

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

% Judgment Reserved On: 29th October, 2010
Judgment Delivered On: 1st November, 2010

+ **WP(C) 8127/2008**

CT.ARVIND KUMAR ...Petitioner
Through: Mr.Sourabh Ahuja, Advocate

Versus

GNCT OF DELHI & ORS. ...Respondents
Through: Mr.Aditya Madan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. A charge memo was issued on 22.8.2005 against the petitioner in which the indictment alleged was that on 14.5.2005 he was posted at Vivek Vihar Traffic Circle and was detailed for duty at Surya Nagar Red Light Point. A PRG team found him in plain clothes at 2:30 PM when petitioner had stopped a half-body truck (HDV) bearing Registration No.HR-38C-6534 near the Red Light Point and was seen talking to the driver. After some conversation the truck was let off. It was intercepted by Insp.V.K.Kalia of the PRG team and upon inquiry the truck driver named Rajveer Singh informed that petitioner had stopped him and thereafter released him after receiving ₹100/- as entry fee. He i.e. Rajveer Singh further disclosed that even on 13.5.2005 he had paid ₹200/- to Const.Arvind

Kumar at the same red light. He produced a note book on which petitioner had acknowledged having received the entry fee. The driver was taken back to the point/place where petitioner was standing and he correctly identified the petitioner. The indictment was that the afore-noted act of the petitioner in demanding and collecting ₹200/- on 13.5.2005 and ₹100/- on 14.5.2005 from Rajveer Singh and having acknowledged receipt of the amounts on the notebook of the driver was a grave misconduct inasmuch as petitioner had indulged in a corrupt practice and additionally there was dereliction in the discharge of his official duties.

2. The petitioner denied the allegations and hence an inquiry officer was appointed.

3. At the inquiry the department produced five witnesses, the first two with the intention to prove petitioner's deployment on 13th and 14th of May 2005 at Ram Prastha Chowk i.e. a spot near Surya Nagar Red Light Point. And the other three to prove the indictment as per the allegations in the charge sheet pertaining to the misdemeanor alleged to have been committed on 13th and 14th May 2005.

4. Const.Naresh Kumar PW-1 deposed that as per record Ex.PW-1/A, petitioner was posted at Vivek Vihar Traffic Circle. HC Om Pal Singh PW-2, with reference to the Daily Diary Rojnamcha Ex.PW-2/A and the duty roster Ex.PW-2/B deposed that on 13th and 14th May 2005 the petitioner was deployed at Ram Prastha Chowk and that on both days he had recorded his departure vide DD No.5 and DD No.4 respectively.

5. Rajveer Singh PW-3, who was cited as the star-witness of the prosecution, let down the prosecution. He did not support the charge and denied having ever paid any bribe to the

petitioner on 13th and/or 14th May 2005. He denied that the petitioner ever acknowledged in the diary maintained by Rajveer Singh of having received any bribe. He deposed that on 14.5.2005 he was bringing in bricks into Delhi and near Karkardooma Courts two persons stopped him and made enquiries and in the meantime at 3:45 PM petitioner came. The two persons who were policemen searched the petitioner and recovered ₹300/- which they returned to the petitioner and one policeman took his i.e. Rajveer's diary and got its pages photocopied and thereafter returned the diary to him. The policemen obtained his signatures on two papers, contents whereof were not known to him.

6. On being cross-examined Rajveer Singh denied that the petitioner took any entry money from him either on 13th or on 14th May 2005. He stated that his alleged statement recorded on 14th May 2005 was falsely recorded. It may be noted that the inquiry officer suggested to Rajveer Singh that petitioner had either won him over or intimidated him, both acts alleged to have been committed by the petitioner were denied by Rajveer Singh.

7. Insp.V.K.Kalia PW-4 and Insp.M.K.Meena PW-5 supported the indictment and deposed facts in harmony with what was alleged in the indictment. Insp.V.K.Kalia deposed that the seizure memo Ex.PW-4/A showing recovery of ₹300/- from the petitioner was drawn by him and that the seizure memo Ex.PW-4/C relating to the notebook of the driver was drawn up by him as also the report Ex.PW-4/B.

8. Pertaining to the cross-examination of the two witnesses, it may be noted that both of them admitted neither having heard what transpired between the petitioner and Rajveer

Singh. Both of them stated that they did not see any money being paid by Rajveer Singh to the petitioner.

