
(2015) 07 CAL CK 0112
In the Calcutta High Court
Case No : F.M.A. No. 894 of 2006

Tara Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34, 379, 411
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2015) 3 WBLR 979

Hon'ble Judges : Tapen Sen, J; Siddhartha Chattopadhyay, J

Bench : Division Bench

Advocate : K.B.S. Mahapatra and Abhishek Paul, for the Appellant; Chandreyi Alam, Advocates for the Respondent

Final Decision : Allowed

Judgement

Siddhartha Chattopadhyay, J—This appeal is directed against the judgment passed by a learned Single Judge of this Court in connection with Writ Petition No. 5130 (W) of 2004 wherein and whereunder the learned Trial Judge held that the punishment imposed against the appellant by the authority concerned does not call for any interference. Feeling aggrieved and dissatisfied with the said finding of the learned Trial Judge, the appellant came before us and ventilated his grievances that the learned Trial Judge misconstrued the provisions of law and failed to appreciate the evidence taken by the Enquiring Authority and the punishment imposed by the disciplinary authority in its proper perspective. He also categorically submitted at the time of hearing that the learned Trial Judge did not apply his mind nor had gone through the evidence recorded by the Enquiring Authority so far as seized articles are concerned.

2. In the interest of effective adjudication, factual aspect needs to be restated. Filtering out unnecessary details, fact of the case in a capsulated form is such that the appellant herein was a constable of C.I.S.F. and while he was leaving his

place of duty during wee hours i.e. (intervening night of 18th April/19th April, 2001), he was found in unauthorized possession of 25 packets bearing Koya, made in Japan, 813 numbers of micro-button cells and 19 packets door viewers while checked by A.S.I., K.R. Patle. Such act of the appellant, according to his authority, amounted to misconduct, violation of rules and unbecoming of a member of the force.

3. Departmental proceeding was initiated against him, without appointing any Presenting Officer Enquiring Authority himself collected the materials against the charged employee (herein the appellant) and he himself summoned notices to the witnesses and the charged employee. After taking evidence, the Enquiry Officer found the appellant guilty. His such finding was established by his higher authority, who had been pleased to dismiss the charged employee.

4. Against the said order, the charged employee i.e. this appellant had come before the learned Trial Judge who had also endorsed the views of the disciplinary authority.

5. At the time of hearing this appeal, learned Counsel appearing on behalf of the appellant vehemently submitted that the judgment passed by the learned Trial Judge absolutely is without any basis and the law settled by the Hon'ble Apex Court has been misconstrued by His Lordship. He further submitted that the alleged charge framed by the disciplinary authority was such that this appellant was found in unauthorized possession of certain articles of the C.I.S.F. unit. But the judgment passed by the Chief Metropolitan Magistrate is quite different. The learned Chief Metropolitan Magistrate, Calcutta after taking evidence of prosecution witnesses came to the finding that there were no labels pasted on the articles alleged to have been seized from the possession of the present appellants. PW1 of criminal case (Shri Gopal Krisnan) stated that there were labels pasted oh the articles but at the time of hearing before learned Chief Metropolitan Magistrate he noticed that no labels were pasted there. Accordingly, learned Chief Metropolitan Magistrate held "this presupposes that the articles showing seized articles (Ext. 4) labelling the same to be the stolen property has not been actually so labelled as such by the C.I.S.F. authority. This is no doubt, an uncementable fissure which cannot be bridged so to rope in the accused to the allegation of culpability of offence under Section 411, I.P.C. as alleged against him."

6. It is trite law that in a case under Section 379/411, IPC seizure of goods is essential and that is to be proved beyond all reasonable doubts. Here in this case the prosecution could not establish that properly and for which the appellant was honourably acquitted by a reasoned judgment.

7. Although in a mandamus appeal, High Court normally does not re-appreciate the evidence recorded in course of domestic enquiry but here we have to make it for rendering substantial justice.

8. Statement of No. 741290058 A.S.I./Exe. K.R. Patle (PW-1) (of domestic

enquiry) stated Tara Singh was then ordered to put his signature on the outgoing register and then to undergo security check, as per prevailing system. Const. Tara Singh was having a bicycle with him and there was one rain coat in a folded condition in the carrier and one water bottle hanging on the handle of the bicycle. A.S.I. K.R. Patle, has stated, when the accused unfolded the rain coat during check, 25 (twenty five) pieces of bearing fell on the ground from it and at the same time the bicycle also fell down.

9. Statement of No. 744270019 A.S.I./Exe. S.C. Rajak (PW-2) (of domestic enquiry) stated when he was busy in the C/Room, A.S.I. K.R. Patle from Gate No. 8 called for S.I.P. Chetai, who was detailed for "A" shift duty in Sector-11 area and available in the C/Room. On hearing A.S.I. K.R. Patle, myself A.S.I. S.C. Rajak and S.I.P. Chetai came out of the C/Room and noticed that one bicycle, one rain coat, one water bottle and some quantity of "bearings" were lying on the ground. On arrival to the gate, Shri D.K. Pattanayak, Asstt. Commandant ordered to put the alleged articles on a table inside the C/Room and it was done by A.S.I./Exe. K.R. Patle.

