
(2011) 08 DEL CK 0288
In the Delhi High Court
Case No : Writ Petition (C) 9129 of 2007

Varghese B.

APPELLANT

Vs

Director General (BSF)

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 354

Citation : (2011) 08 DEL CK 0288

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

Bench : Division Bench

Advocate : Judy James, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On 7.8.2006 ASI Anant Kumar Singh, husband of Gunjan Singh, lodged a written complaint alleging that the Petitioner had acted inappropriately with his wife during his i.e. ASI Anant Kumar Singh's absence in the house.

2. Taking cognizance of the report and treating the same as an offence report and hearing the Petitioner with respect thereto, the Commandant of the battalion to which the Petitioner was attached opined that Record of Evidence be prepared and for which he framed a charge against the Petitioner. Record of Evidence was prepared and placed before the Commandant, who after considering the same, opined that the Petitioner requires to be tried at a Petty Security Force Court. Formal charge was drawn indicting the Petitioner of having used force with intent to outrage the modesty of Mrs. Gunjan Singh at 11:25 hrs. on 7.8.2006; the place being quarter No. 43, BSF Campus, Dobasipara, Tura, Meghalaya. It was alleged that the act of the Petitioner was an offence punishable u/s 354 Indian Penal Code, 1860.

3. At the trial, Petitioner pleaded not guilty. Completing all formalities at the trial,

evidence was recorded.

4. Gunjan Singh PW-1 deposed that along with her husband ASI Anant Kumar Singh she resided at Qtr. No. 43, BSF Campus, Dobasipara, Tura, Meghalaya. The quarter was a two room accommodation, one of which was used as a drawing room and the other as a bed room. It had a small kitchen, a bath room and a toilet attached. That on 7.8.2006 Petitioner came to her house and rang the call bell. As she opened the door, Petitioner told her that he had come to repair the heater. She asked the Petitioner to sit down in the drawing room as the heater was hot. The Petitioner asked her where her neighbours were and she replied that they had gone to the hospital. Petitioner entered her bed room and asked for a glass of water saying that he intended to cool the heater by pouring water. She gave him a glass of water, which he poured on the heater and as the heater became cool the Petitioner started repairing the same. As he scrapped the burnt coil which was sticking to the heater he asked her to hold the heater as he was to use both hands to remove the burnt coil which was sticking to the heater. As she held the heater with her right hand, Petitioner put his hand over hers and as she removed her hand the Petitioner said that he had touched her by mistake. She retrieved and sat on the bed. Her 3 years old son Gulshan Kumar was playing nearby. Petitioner kept the heater on the table and started repairing it. He played a Tamilian song on his mobile phone and handed over the same to her son. She told her son to return the phone to the Petitioner. Petitioner said that he had recorded Hindi songs and asked whether she would like to listen to them. She told the Petitioner to take back the mobile phone from her son. Petitioner got up from the chair and while taking the mobile phone from the hand of her son put his hand on her right thigh and brushed the same towards her knee.

She got up angrily and cautioned Petitioner not to misbehave.

Saying sorry and apologising, the Petitioner left her house. After some time when her husband came she reported the matter to her husband who lodged the complaint.

5. Relevant would it be to note that Gunjan has not been cross-examined with reference to her statement recorded during the Record of Inquiry. She has been cross-examined by the Petitioner and we do not find her testimony to be discredited.

6. ASI Anant Kumar Singh PW-2 deposed that he was working in the BSF and Qtr. No. 43 was allotted to him in March 2006 and since then he was residing there with his wife and a son aged 3 years. That the Petitioner was working as an electrician and since he was having a problem with the coil of the heater, on 6.8.2006, he had requested the Petitioner to replace the coil of the heater and the Petitioner told him that he would do so the next day. That next day after working in his office, as he returned home at around 14:30 hrs. he found his wife in a state of shock and with face flushed. On seeing him she started weeping. He consoled her. She apprised him of the misconduct committed by the Petitioner

with her. and thus, he immediately gave a written complaint against the Petitioner to Shri Bera Singh performing OS/SM duty.

7. Relevant would it be to note that ASI Anant Kumar Singh has not been cross-examined with respect to or with reference to his written complaint lodged on 7.8.2006.

8. OS/SM Bera Singh PW-3 has deposed that PW-2 had handed over a written complaint to him about the incident which he had passed on to the competent authority. IRLA R. Siakeng PW-4 deposed that he was performing duties as a Dy.Cmdt.(Admn.) and that when he was in his office at around 16:00 hrs. on 7.8.2006 OS/SM Bera Singh came to his office and intimated the written complaint lodged by ASI Anant Kumar Singh pertaining to Petitioner having misbehaved with his wife. IRLA Rajesh Kumar Sahai, Dy.Cmdt. PW-5 deposed that he was performing duties as an Adjutant, when under directions of the Commandant he prepared the Record of Evidence on 10.8.2006.

