

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

Date of decision: 03rd February, 2010

+ **W.P.(C) 10303/2009**

JITENDER SINGH Petitioner
Through Mr. Bishram Singh, Adv.

versus

UOI & ORS. Respondent
Through Ms. Preeti Dalal, Adv. & Mr. K.P.S. Kohli, Adv.
with Mr. Yadunath Singh, Deputy Commandant,
BSF.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

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

GITA MITTAL, J (Oral)

1. By this writ petition, the petitioner assails the findings and sentence imposed on him by the Summary Security Force Court on the 2nd December, 2008 and its countersigning by the DIG on 12th January, 2009 in exercise of powers under Rule 161 of Border Security Force Rules, 1969 (hereinafter referred to as "BSF Rules, 1969 for brevity). The petitioner also assails the rejection of his statutory representation by the order dated 22nd April, 2009 by the Director General-respondent no.2.

2. The petitioner has assailed the findings and sentence on several grounds including a challenge to the procedure followed by the Summary Security Force Court. The ground of challenge pressed before us, however, is the contention of Mr. Bishram Singh, learned counsel for the petitioner to the effect that the

findings and sentence of the petitioner are based on no evidence at all. It is submitted that the petitioner has been wrongly framed in the case and that there was no material to connect the petitioner with the allegations made against him.

3. So far as the facts giving rise to the case are concerned, it has been stated that the petitioner was enrolled with the Border Security Force on 5th December, 1992 in the rank of a constable. On 30th May, 2003, the petitioner was posted in the 'B' Company, 105 Battalion, BSF and the said company was deployed at BSF post, Asharidah in the state of West Bengal. It is alleged by the respondent that on 21st August, 2008, one BSF Inspector N.B. Bhatt arrested a civilian who was identified as Najrul Islam who was a resident of Village Manikchak within the police station Lalgola, West Bengal and effected seizure of Rs.50,000/- from his possession along with a white piece of paper containing the name of one Bhupinder Singh, details of the Account No.30227635849 and a bank draft application prepared by him. On being questioned, Najrul Islam disclosed that the amount was given to him by the petitioner for his brother Shri Rahim Seikh and was intended to be sent to one Shri Bhupinder Singh, son of Shri Zila Singh resident of PO Jasrana, tehsil Gohana, district Sonapat, Haryana.

4. Based on a preliminary report from the Company Commandant as well as from the Vigilance Cell, the petitioner is stated to have heard by the Commandant on allegations of having committed offences under Sections 40 & 46 of the BSF Act. It was alleged that the petitioner while deployed at BOP, Asharidha on 21st August, 2008, had arranged to send an amount of Rs.50,000/- to the said Shri Bhupinder Singh through civilian contacts. This amount was disproportionate to his known source of income which he could not satisfactorily account for. The second charge against the petitioner was that he

was in possession of Rs.50,000/- in cash in violation of Standing Operating Procedure/instructions which mandate that the BSF personnel deployed on BOP, cannot keep more than Rs.500/- in cash with him without permission.

5. During the hearing by the Commandant, the petitioner pleaded not guilty to these charges. As such, the respondent directed a record of evidence to be prepared. Based on the evidence which came on record, the petitioner was tried by a Summary Security Force Court at the Battalion Headquarters on 2nd December, 2008 for having committed offences under Sections 40 & 46 of the BSF Act, 1968 on the above allegations. Five witnesses were examined in support of the allegations. The petitioner was permitted to make a statement. The court found the petitioner guilty of both the charges and sentenced him to be dismissed from service. The proceedings of the Summary Security Force Court were countersigned by the DIG on the 22nd January, 2009. The petitioner assailed the same by way of a statutory appeal which was rejected by the order dated 22nd April, 2009. Aggrieved thereby, the present writ petition has been filed.

6. We have heard learned counsel for the parties who have carefully taken us through the complete record of the court martial placed before us. The case against the petitioner commences on information received by Inspector (Vigilance) N.B. Bhatt from the informers section on the 21st of August, 2008 that some money approximately Rs.95000/- was likely to be transferred through SBI, Lalgola that day utilising the assistance of civilians. This inspection activated the vigilance set up and mounted vigil at the bank. The vigilance team of the respondent which included Inspector N.B. Bhatt as well as head constable (vigilance) Naresh Kumar and a constable driver Suresh who found two persons who were behaving in suspicious manner. One Najrul Islam was found to have filled the bank draft form except his signatures who

allegedly told the vigilance team that the money belongs to the Border Security Force and the BSF could take the amount when his personnel was searched. An amount of Rs.50,000/- being ten notes in the denomination of Rs.1000/- and eighty notes of the denomination of Rs.500/- each were seized. These notes were taken into custody by the inspector. It is in the statement of the inspector Bhatt before the Summary Security Force Court that Najrul Islam did not name any BSF personnel. Later on, he named the petitioner deployed at BOP, Asharidha as the one to whom money of Rs.50,000/- belongs.