9. The petitioner led no evidence but filed a written statement of defence after the evidence was led in which he attempted to punch holes into the testimony of the prosecution witnesses. In a nutshell, the thrust of the written statement of defence was that Rajveer Singh having denied paying any bribe and the two police officers i.e. PW-4 and PW-5 having admitted not having seen any money being passed on from Rajveer Singh to the petitioner and having not deposed to have heard any conversation between the two, the indictment could not be sustained as there was no proof of any bribe being demanded or paid.

10. Vide report dated 24.4.2006 the inquiry officer indicted the petitioner holding that the charge was fully established and in returning the finding, the inquiry officer held that the testimony of PW-4 and PW-5 proved that the petitioner stopped the half-body truck driven by Rajveer Singh; the two spoke to each other and the truck was allowed to proceed ahead. The inquiry officer further held that notwithstanding Rajveer Singh turning hostile, the testimony of the two police officers established that soon after Rajveer Singh, on being permitted to proceed ahead, being stopped by the two police officers and questioned, told them of having paid ₹100/- to the petitioner as consideration for letting his truck proceed ahead and that he further told them of likewise paying a bribe the previous day. The inquiry officer further held that the testimony of the two police officers establishes that Rajveer Singh produced his diary in which there were two entries pertaining to 13th and 14th May 2005 in sum of ₹200/- and

₹100/- respectively and in respect whereof Rajveer Singh told the two police officers that the said entries were made by the petitioner.

11. After furnishing the report of the inquiry officer to the petitioner and receiving his response thereto, vide order dated 14.6.2006 the Disciplinary Authority rejected the response of the petitioner and proceeded to inflict the penalty of forfeiture of one year approved service permanently with further direction that the period 19.5.2005 till 1.9.2005 during which petitioner remained suspended would not be treated as spent on duty. The Disciplinary Authority passed another order on 3.8.2006 directing the name of the petitioner be entered in a list of persons with doubtful integrity for a period of three years. Appeal filed by the petitioner against the order imposing penalty of forfeiture of one year's approved service permanently was rejected vide order dated 23.7.2007.

12. The petitioner thereupon filed OA No.2037/2007 in which he challenged the penalty imposed and the order rejecting his Appeal.

13. Though various grounds were urged in the Original Application, but as urged before us by learned counsel for the petitioner, the validity of the orders impugned before the Tribunal were questioned, during arguments before the Tribunal on the following grounds:- (i) Rajveer Singh PW-3 having not stated that he ever paid any bribe to the petitioner and Insp.V.K.Kalia PW-4 and Insp.M.K.Meena PW-5 having not deposed to have heard the petitioner demand any bribe or having seen the petitioner receive any bribe, the inquiry officer was not justified in accepting the hearsay version of the two police officers that Rajveer Singh told them that he had paid a

bribe to the petitioner on 14.5.2005 and even on 13.5.2005. In a nutshell, the first contention was that it was a case of no evidence. (ii) Second contention urged was that having not seized the alleged diary produced by Rajveer Singh but having retained photocopies thereof, the petitioner was denied an opportunity to obtain expert evidence with respect to the two entries in the diary alleged to be in the handwriting of the petitioner and containing the acknowledgment of having received ₹200/- on 13.5.2005 and ₹100/- on 14.5.2005. In a nutshell, the second contention urged was that the two police officers had allowed the best evidence to be dissipated and thereby causing prejudice to the petitioner. (iii) The third submission urged was that the inquiry officer, under the garb of examining PW-3 had cross-examined PW-3 and thus the inquiry stood vitiated. (iv) It was urged that PW-4 and PW-5 were senior police officers of the rank of Inspector and it could be presumed that they were aware of the procedures of law pertaining to investigation and preparation of contemporaneous memos evidencing the identifications and seizures during investigation; it was highlighted that no pointing out memo at the instance of Rajveer Singh and pertaining to the petitioner being pointed out and identified as the recipient of the bribe was drawn up.

14. We note that the Tribunal has neither noted the aforesaid four submissions, but has proceeded to discuss the evidence on the principles of proof required at a domestic inquiry, and probably for the reason the pleas urged pertained to the appreciation of evidence led, held that in the absence of any allegation of malice against the petitioner at the hands of PW-4 and PW-5, there was no reason to disbelieve the said two

witnesses. The Tribunal has held that in view of the law laid down by the Supreme Court in the decision reported as AIR 1977 SC 1512 State of Haryana vs. Ratan Singh, there was nothing wrong in admitting hearsay evidence spoken of by PW-4 and PW-5. It is but apparent to a reader of the present decision that OA No.2037/2007 was dismissed. The order is challenged before us. It is dated 5.3.2008.

