of a TIP memo being prepared, is repelled by us holding that a defect in investigation cannot wash away percipient evidence. Three witnesses have spoken of a TIP and the factum thereof has been recorded in Ex. PW-4/A, a contemporaneous

document.

27. It may be true that duty roster Ex. PW-2/A evidences that Ct. Ram Singhasan was performing duty as night reserve because HC Harinder was on duty rest, but at the same time we have evidence of PW-1 of having participated at a TIP. We have testimony of ASI Tara Chand PW-13 that PW-1 told him that 5 policemen were involved in extorting money. PW-4 has proved that he called for all patrolling staff of P.S. Connaught Place to be subjected to a TIP. It may be possible that Ct. Ram Singhasan had also thought it better to be making merry on the new year's day in Connaught Place area, to spot soft targets. But we take this argument no further lest our opinion is labeled as conjectures. It would be enough for us to record that we are not to do this exercise because a writ court has not to indulge in re-appreciation of evidence.

28. It is settled law that pleas of adequacy or inadequacy of evidence to shift the burden, relevant at a civil trial, are irrelevant at a domestic inquiry. As long as credible evidence even of a probative value from the commonsense point of view emerges at a domestic inquiry, a Writ Court would approach the issue: Hands Off. Reiterating that only issue argued in the two writ petitions was: Whether it is a case of no evidence, we dismiss the writ petitions but without any order as to costs.