

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

+ W.P.(C) 4572/2004

Reserved on :06.09.2010
Pronounced on : 09.09.2010

BIJU VARGHESE Petitioner
Through: Mr.Shyam Babu, Adv.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr.Manoj Kr. Rath, Adv. for
Mr.V.K.Tandon, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

: **MOOL CHAND GARG,J:**

1. The petitioner, Constable Raju Varghese was served with a memorandum for having indulged in an act of extortion by demanding a sum of ₹15,000/- from one Yahiya Khan. The summary of allegations which were conveyed to him along with the memo dated 17.07.2002 reads as under:

It is alleged against constable Biju Varghese No.3172/SD and constable Bhagwati Prasad No. 1798/SD that while posted at police station Hauz Khas South Distt, New Delhi, on 13.02.2002 both of them approached one Sh. Yaha Khan R/o 3011, Bashiruddin Gate, Kali Masjid, Turkman Gate Delhi at evening time while he was sitting with his wife Saira in Rose Garden in area of police station Hauz Khas. You threatened for false implication and demanded money and took out ₹1000/- or ₹1200/- along with driving license from the pocket of Sh. Yaha Khan during the search, & further demanded ₹15000/- more. Accordingly a raid was organized by the flying squad of vigilance branch, PHQ on 18.02.02 & both of them were caught red handed while accepting ₹3000/- from Sh. Yahya Khan near Rose Garden gate Hauz Khas. The money was recovered from the possession of both

of them along with the driving license of Sh. Yahya Khan which was returned to the complainant after acceptance of money. You constable Biju Varghese was also carrying a mobile phone number 9811327053 & its cash card was also seized by the raiding party. You constable Biju Varghese was also having a motor cycle number DL-8SR-0553.

The above act amounts to gross misconduct & unbecoming of a government servant on parts of constable Biju Varghese No.3172/SD & constable Bhagwati Prasad No.1798/SD which renders liable for departmental enquiry under the provisions of Delhi Police (Punishment & Appeal) Rules 1980.2. It may be observed here that vide order dated 19.02.2002, the petitioner was placed under suspension.

2. The disciplinary authority appointed an inquiry officer who after recording evidence, framed charges against the petitioner in accordance with the Delhi Police (Punishment & Appeal) Rules (for short 'the Rules') which reads as under:

I Rakesh Kumar, Inspr. E.O. charge you Constable Biju Verghese No.3712/SD(PIS No.28941819) and Bhagwati Prasad No.1798/SD(PIS No.28860641) that on 13.02.2002, while posted at police station Hauz Khas you approached one Shri Yahiya Khan R/o 3011, Naseeruddin Gali, Kali Masjid, Turkman Gate, at evening time while he was sitting with his wife Saira in Rose Garden, Hauz Khas. You threatened the complainant of false implication and demanded money and took out ₹1000/- or ₹1200/- with his driving license from his pocket during his search and further demanded ₹15000/-. Accordingly a raid was organized by flying squad of Vigilance Branch on 18.02.02 and both of you were caught red handed while accepting ₹3000/- from the complainant at Rose Garden Gate, Hauz Khas. The money was recovered from the possession of you constables along with the driving licence of complainant, which was being returned after acceptance of money. You Ct. Biju Verghese was also carrying a mobile phone No. 9811327053 and its cash card was also seized. You Ct. Biju Verghese was also having a motor cycle No.DL-8S-R-C553. The above act amounts to gross misconduct and unbecoming of Govt. servant on the parts of constables Biju Verghese No.3712/SD and Const. Bhagwati Prasad No.1798/SD which renders you liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules 1980.

(RAKESH KUMAR)E.O.
INSPECTOR: D.E.CELL:DELHI

3. The enquiry officer examined four witnesses as desired by the petitioner and thereafter gave his report after taking into consideration the written statement of defence submitted by the petitioner dated 11.03.2003.

