

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

+ **W.P(C) No. 8428/2008**

Date of Decision: 13.01.2010

COMMISSIONER OF POLICE Petitioner
Through Mr. V.K. Tandon, Advocate

Versus

DEVENDER KUMAR Respondent
Through Mr. N. Safaya, Advocate

AND

+ **W.P(C) No. 8429/2008**

COMMISSIONER OF POLICE Petitioner
Through Mr. V.K. Tandon, Advocate

Versus

SRINIWAS Respondent
Through Mr. Sachin Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: MOOL CHAND GARG, J.

1. Petitioners are aggrieved by an order passed by the Central Administrative Tribunal dated 03.07.2008 whereby the Tribunal has been pleased to allow the Original Application bearing no. 629/2002 filed by the respondents holding that the respondents were not guilty of

the charges levelled against them and exonerated of the Memorandum of Charge levelled against them in the summary of allegations served upon them on 16.08.1994 based upon FIR bearing No. 13/94 registered under Section 394/34/452 of the IPC at the instance of the complainants who were not produced as witnesses before the Court.

2. The Tribunal accepted the case of the respondents by holding that the order passed by the disciplinary authority and the Appellate Authority inflicting the punishment of dismissal on the respondents and rejecting their appeals respectively were bad in law and, thus, the two orders were quashed and set aside and the respondents were directed to be reinstated in service forthwith with all consequential benefits except back wages. Those directions were required to be complied with within three months of the receipt of the certified copy of the said order.

3. The petitioners who initiated the enquiry against the respondents under Rule 12 of Delhi Police (Punishment & Appeal) Rules 1980, despite acquittal of the respondents by the Criminal Court vide judgment dated 26.04.2000 in case FIR No. 13/94 submits that the order passed by the Tribunal was not correct inasmuch it was not a case where there was no evidence to prove the allegations made by the petitioners against the respondents. It was also submitted that it was a fit case where the petitioners were fully justified in having called shri Narender Chawla as a Court witness despite his name having not

mentioned in the list of witnesses in view of Rule 16 (viii) of Delhi Police (Punishment & Appeal) Rules 1980 which reads as under:

“ 16. (viii) After the defence evidence has been recorded and after the accused officer has submitted his final statements, the Enquiry Officer may examine any other witness to be called “Court witness” whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross-examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires.

4. On the other hand, the respondents submits that the Enquiry Officer himself noticed the contradiction in the statement of Narender Chawla inasmuch as even though he admits that the complaints have been recorded in different hands, although he had recorded the complaints of both the complainants and, therefore, rightly disbelieved him. It is a matter of record that the complainants were not examined in the matter. All the recovery witnesses have not supported the case of prosecution and it is for that reason the respondents were even acquitted. The judgment of the Trial Court goes to show that it is not a case of granting benefit of doubt because it is the case where the acquittal has taken place on the basis of no evidence.

5. We have gone through the order passed by the Tribunal. The relevant portion of the order is reproduced hereunder:

9. We have meticulously gone through the documents placed before us with the assistance of the counsel and bestowed our careful attention to the contentions of the counsel for the parties.

10. It had not been possible to examine the complainants in this case because both of them had reportedly gone overseas at the time of the departmental enquiry. Rule 15(3) provides that the statements in the preliminary enquiry of the witnesses who are not available could be taken on record after supplying a copy of the same to the Charged Officer. Rule 15 (3) is reproduced below:

“15.(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.”

11. The statements of the complainants have been produced as exhibits CW1/A and CW1/B as supposed to have been recorded by the court witness Inspector Narender Chawla, Police Post Okhla Head. However, as we have noted in paragraph 4 above, it is clear that the complaints of the two complainants have not been recorded by the same person. The complaints have been recorded in different hands, although the court witness Shri Narender Chawla has stated that he had recorded the complaints of both the complainants and have attested after they had signed the documents. We have no doubt that no reliance can be placed on the documents. We have no doubt that no reliance can be placed on the documents at exhibits CW1/A and CW1/B, complaints of the two complainants, in view of what has been stated above. In the absence of the complainants, therefore, the allegation against the Applicants cannot be substantiated. We would like to reiterate, at the cost of repetition, that the allegations against the Applicants cannot be substantiated on the basis of the aforesaid documents namely the complaints alleged to have been recorded by the court witness, Shri Narender Chawla in his hand. The OAs would succeed only on

this ground and we do not feel it necessary to discuss other arguments advanced by the learned counsel for the Applicants.