9. Petitioner made a statement in defence in which he admitted having gone to the house of ASI Anant Kumar Singh to repair the heater but claimed that he told wife of Anant Kumar Singh that using heater was prohibited. In spite thereof he offered to repair the heater. While he was working, the mobile telephone kept in his pant pocket fell down. Anant Kumar Singh's wife took up the mobile phone and asked him whose photograph was on the screen. He said that it was the photograph of his son. Mrs. Anant Kumar asked him whether he had downloaded a photograph of his wife in the mobile phone.

He replied in the affirmative. She desired to see the photograph of his wife. Since the coil of the heater was sticking, he requested Mrs. Anant Kumar Singh to hold the heater so that he could use both hands to scrap the coil. After completing the work he took the mobile phone from the son of Mrs. Anant Kumar Singh and left.

10. Holding Petitioner guilty, penalty of 3 months" rigorous imprisonment in force custody and forfeiture of 10 years" service for purpose of promotion and pension was inflicted upon the Petitioner against which statutory remedies availed by the Petitioner have been negated.

11. Learned Counsel for the Petitioner urged that PW-1 has contradicted herself with respect to her testimony recorded during Record of Evidence. Learned Counsel urged that PW-2 deposed at variance with his written complaint lodged on 7.8.2006. Thus, Petitioner's counsel urged that both witnesses of the prosecution being tainted, removing their evidence, nothing remained. Counsel urged that it would be a case of No. evidence.

12. As noted by us hereinabove, PW-1 was never confronted with her statement recorded during Record of Evidence when she deposed at the trial. Unless she was so confronted, we are afraid, No. argument can be projected with reference to the alleged discrepant statement made by PW-1 vis-a-vis her previous statement. Similarly, as regards Anant Kumar Singh, he not being confronted

with any portion of his written complaint dated 7.8.2006, we are afraid his testimony cannot be questioned with reference to the said written complaint.

13. Be that as it may, we have independently perused PW1's statement recorded during Record of Evidence and we find that her testimony during trial is substantially the same. Choice of words has differed. Different sentences have been used. But the core remains the same. Similarly, the written complaint lodged by husband of the Petitioner is substantially the same as deposed to him at the trial and we would highlight that as at the trial, even in the complaint, PW-2 has simply narrated what he claimed was told to him by his wife.

14. It is apparent that the facts stated in the complaint pertaining to the incident and the testimony of PW-2 would be hearsay evidence. But not all.

15. PW-2, as noted by us, has deposed that when he returned to his flat he saw his wife disturbed, in tears and with face flushed. This is his percipient testimony regarding the physical and the mental condition of his wife soon after the incident. It shows that the lady was traumatized. This corroborates the testimony of PW-1 as per whom she was traumatized by the Petitioner.

16. An argument was projected that it is difficult to believe that in the presence of the 3 years old son of ASI Anant Kumar Singh and Gunjan Singh, the Petitioner would dare attempt to act inappropriately with Gunjan Singh.

17. It is not unheard of men having attempted to outrage the modesty of woman in the presence of their family members and especially when the family members are infants.

18. From the testimony of PW-1 it emerges that the Petitioner tested the waters. He questioned Gunjan Singh as to where were her neighbours and when she told that the neighbours were away to the hospital, the next thing done by the Petitioner was to distract the minor son of Gunjan Singh by handing over the infant, aged 3 years, a mobile phone with music played on the mobile phone. He wanted to test the reaction of the lady, when under the garb of his hand slipping while repairing the heater, he placed his hand over the hand of Gunjan Singh. Finding the lady a little annoyed but not outraged at what had happened, probably the Petitioner thought that he could test the lady a little more and which he did by putting his hand on her thigh and brushing the same downwards till the knee. It was then that the Petitioner retracted on seeing Gunjan Singh being furious about what had happened.

19. Within the confines of a trial at a Summary Security Force Court and the verdict of guilt we find sufficient evidence to nail the guilt of the Petitioner and would simply highlight that exercising jurisdiction under Article 226 of the Constitution of India we are not to sit in appeal.

20. No procedural impropriety was shown or argued. No. statutory rule being breached was argued.

21. The last argument pertaining to the quantum of punishment needs to be dealt with. It was argued that the inappropriate placing of Petitioners hand on the thigh of Mrs. Gunjan Singh, sans any other inappropriate act, would not and should not invite such a severe penalty.

22. Law is clear. Unless the penalty levied is shockingly disproportionate and prick a judicial conscience, it cannot be interdicted by a court. Highlighting that in BSF camps it becomes extremely important that propriety is maintained and No. force personnel indulges in misadventure with the wife of another force personnel and the requirement for discipline requiring nothing to be trivialized, we find the penalty not to be disproportionate for the reason BSF personnel are armed and if such kind of incidents are condoned it may compel the angry husbands to take law in their hands. Needless to state, consequences would be disastrous.

23. We dismiss the writ petition but refrain from imposing costs.