15. Arguing the writ petition on 29.10.2010 Sh.Sourabh Ahuja, learned counsel for the petitioner urged four submissions, contents thereof have been noted by us in para 13 above.

16. We deal with the third submission urged for the reason the first, second and the fourth submissions urged pertain to appreciation of evidence and the impact of deficiency in the evidence led by the department and thus requiring a discussion on the quality of evidence led and the probabilities arising therefrom and we feel that if we individually deal with the said three submissions, we would be unnecessarily repeating ourselves.

17. The third contention urged was that the inquiry officer, under the garb of seeking clarifications has virtually cross-examined Rajveer Singh. The legal content of the argument was that where the inquiry officer actively participates in cross-examining a witness, he exceeds his brief and as a result the inquiry report gets vitiated.

18. Now, in the instant case no part of the statement made by Rajveer Singh PW-3 has been relied upon by the inquiry officer and thus it hardly matters whether the inquiry officer was over-enthusiastic in putting questions to Rajveer Singh, which questions partake the nature of a cross-examination. It

is settled law that unless a wrong at a domestic inquiry results in a prejudice to the accused, the same is immaterial. That apart, the so-called over-enthusiastic cross-examination are two questions (only two) put to Rajveer Singh by the inquiry officer. The first question was to seek an answer pertaining to the difference in what he told Insp.V.K.Kalia on 14.5.2005 and what he deposed before the inquiry officer and the second was the question by way of suggestion that he had been won over by the petitioner. The first question is not in the nature of cross-examination. It only seeks a response of the witness with reference to the alleged previous statement made by the witness. The second question may assume the character of a cross-examination, but its nature shows the trivialness of the question, answer whereof was expected. Given the testimony of the witness before the inquiry officer, it was futile to suggest to him that the witness had been won over or intimidated. However, we conclude by re-affirming that the two questions posed, to be answered, have caused no prejudice; the first question is purely clarificatory and not by way of cross-examination. The second partakes the character of cross-examination but is trivial and has caused no prejudice. Lastly, we note that the inquiry officer has not referred to the same.

19. Dealing with contention one, two and four, suffice would it be to state that even at a criminal trial, deficiencies during investigation are rendered meaningless, if otherwise the prosecution is able to sustain the indictment. Thus, even at a domestic inquiry, deficiencies in the investigation have to be ignored. We clarify that unless it is established that the deficiencies pertained to matters of serious consequences and if evidence relatable thereto was brought on record the

innocence of the accused could have surfaced, only then the deficiencies have to be used for the benefit of the defence. This principle of law at a criminal trial is based on the requirement of law that at a criminal trial the prosecution must bring on record not only evidence which points towards the guilt of the accused but even rules out the innocence.

20. We have noted herein above that the Tribunal has relied upon the decision of the Supreme Court in Ratan Singh's case (supra). In said case it was observed by the Supreme Court that at a domestic inquiry the strict and sophisticated rules of evidence under the Indian Evidence Act have no application and that all evidence which have a logical probative value for a prudent mind are admissible evidence and that there is no allergy to admitting hearsay evidence at a domestic inquiry provided it has reasonable nexus with the incident and is credible. The only caution is that one must be careful in evaluating such material and should not lead oneself into gullibly swallowing what is strictly speaking not relevant and admissible evidence under the Indian Evidence Act.

21. Thus, we may say that fair-play is the basis at a domestic inquiry and only bias or surrender of independence of judgment vitiates the conclusions reached. The simple point would be whether there is enough material where from a logical and a prudent mind, dealing with the probative weight of evidence, conclude one way or the other.

22. Re-visiting the testimony of the witnesses, through the mouth of PW-1 and PW-2 it has been proved that on 13.5.2005 and 14.5.2005 the petitioner was on duty at a traffic light point near the spot where PW-4 and PW-5 claim to have witnessed the petitioner stop the truck driven by PW-3 and after an

exchange of dialogue the truck was allowed to proceed ahead. Now, PW-4 and PW-5 have no animus against the petitioner and there is no reason why they would be lying. The evidence of the two can be divided into two parts. Part one is what they saw with their own eyes i.e. direct and percipient evidence. Part Two is what they claim to have been told to them by PW-3.

23. The percipient evidence is the two police officers having seen the petitioner, in plain clothes, at Red Light Point of Ram Prastha Chowk and his having stopped truck No.HR-38C-6534 and the petitioner and the driver of the truck talking to each other. Since the two police officers were at a distance they could obviously not hear the conversation. But, with reference to the gestures of the two persons and the movement of the lips, a witness may be able to prove that two persons spoke. Proof of two persons speaking need not be confused with proof of what was spoken about. It is true that the two police officers could not prove what was spoken about. But have certainly proved through direct evidence that the petitioner and PW-3 had a conversation.