4. A show cause notice was issued by the disciplinary authority on 22.04.2003 calling upon the petitioner to make a representation against the report if any which was made by the petitioner. After considering the report, the disciplinary authority imposed the punishment of removal from service vide order dated 08.05.2003. The period of suspension from 19.02.2002 was treated as period not spent on duty. Appeal filed by the petitioner against the aforesaid order was rejected on 15.07.2003. It is thereafter, the petitioner filed an application before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') being O.A.No.2052/2003 to assail the orders passed by the disciplinary authority and the appellate authority with a further request to reinstate him in service with all consequential benefits/reliefs.

5. The Tribunal vide impugned order dated 27.02.2004 has dismissed the application filed by the petitioner. Before the Tribunal the petitioner primarily raised two grounds:

- i) that if a preliminary inquiry is held in accordance with the Rule 15 of the Rules and the same discloses commission of cognizable offence in relation with public; departmental inquiry shall be ordered after prior approval of the Additional Commissioner of Police and a decision has to be taken by the ACP as to whether a criminal case has to be registered against the delinquent officer or inquiry should be held.
- ii) that the approval of charges by the inquiry officer from the disciplinary authority was contrary to Rule 16(4) and as such the proceedings were vitiated inasmuch as the same

authority i.e. the disciplinary authority who proved the charges punished the petitioner.

6. The Tribunal has dealt with both the objections raised by the petitioner and has not found any favour with the petitioner. As regards the first issue raised by the petitioner, the petitioner had gone through the departmental file which indicates that the Joint Commissioner of Police (Southern Range) ordered that since the incident relates to 13.02.2002, and a criminal case had not been registered against the delinquent earlier, it would not be proper to register a case because of the delay and therefore, directed a departmental action to be initiated against the petitioner.

7. The Tribunal rightly observed that the aforesaid decision of the Joint Commissioner of Police indicates that a positive decision had been arrived at by the said Commissioner which was in terms of sub-Rule 2 of Rule 15 of the Rules that instead of initiating criminal proceedings, it would be proper to deal with the applicant in disciplinary proceedings. A similar issue was raised before us also by the learned counsel for the petitioner. We are in agreement with the Tribunal that the aforesaid argument holds no water.

8. Coming to the second issue that charges were approved by the inquiry officer from the disciplinary authority, the Tribunal has rightly rejected the aforesaid argument by observing:

15. Rule 16 of Delhi Police Punishment and Appeal Rules (supra) prescribes the procedure to be observed in departmental inquiries. The disciplinary authority is empowered to appoint an inquiry officer. It is the inquiry officer who prepared the summary of statement, summarizing the misconduct alleged against the accused officer and list of witnesses together with the brief details of the evidence. After the evidence is recorded, when the matter is contested, the inquiry officer has to frame a charge as prescribed under Rule 16(4) of the Rules. Even if the inquiry officer had got charge approved from the disciplinary authority, we find that it cannot be termed (permitted) that that proceedings would be vitiated. Reasons are obvious. The inquiry officer is a nominee of the disciplinary authority. If he has got charge approved, no prejudice is caused to the applicant. It cannot be termed that any extraneous factor

has come into being so as to vitiate the whole proceedings.
The contention therefore must be repelled.

9. Similar argument was taken before us also by the learned counsel for the petitioner but he has not been able to place even before us either any precedent or the Rule which prohibits such approval of the charges by the inquiry officer from the disciplinary authority. The reasoning given by the Tribunal is well founded and does not require any interference from us. Accordingly, the second argument of the learned counsel for the petitioner is also rejected.

