

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 26th November, 2009

+ **WP(C) No. 14844/2006**

JESUDOSS MAHENDER Petitioner
Through: Mr. Anil Gautam, Advocate

Versus

UOI & ANR. Respondents
Through: Ms. Anjana Gosain, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. A charge memo was issued to the petitioner, alleging as under:-

FIRST CHARGE	DOING A THING WITH INTENT TO
BSF ACT	DEFRAUD
SEC 30(f)	

That the petitioner while being posted at New Delhi, on 09.01.2002, while performing the duties of Task holder at Tak No.19, of PG-I, PAD BSF, New Delhi opened a saving bank account No.01190007750 in SBI CGO Complex,

Lodhi Road, New Delhi, in the name of Mahender, with intent to defraud.

SECOND CHARGE	DISHONESTLY MISAPPROPRIATING
BSF ACT	PROPERTY BELONGING TO THE
SEC 30 (b)	GOVERNMENT

That the petitioner at New Delhi between 09.01.2002 to 31.12.2003, while performing the duties of Task holder at Task No. 19, of PG-I, PAD BSF, New Delhi, misappropriated Rs.8,75,711.00 (Rupees eight lacs seventy five thousands seven hundred eleven) only as per details mentioned below, the property belonging to the government by withdrawing the same from Saving bank account No.01190007750 of SBI CGO Complex, Lodhi Road, New Delhi.

- | | | |
|------|-------------------|-----------------|
| i) | Pay & allowances | Rs. 4,97,548.00 |
| ii) | Transfer TA | Rs.74,164.00 |
| iii) | Uniform grant/KMA | Rs.9,750.00 |
| iv) | Leave encashment | Rs.2,38,566.00 |
| v) | Medal allowance | Rs.17,250.00 |
| vi) | CGEGIS | Rs.38,433.00 |
| | Total | Rs.8,75,711.00 |

THIRD CHARGE	DOING A THING WITH INTENT TO
BSF ACT	DEFRAUD
SEC 30(F)	

That the petitioner at Pad BSF, New Delhi, on 19th March 2004, while posted in 45 Bn BSF, submitted a false bill, amounting to Rs.1,69,340/- (Rupees one lack sixty nine thousand three hundred forty) only, towards leave encashment in the fictitious name of Sh.Mahender, AC, with intent to defraud.

FOURTH CHARGE	DOING A THING WITH INTENT TO
BSF ACT	DEFRAUD

SEC.30 (f)

That the petitioner at PAD BSF, New Delhi, on 19th March 2004, while posted in 45 Bn. BSF, submitted a false bill amounting to Rs.32,818/- (Rupees thirty two thousand eight hundred eighteen) only towards CGEGIS, in the fictitious name Sh.Mahender, AC, with intent to defraud.

2. The Court of Inquiry ordered by DIG BSF, Signal Training School returned a finding of guilt. Based thereon, after following the process of law the petitioner was inflicted with a penalty of dismissal from service. The petitioner was also sentenced to undergo three year rigorous imprisonment. It may be noted here that the inquiry was actually a trial before the General Security Force Court. The order of dismissal is dated 14.10.2005. The petitioner has undergone the sentence. Confirmation petition has been dismissed.

3. Two points have been urged at the hearing of the appeal. Both points are of a technical nature. It is firstly urged that there were three civilian employees concerned with the clearance of the bills and their names are Shri A.K.Tiwari, Shri Shiv Dutt and Shri Shyam Lal Singh; submission made is that the convening authority ought to have referred the trial of the petitioner to the Civilian Court i.e. the Magistrate competent to take cognizance under the Code of Criminal Procedure. Second submission made is that the said three persons were cited as witnesses of the prosecution; meaning thereby, the

petitioner has been convicted on the tainted testimony of persons who are co-accused.

4. Learned counsel for the petitioner has not been able to show to us that when the General Security Force Court was convened the petitioner made any representation that his trial be conducted before the Civil Court. In that view of the matter, having taken his chance before the Summary Security Force Court, the petitioner cannot make any grievance on said count.

5. With respect to the second plea, suffice would it be note that the evidence held duly proved against the petitioner at the trial is that the petitioner was the one who opened a fictitious account in the name of Shri Mahender and it was he who took the benefit of the money which was credited in the said account. That the three civilian employees had dealt with the scrutiny of the bills submitted under the forged signatures of Mahender Singh would not make them co-conspirators.

6. Learned counsel for the petitioner has urged no submissions with respect to the merits of the findings returned against the petitioner.

7. Noting that the petitioner has defalcated Rs.8,75,711/-, Rs.1,69,340/- and Rs.32,818/- which actually belonged to Mahender, we find no merit in the writ petition.

8. The writ petition is dismissed.
9. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

November 26, 2009
Hk / dk