

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

% *Date of Decision : January 08, 2013*

+ **WP(C) 3041/2001**

MAHA SINGH Petitioner
Represented by: Mr.Arvind Nayar, Mr.Shashi Mohan,
and Mr.Sanjay Abbot, Advocates.

versus

COMMISSIONER OF POLICE, DELHI & ORS. ... Respondents
Represented by: Ms.Ruchi Sindhwani, Ms.Bandana
Shukla, and Ms.Megha Bhan, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J. (Oral)

WP(C) No.3041/2001

1. The petitioner was enlisted in Delhi Police on September 25, 1968 and was posted as an Assistant Sub Inspector at IGI Airport (FRRO) on January 05, 1995.
2. The petitioner was charge-sheeted on May 22, 1995 and as per the order under which the charge-sheet was served containing the summary of allegations it was alleged against the petitioner that on January 05, 1995 at about 05:00 hours one Sh.Naseem Ahmed (the complainant-pax) disembarked at IGI Airport, New Delhi by flight No.RJ-192 from Jeddah. Reporting at the Immigration Counter for clearance he was informed that since he had returned on an Emergency Certificate he would be attended to for Immigration Clearance later on and after all passengers of the flight had left the Immigration counter after obtaining clearance Sh.Naseem

Ahmed was attended to by the petitioner at the asking of another Immigration Officer. The petitioner then took the complainant–pax to an adjoining room and forcibly removed 16 notes of Riyal 500.00 i.e. a total sum of Riyals 8000.00 and threatened Naseem Ahmed that he would face dire consequences if he inform anybody. Scared and frightened Naseem Ahmed left the Airport but after a few days confided in a friend at whose instance he made a written report to the senior officers of FRRO.

3. Since the petitioner did not deny having accorded Immigration Clearance to Naseem Ahmed i.e. having handled the Immigration Clearance to Naseem Ahmed who returned to India from Jeddah on January 05, 1995, but denied having extorted any money from Naseem Ahmed, it would be relevant to note the version of the petitioner.

4. As per the petitioner he was working as C.O. at Counter No.9 at the Arrival Left Wing when the complainant-pax arrived at about 05:55 hours via Royal Jordan flight RJ-192. Since the passenger had arrived on an Emergency Certificate, Sh.B.Poonocha, ACIO told him to wait till other passengers were cleared. As per the petitioner he questioned Naseem Ahmed the reason for he travelling on an Emergency Certificate and directed Ct.Rupinder to bring the baggage of Naseem Ahmed. As per the petitioner when he was questioning Naseem Ahmed he replied with annoyance and appeared to be furious at which he had told him to be quiet and probably because of this altercation a false complaint was lodged against him. As per the petitioner Naseem Ahmed was also questioned by three senior officers before he was given the final clearance. The petitioner denied having taken Naseem Ahmed to any adjoining room and forcibly extorting Riyal 8000.00 from him.

5. It was on January 15, 1995 that Naseem Ahmed lodged a complaint as per which petitioner had extorted Riyal 8000.00 from him. Placed under suspension pending inquiry vide order dated January 20,

1995 the Inquiry Officer proceeded to examine 15 witnesses of the prosecution as per list of witnesses, and we highlight that statements of only 13 were recorded during inquiry being Sh.Naseem Ahmed, SAG Rupinder Singh, SI Om Prakash Dalal, ACIO B.Poonacha, ACIO Pawan Kumar, ACIO R.R.K Vashista, SI Ved Prakash, SI Rajender Kumar, SI Vijay Kumar, SAG Baldev Raj, W/Inspr. Prem Soni, ACIO Sanjay Kumar, ACIO Akhilesh Kumar, AFRRO K.S.Gograh and HC Om Prakash. Two witnesses, ACRO-I B.Poonacha and Sh.R.R.K.Vashista were not examined as despite repeated summons issued to them they did not appear at the inquiry.

6. Naseem Ahmed PW-1 deposed as per the indictment and relevant would it be to note that on being cross-examined with reference to his written complaint dated January 15, 1995 stated that being illiterate somebody else had written the complaint on his behalf after he had told the facts to him.

