

(2010) 02 DEL CK 0003

In the Delhi High Court

Case No : Writ Petition (C.) No. 243 of 2002

Sh. Jiya Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 02 DEL CK 0003

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

Bench : Division Bench

Advocate : Sanjay Das and M. Ram Babu, for the Appellant; Aditya Madan, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner challenges the order dated 12th September, 2001 in O.A No. 1844/1999 titled Sh. Jiya Ram & Ors dismissing his original application impugning the order of dismissal from service dated 20th October, 1997 as Assistant Sub Inspector (Police) and dismissal of his appeal by order dated 11th March, 1998 and revision petition by order dated 5th March, 1999.

2. The allegations against the petitioner were that Sh. Nanhe Mal, complainant complained against the petitioner and against Inspector Mohan Chander, SI Net Ram and Ct. Ranbir Singh and Jatan Bir that they forcibly picked up his son Subhash Chander along with his two servants from their cold drink shop on the allegation that they were storing spurious cold drinks. They had also picked up 70 crates of cold drinks and a three wheeler scooter. Sh. Subhash Chander was threatened with involving him in a false criminal case, if an amount of Rs. 50,000/- is not paid as illegal gratification.

3. Ultimately an amount of Rs. 30,000/- was extorted from the complainant and Subhash Chander and other servants were released, however, out of 70 crates only 59 creates of cold drinks were returned. Three wheeler scooter was also

released after extorting the amount of Rs. 30,000/- from the complainant. A joint departmental enquiry was held against the petitioner and others where the order of dismissal dated 20th October, 1997 was passed against the petitioner who was Sub Inspector of Police.

4. The Tribunal considered the order of the disciplinary authority, appellate authority and the revisional authority as well as the evidence adduced before the enquiry officer though it was noted that the role of the Courts and Tribunal is limited to ascertain that the enquiry has been conducted in accordance with law and there is no denial of principles of natural justice, however, on account of the pleas raised by the counsel for the petitioner that there was no evidence against the petitioner, the Tribunal has considered the evidence also. The Tribunal also noted that complainant in his statement before the authorities recorded earlier had clearly named petitioner and co-delinquents as the persons who had indulged in illegal acts and who had extorted Rs. 30,000/- and had also beaten Krishan Chander and other persons. The version of Sh. Nanhe Mal was also found to be corroborated by his son Vinod Kumar who had deposed about payment of money. Another affidavit given by Sh. Nanhe Mal 19 years after the incident having certain depositions contrary to what was stated during the enquiry and before the officials, was not accepted and it was held that there was no justification to infer that the inferences drawn by disciplinary authority and the punishment imposed which was sustained by the appellate authority and the revisional authority were liable to be differed.

5. The learned Counsel for the petitioner has very emphatically contended that there was no evidence against the petitioner Sh. Jiya Ram of his implication and culpability. We called for the original record and obtained the photocopies of the statements recorded of Sh. Nanhe Mal who was examined as PW.4; Sh. Subhash Chander, son of Sh. Nanhe Mal was examined as PW.5; Sh. Krishan Pal, PW.6 who was a rickshaw puller and was a helper to Sh. Subhash Chander and Sh. Vinod Kumar son of Sh. Nanhe Mal.

6. This Court considered the original statements recorded before the enquiry officer as in another case of a co-delinquent also, it was alleged that the portion of the testimony of Sh. Nanhe Mal as recorded by the enquiry officer in his report was at variance with the statement recorded before him.

7. Though in exercise of jurisdiction under Article 226 of the Constitution of India, the Court does not have to go into the findings of facts unless the findings are perverse or findings are based on no evidence, however, on account of insistence of the learned Counsel for the petitioner that it is a case of no evidence, the evidence was perused by this Court. Sh. Nanhe Mal complainant in his statement was categorical that though he asked petitioner and others as to on what ground 70 crates of cold drinks was picked up by them along with his son Sh. Subhash Chander and his helper Sh. Krishan Pal, however, no cogent answer was given rather he was told that he should come to Seelampur Police Station and meet their officer who will explain everything and will release his

goods and his son and his helper. He categorically stated that Ct. Krishan Pal in presence of the petitioner had beaten the helper Ranbir with a stick (danda) and stated that money will come because of this. The complainant though protested that he is neither a thief nor a dacoit then why his man is being beaten up and Rs. 50,000/- demanded with the impunity. He was, however, told that his persons will not be released and his son will be implicated in false case unless the amount is paid. The allegation against the petitioner and other personnel was also categorical that it will be better if they give Rs. 30,000/- to them instead of Rs. 50,000/- instead of going to the Court and seeking bail and spending amount on litigation. He categorically stated that he asked his grandson Rakesh to go and bring Rs. 30,000/- from the trunk of his wife who brought Rs. 30,000/- and this amount was given by him to Net Ram, Jiya Ram (Petitioner), Ranbir and Jatan Bir. In the cross examination the complainant identified all the persons, however, he identified two persons incorrectly. While not identifying correctly he did not say that they were not the persons who were not present, however, he misdescribed two out of five persons. To the specific question, question No. 5 in the cross examination he deposed to the effect as to who were the persons who had come to his place and he again categorically identified that there were four persons and named petitioner Jiya Ram along with others. He also stated that earlier he did not know their names but later on he came to know their names. In reply to question No. 13 as to who had demanded the money, he was specific in his reply that the amount was demanded by Jiya Ram (petitioner) and Sh. Net Ram. He also stated in reply to question No. 15 that his helper Krishan Pal was beaten by Sh. Jatan Bir. Again in reply to question No. 19 he very emphatically stated that when the money was given it was in denominations of Rs. 100/- and Rs. 50/- notes and the amount was handed over to the petitioner (Jiya Ram) and Sh. Net Ram.

8. The statement of the complainant Sh. Nanhe Mal on material aspects was corroborated by his son Vinod Kumar. Though the helper Krishan Pal in the cross examination deposed that he was not beaten by the police and all the 70 crates of campa cola was returned, on other aspects the statement corroborated the version given by the complainant.

9. Disciplinary and appellate authority have considered these statements in detail. In the facts and circumstances, the contention of the learned Counsel for the petitioner that there is no cogent evidence against the petitioner is without any basis. The evidence as discussed hereinabove, shall be sufficient to demonstrate the culpability of the petitioner. In the circumstances, the petitioner is not entitled for any relief on the ground that the findings of the enquiry officer and the respondents are based on no evidence or are based on surmises or conjectures or that the procedure was not followed.

10. No other ground has been raised by the learned Counsel for the petitioner impugning the order of the disciplinary authority and other authorities imposing the punishment of dismissal from service. Brazenness with which the petitioner

in collusion with other police officials violated the rules and extorted money from an innocent businessman does not entitle them for any leniency. The petitioner was entrusted the maintenance of law and order which he exploited shamelessly for his personal ends and in the circumstances, there is no scope to differ with the punishment awarded by the disciplinary authority. The order of the Tribunal does not suffer from any such illegality or irregularity so as to entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

11. The writ petition is without any merit and it is therefore dismissed.