24. Circumstances enwombing a fact play a very important role in appreciating the probative conclusions which can be inferred from a fact. For example, it is 1:00 PM i.e. lunch time and two friends are seen to enter a restaurant. These facts are proved. A reasonable and probative inference drawn would be that the two have gone for a lunch. The example may be simple, but helps us to identify the process of reasoning we need to follow to determine in which side of the borderline a case would fall.

25. It is permissible for a Court to take judicial notice of Rules

of Law. We take judicial notice of the fact that pursuant to directions issued by the Supreme Court, plying of heavy duty vehicles carrying goods is prohibited within the city of Delhi between 8:00 AM to 8:00 PM since the year 2001. Now, the testimony of PW-4 and PW-5 establishes that PW-3 drove his truck into the city of Delhi and was carrying bricks as deposed to by PW-3. The testimony of the two police officers shows that the petitioner had stopped the truck. Their testimony establishes that the petitioner and the driver of the truck exchanged words. Their testimony establishes that after some time the truck proceeded ahead. Now, it was the job of the petitioner to ensure that law is obeyed and not broken pertaining to the movement of traffic from and at the spot where the petitioner was on duty. The petitioner has rendered no explanation as to why, after stopping the truck driven by PW-3 he permitted the truck to proceed ahead. What is *Res ipsa loquitur*? It is a guiding maxim which means that the fact speaks for itself and is a good tool to be used by the trier of facts to infer conclusions from proved facts. It is apparent that the petitioner, who is no saint, at least has not been proved to be one, extracted an illegal benefit for himself.

26. Discussing a little further, though PW-3 has not supported the case of the prosecution, but it would be worthwhile to note that conscious of the fact that the diary produced by PW-3 was photocopied by PW-4 and PW-5 and was retained by them and the petitioner was present at the spot, PW-3 has stated that the petitioner reached the spot at 3:45 PM. The time deposed to by PW-4 and PW-5 is 2:30 PM. As per PW-3 he was stopped by two policemen in plain clothes and when they were asking him whether he had given entry to

a policeman and he said no, the petitioner happened to reach the spot at 3:45 PM. Now, an exchange of two dialogues; the policemen asking PW-3 whether some policeman had charged him entry money and PW-3 answering 'No' would take no more than 5 seconds. It would certainly not take 1 hour 15 minutes for the two dialogues to be exchanged between two persons. We have highlighted the aforesaid to bring home the point that even through the testimony of PW-3 we have proof of the fact that PW-3 was accosted by PW-4 and PW-5 and around same time petitioner was present in the company of PW-3, PW-4 and PW-5. The four being in each other's company is logically probative as per the testimony of PW-4 and PW-5 i.e. when they stopped the truck of PW-3 and upon asking him, received the answer that the petitioner had taken a bribe from him and thereupon PW-4 and PW-5 taking back PW-3 to the spot where the petitioner was standing, being the spot where PW-4 and PW-5 saw a little time earlier the truck driven by PW-3 being stopped by the petitioner and the two talking to each other.

27. Thus, we need not deal with the issue of what was told by PW-3 and as claimed by PW-4 and PW-5 and thus need not discuss the issue of hearsay evidence.

28. For our reasoning in the preceding paragraphs, we are able to find sufficient evidence to establish that on 14th May 2005 the petitioner was posted on duty at Red Light Point of Ram Prastha Chowk and that he stopped a truck carrying bricks being driven into Delhi by PW-3 and after an exchange of dialogue the petitioner permitted the truck to be driven into Delhi; entry of trucks being prohibited in Delhi between 8:00 AM to 8:00 PM; the entry being permitted at 2:30 PM, there is enough material to establish that the petitioner acted for

personal gain.

29. That apart, as is noted from the language of the indictment, a facet of the indictment is being found in plain clothes while on duty and having stopped a HDV and then permitting it to ply ahead being a grave misconduct. This facet of the indictment is clearly established.

30. The menace of bribe demanding and harassment at the hands of the traffic police in the city of Delhi is spoken of in evening discussions at parties etc. by the citizens of Delhi and of which we hear echoes in a Court of Law. Thus, though no submissions were urged on the proportionality of the penalty levied, we find the same to be adequate and reasonable.

31. We concur with the conclusion arrived at by the Tribunal, but on the process of reasoning as afore-noted and hence we dismiss the writ petition but refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

November 01, 2010
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