12. On the basis of above discussion, the OAs succeed. The impugned orders of the disciplinary authority and the appellate authority inflicting the punishment of dismissal on the applicants and rejecting their appeals respectively are quashed and set aside. The Applicants will be reinstated in service forthwith. They will be eligible for all consequential benefits except back wages. The above directions should be complied with within a period of three months from the date of receipt of a certified copy of this order. No costs.

6. The very fact that the statement of the complainants exhibit CW1/A and CW1/B could not be relied upon, there being no other evidence led on behalf of the department to support the allegations made against the respondents, it cannot be said that the respondents were guilty of robbing the complainants and snatching the money from their possession more so, when the money which has been allegedly recovered had been returned back to the applicants by the Metropolitan Magistrate concerned. It is a matter of record that even the recovery witnesses had not supported the case of the prosecution, as they were also not produced before the Enquiry Officer. At this juncture, it may be relevant to take note of an order passed by the Metropolitan Magistrate concerned while returning the money to one of the applicants which is the order similar in both the cases. The said order for the sake of reference is reproduced hereunder:

In the Court of Sh. Vinod Kumar M.M. New Delhi

FIR No. 13/94

21.9.2002

ORDER

By this order I shall dispose of an application moved by applicant Mangeram to release the amount of Rs. 1,20,000/-. The facts in brief leading to the moving of the present application are that police filed a challan against accused Hasan raja, Shriniwas and Devender alleging that they had committed robbery of Rs. 6,89,000/- in the house of Ali Akhtar. It is alleged by the Prosecution that police officials recovered stolen amount of Rs. 1,20,000/- from the possession of Shriniwas. Applicant Mangeram is the father of that accused and he had moved an application in the Court that this amount be released to him because the amount in question belongs to him. In that application he has stated that this amount was taken on loan by the applicant for the marriage of his son. He has placed on record the copy of the Pronotes and Ration Card. In such a situation my Ld. Predecessor Shri V.K. Goyal, had released the money to Ali Akhtar the complainant, however he was directed to file a Bank guarantee that in case after trial the money was found to belonging to Mangeram, Ali Akhtar shall deposit that amount in the Court failing which the Bank shall indemnify the court to the tune of Rs. one lac.

Now after trial all the accused persons have been acquitted. Notice was sent to Ali Akhtar and one Rais Khan advocate appeared on behalf of one Habibullah. He stated that Ali Akhtar is in abroad and he sought sometime to file the reply on affidavit on behalf of Ali Akhtar, but thereafter none appeared on behalf of Ali Akhtar.

I have heard the arguments of Ld. Defence counsel. The previous ordersheets would show that at one time Shri R.K Garg advocate and another time Shri Firoz Khan advocate on behalf of Ali Akhtar appeared. However, thereafter none appeared on behalf of said Ali Akhtar. In fact he did not appear to testify even during the whole of the trial which led to acquittal of the accused. However at the same time I find that as per prosecution case the recovery was effected from the possession of accused Shriniwas i.e. the son of applicant. But he has not put his appearance. It would be appropriate if he is also given an opportunity to be heard.

Issue court notice to Shriniwas, for 2.11.2002.

(Vinod Kumar)
M.M./ ND

6. In so far as the judgment of the Trial Court is concerned, the said order is also available on record which clearly goes to show that it was a case of acquittal on the ground of there being no evidence.

7. In these circumstances, despite the order passed by a Division Bench of this Court holding that enquiry can proceed under Rule 12, it cannot be said that those observations amounts to admitting the case of the petitioners against the respondents. The said order at the most permitted the petitioners to continue with the enquiry. However, once the enquiry has been concluded and the evidence which has been led on behalf of the petitioners having not been found favour by the Enquiry Officer, the order of dismissal which is the punishment imposed upon the respondents cannot be justified.

8. In view of the aforesaid, both the writ petitions filed by the petitioners are dismissed.

MOOL CHAND GARG, J.

JANUARY 13, 2010
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ANIL KUMAR, J.