10. Statement of No. 743210038 H.C./G.D. Baban Dhonge (PW-3) (of domestic enquiry) stated the alleged bicycle he found in between A.S.I./Exe. K.R. Patle and Const. Tara Singh when it was checked by A.S.I./Exe. K.R. Patle. It was not in the cycle stand. He was not aware about anything what happened inside the C/Room. When he was called for, he went there and signed on the seizure memo. He did not check nor counted the articles when the same were lying on the ground. He got proper knowledge about the articles only when he signed on the seizure memo.

11. Statement of No. 724570054 S.I./Exe. H.M. Sarkar (PW-4) (of domestic enquiry) stated he came to Gate No. 8 NSD on 19.4.2001 at about 05-40 hrs and at that time no such articles were found in his possession, which were seized afterwards. Some "C shift duty personnel were found coming forwarded to briefing at the gate, and he was present at the gate.

12. Statement of Shri B.K. Pattanayak, Asstt. Commandant (PW-5) (of domestic enquiry) stated when he came to the gate for debriefing, after completion of "C shift duty. On receipt of the information he came to Gate No. 8 N.S.D. at about 0550 hrs and notices Const. Tara Singh was standing inside the C/Room at Gate No. 8 N.S.D. and some articles were kept on a table which were 25 packets bearings and a plastic water bottle wrapped with a woolen socks containing micro cells. A.S.I. K.R. Patle informed him that when he checked the rain coat kept in the carrier of the bicycle, the rain coat and the bicycle fell down on the ground and the bearings dropped down. Also the micro cells could be found in the bottle.

13. If we consider the deposition of the witnesses before the Enquiry Officer appointed by the disciplinary authority, we find there are serious discrepancies in regard to manner of search and seizure and place of occurrence. Some say that when the charged employee " was proceeded towards the gate, the rain coat fell

down and from the pocket of the rain coat "bearings" were recovered. Some say that those seized articles i.e. bearing and door viewers were lying on the ground. One of the seizure witnesses says that he was asked to be present in the office and found those articles were kept on a table. Therefore, search and seizure was not proper. From the evidence recorded by the Chief Metropolitan Magistrate speaks that the articles produced before the Chief Metropolitan Magistrate Court did not bear any label. Accordingly the learned Chief Metropolitan Magistrate, acquitted the charged employee from the criminal proceedings.

14. Learned Trial Judge held that the charged employee was not honourably acquitted by the Criminal Court but he was discharged from the case for want of evidence. We fail to understand wherefrom the learned Trial Judge came to such a finding which is not on record. We are quoting a few lines from the judgment of the learned Trial Judge a page 5 "the petitioner was obviously not acquitted honourably. He has been discharged so to say for lack of evidence. The prosecution could not prove the case under Section 411 of the IPC. Such acquittal does not lend any assistance to the petitioner". After going through his such observation and finding we are of the view that the learned Trial Judge failed to construe the purport and meaning of "acquitted honourably." We are armed with the decision reported in S. Bhaskar Reddy Vs. Superintendent of Police, (2014) 4 ESC 633 : (2015) 1 LLN 273 : (2014) 10 SCJ 428 : (2015) 1 SLJ 265 . Here, the Hon"ble Apex Court held that "the Trial Judge has categorically recorded the finding of fact on proper appreciation and evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the appellants and therefore they have been honourably acquitted for the offences punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Sections 307 and 302 read with Section 34, IPC. The law declared by this Court with regard to honourable acquittal of the accused for criminal offences means that they are acquitted for want of evidence to prove the charges." The expressions "honourable acquittal", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. Therefore, if the accused is acquitted for want of evidence, this certainly comes within the purview of "honourable acquittal" which has been lost sight of the learned Trial Judge.

Therefore, we can safely conclude that the learned Trial Judge overlooked this point totally and for which it caused injustice to the appellant. It was also argued by the appellant that Presenting Officer should not act as a prosecutor as well as a judge. Learned Trial Judge did not consider this aspect also. Rather he came to the finding that appointment of Presenting Officer is of no significance because neither of the parties was represented either by any representative or by any

lawyer. The Enquiry Officer conducted the enquiry unassisted. He allowed the witnesses to make their statement and thereafter the adversary was allowed to cross-examine. Such a procedure is not bad or illegal. Moreover, there is no allegation that by adopting such a procedure, any prejudice was caused to the petitioner.

15. We are armed with the decision reported in *State of U.P. and Others Vs. Saroj Kumar Sinha*, AIR 2010 SC 3131 : (2010) 124 FLR 857 : (2010) 1 JT 617 : (2010) 2 LLJ 334 : (2010) 2 SCALE 42 : (2010) 2 SCC 772 : (2010) 1 SCC(L&S) 675 : (2010) 3 SCR 326 : (2010) 2 SLJ 59 : (2010) 2 SLR 159 : (2010) 2 UJ 788 wherein the Hon"ble Apex Court held that an enquiry officer is a quasi-judicial authority and he is in the position of an independent adjudicator. He is not supposed to be representative of the department/disciplinary authority/Government, even in the absence of the delinquent official, he is to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. Therefore, we have no option left with except to set aside the impugned order. In the result, the instant appeal is allowed. Judgment passed by the Learned Single Judge as well as the order of the disciplinary authority of C.I.S.F. are hereby set aside. The appellant be restored in his original position in service, if he has not attained the age of superannuation by this time and if he had already attained the age of retirement, then in that case, all financial benefits should be given to him, as if he was never terminated, within three months from the date of communication of this order.

Tapen Sen, J.

I agree.