10. Learned counsel for the petitioner further submitted that the witness who could have brought on record the correct facts, namely, Saira Bano, wife of Sh.Yahiya Khan has not been examined by the prosecution who if examined would have exposed the falsity in the version of the department. In this regard, it has been submitted that in his defence statement he has stated:

On 13.02.2002, I along with Ct. Bhagwati Parsad the Co-defaulter; was on duty at SDA Picket adjacent to Rose Garden, Safdar Jung Development Area. At about 6.30 PM one Jagan Nath – a fruit seller came to the picket and informed that a lady and public persons were beating a young man in the garden. Ct. Bhagwati and I reached there and found some persons standing. On enquiry it was learnt that one young man had brought a middle-aged lady to the garden. He led her behind the bushes. She raised an alarm. People gathered and on learning that the young man was not willing to make the settled payment of ₹ Five Hundred, they and the lady started beating him. She threatened that she would take him to the police station. One person ran to call the police. The young man got afraid and apologized and requested the lady to end the matter. She demanded ` 1000/- and the young man paid her the money and vanished and so disappeared the lady. The public took us behind the bushes where the lady and man had altercations. One gentleman whose name came to know as Shri. Ramesh Uppal picked up a driving license from the spot. After having seen the photograph on the license he told me that this was the man who was beaten by the lady. Other public men also identified. Other public men also identified the person from the photograph on the driving license. The details of the license came to know as Lic. No. P 95070543 issued in the name of yahya Khan S/o Sh. Mohd. Yusuf R/o 3011 Bashiruddin Kali Masjid, Delhi. Mr. Ramesh gave me

his mobile No. as 9868152191. We searched for Mr. Yahya and the lady but our efforts did not meet the success.

Next day, from MTNL enquiry – 197, I took the telephone No. installed at H.No.3011 Bashiruddin Kali Masjid, Delhi as 3234375. I dialed the number. A lady attended it. She was informed that Yahya's driving license was found in the Rose Garden and he should collect it from Rose Garden Police Booth. I gave her my mobile number.

On 15.02.2002 some time at 10.15 PM Mr. Yahya came to me in PS Hauz Khas, while I was going home with my friend. He wanted to talk to me in private about license. I told him that it was lying in the police Booth and the key was with another const. I asked him to come to Rose Garden Picket next day after 10 AM and collect the license. Mr. Yahya wanted to talk to me in private. I told him that he should speak, as the person with me was my friend. He said that his prestige was in my hand as all his family members have been enquiring as to what for he had gone to Rose Garden. In case they know the truth his life will be spoiled. I assured him that police shall not be the cause of his trouble. He wanted to give me some money but I rebuffed him. He felt obliged and went. The latter developments are the result of some one's instigation and misguidance.

11. It is not in dispute that on the second date the Driving License of Sh. Yahiya Khan who in his complaint has stated that at the relevant time he was with his wife when the petitioner raised a demand of ₹15,000/- and on that pretext has taken away his driving licence inasmuch as at the relevant time he was not having the money demanded.

12. Learned counsel for the petitioner submitted that in his complaint Sh. Yahiya Khan has stated that the lady sitting with him was his wife. In case his wife Saira would have been examined the complaint made by Yahiya Khan would have fallen to the ground.

13. Insofar as the aforesaid submission made by the learned counsel for the petitioner it is sufficient to say that firstly, the petitioner had no business to have taken away the driving license of Yahiya Khan which has been seized from him on the next day along with a sum of ₹3,000/- when the complainant was sitting with his wife. The possession of the Driving Licence of the complainant along with a sum of ₹ 3,000/- seized

by the raiding party from the possession of the petitioner supports the case of the prosecution that the licence had been taken by the petitioner from Yahiya Khan only with a view to ensure that the extortion amount as claimed by him would be brought by Sh.Khan at least to take back the driving licence and thus proves the charge that the petitioner was guilty of threatening the complainant of his false prosecution unless he is agreed to pay the extortion amount. In any case, it was for the petitioner to have moved an application for examining Saira Khan as a defence witness, if he wanted to take help from her testimony, which has not been done.

14. In these circumstances, we find no infirmity with the order passed by the Tribunal. Accordingly, the petition filed by the petitioner is dismissed and the order passed by the Tribunal is upheld.

15. No costs.

MOOL CHAND GARG,J

PRADEEP NANDRAJOG, J

SEPTEMBER 09, 2010

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