7. It is also on record that this witness was examined as PW-1. In the statement of PW-3 Inspector N.B. Bhatt recorded during the recording of evidence, he has stated that this witness did not name the petitioner either at the post or at the battalion headquarters till such time he had spoken to his brother Rahim Sheikh on his mobile who informed him that the money belonged to the petitioner.

8. The witnesses who have been examined in support of the allegations against the petitioner include Najrul Islam as well as Rahim Seikh and two other officers, inspector Sunil Kumar and head constable (vigilance) Naresh Kumar who were with the Inspector V.N. Bhatt at the time of the seizure. Inspector Sunil Kumar was examined as the fifth witness in support of the prosecution who has made a statement about the money being recovered from the civilian and recovery of a bank slip on which the name of one Bhupinder Singh with the account number stood mentioned. PW-5 confirmed that the particulars of the holder of the account were correctly mentioned.

9. So far as statements of Najrul Islam and Rahim Seikh are concerned, they have stated that an amount of Rs.11,700/- was handed over to Najrul Islam by by Rahim Sheikh for preparation of a draft in the name of Bhupinder Singh on behalf of the petitioner. Rahim Sheikh has further alleged that the petitioner

had handed over an amount of Rs.38,000/- to him and a bit more to keep in safe custody.

10. In **2006 V AD (Delhi) 76 Prosenjit Pandu Vs. Presiding Officer General Security Force Court and Ors.**, this court had reiterated the principles which were laid down in **1999 1 AD (Delhi) 447 Major Anil Behl Vs. Union of India & Ors.** It was held that even if it is found that there is some evidence on record which implicates the petitioner with the offence alleged in the chargesheet, the writ court would have no jurisdiction to sit in appeal over the verdict and sentence of the court martial.

11. Perusal of the record shows that it is in evidence that PW-2 Rahim Seikh had explained the circumstances in which he was familiar with the present petitioner. He has stated that the petitioner used to make purchases from his shop and had been in touch with him. The petitioner is stated to have handed over an amount of Rs.38,000/- to this witness to keep it in safe custody before Eid which had been fallen on 2nd October, 2008.

12. Najrul Islam, appearing as PW-1 had stated that his brother Rahim Seikh had called him to his cloth shop on one occasion and introduced him with the BSF personnel and asked him to accompany him. This BSF personnel was identified as the petitioner by this witness who had handed over an amount of Rs.11,600/- with instructions to keep a draft prepared in the name of one Bhupinder Singh with the details of the account number which was written on a small white piece paper which was handed over to him.

13. Subsequently, an additional amount was handed over by Rahim Seikh to PW1 to bring to total of Rs.50,000/- to get the draft prepared favouring the name and account number given by the petitioner. Najrul Islam had further confirmed in his deposition that Bhupinder Singh was the petitioner's brother-in-law. Before the day of the seizure by the BSF personnel, PW 1 had made one

prior attempt to get the bank draft prepared which was unsuccessful.

There is no challenge to the statement of PW-2 that Bhupinder Singh to whom the money was to be sent was the petitioner's brother-in-law. The petitioner has not been able to assail the statement of PW-1 & 2 attributing ownership of the money in question to him.

14. The above narration would show the fact that the petitioner had handed over a total amount of Rs.50,000/- in two lots to the civilian witnesses which stands established on record. Efforts were being made by the petitioner to transfer this amount to relative to the two witnesses. The respondents have placed reliance on instructions which mandate that the person who is posted in border Out Post (BOP) cannot retain more than an amount of Rs.500/- without permission. There is no explanation available on record as to how the petitioner came in possession of the said amount. It is an admitted position that he had no permission for possession of the same. In this background, the contention of learned counsel for the petitioner that there was no evidence to bring home the finding of guilt to the petitioner for the charges is without any substance.

15. It is trite that in exercise of writ jurisdiction, this court cannot re-appreciate the evidence adduced before a court martial like an ordinary criminal court so as to scrutinize each part thereof and to see whether the charges levelled against the petitioner are proved or not.

16. It is urged by Mr. Bishram Singh, learned counsel for the petitioner that trial against the petitioner suffers from legal infirmity. It has been contended that the petitioner was not granted defending officer in accordance with Rule 157 of the BSF Rules, 1969.

17. Learned counsel for the respondents has drawn our attention to the communication dated 30th November, 2008 from the respondents asking the

petitioner to nominate the name of any officer/subordinate officer available with the unit of the petitioner's choice to perform the duty of the next friend except the recording officer during the trial. The petitioner has responded by a letter dated 30th November, 2008 informing the respondents that he did not wish to avail the services of a defending officer. In this background, the respondents have provided a defending officer to the petitioner. The record produced before us shows that a cross-examination on behalf of the petitioner of the prosecution witnesses, has also been effected. The petitioner has not made any objection with regard to the assistance given by the defending officer who was assigned to him at any time during the trial.

18. Learned counsel for the respondents has vehemently urged that the petitioner has never disclaimed the money which has been recovered.

In view of the above, we find no merits in this writ petition which is accordingly dismissed.

GITA MITTAL,J

VIPIN SANGHI, J

FEBRUARY 03, 2010
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