7. We may highlight right now that the relevance of said aspect of the cross-examination is that in the written complaint Naseem Ahmed has not stated that the petitioner took him to an adjoining room and thereafter extorted the money from him. In the complaint it is written that the petitioner took him to the corner of the room in which Immigration Clearance Counters were housed and took the money from him.

8. Relevant would it be to note that as per the prosecution an identification parade was conducted on March 09, 1995 in that all police officers on duty at the wee hours of the morning at the Immigration Hall on January 05, 1995 were lined up and Naseem Ahmed had identified the petitioner as the one who extorted the money.

9. SAG Rupinder Singh, PW-2, SI Om Prakash Dalal, PW-3, ACIO Pawan, PW-5, SI Ved Prakash, PW-7, SI Rajinder Kumar, PW-8, SI Vijay Kumar, PW-9, SAG Baldev Raj, PW-10, ACIO Sanjay Kumar,

PW-12 and ACIO Akhilesh Kumar, PW-13 all deposed regarding the identification parade that was carried out on March 09, 1995 and stated that Naseem Ahmed had identified the petitioner as the one who had extorted the money from him.

10. Relevant would it be to note that on similar questions being put to all the witnessed during cross-examination they admitted that it would be extremely difficult for a Clearing Officer, while searching a passenger to extort money because at the IC Wing BRO and AFRRO remain present and keep a watch on the passengers and this prevents any passenger being harassed. They all admitted that checking officers do not go to other areas at the Immigration Terminal. It is apparent that the purpose to obtain the aforesaid admission was to bring home the point that at the Clearance Counters it was impossible to extort money and that the Checking Officers do not go to other areas while on duty.

11. W/Insp. Prem Soni, PW-11 deposed that she was on duty at the Immigration on January 05, 1995. She saw the complainant – pax arrive and she saw the petitioner fill his E.C. forms. The petitioner then passed on the form to her. Since the pax had an Emergency Certificate, she wrote her remarks on the form and told the petitioner to get the pax cleared from the Inspector Vigilance along with the ACIO and the AFRRO. She also made enquiries from the pax with respect to his travelling on an emergency certificate. The pax did not make any complaint. The petitioner and the pax were together for further action.

12. AFRRO K.S.Gogarh, PW-14 deposed that he was on duty on the night of incident and that the petitioner had presented one pax to him at about 06:30 hours. Before signing the clearance certificate, he had enquired from the pax whether anyone had misbehaved with him or if anyone had taken anything from him to which the pax answered in the negative. He also stated that nothing seemed to be amiss at that time. The

latter part of his deposition dealt with the identification parade conducted on March 09, 1995 and was concurrent with the version stated above.

13. During cross-examination, question was put as to whether it would be possible for anyone to extort money in his presence to which he replied that it was not possible for a C.O to snatch money at the Arrival lounge as he was always supervised and that at least 15-20 persons from the Immigration Health Dept. and some constables and around 3-4 officers of Inspector rank always remained present.

14. AFRRO K.S.Gogarh PW-14 deposed that he was on duty when the alleged incident took place and that the petitioner had brought one pax to him at about 06:30 hours for issuance of a clearance certificate and upon his enquiring from the pax whether anybody had taken money from him the pax replied in the negative. On being cross-examined he stated that it would not be possible for anyone to extort money at the arrival lounge because senior officers of FRRO keep a watch in the area and besides 15 to 20 persons from the Immigration, officers from the Health Department and security personnel remain present.

15. The petitioner examined ACIO G.K.Shukla, SI Shanti Swaroop and ASI Hukam Singh as his witnesses in defence.

16. ACIO G.K.Shukla, DW-1 deposed that he was on duty on the night of incident and at about 06:00 hours the petitioner presented to him the forms of one pax Sh.Naseem Ahmed. While checking the forms he enquired from the pax the reason for his travelling without a passport and instead emergency certificate; he also asked the pax whether anybody had misbehaved with him to which the pax replied in the negative.

17. SI Shanti Swaroop, DW-2 deposed that he was on duty on the night of incident and at about 05:40 hours a flight arrived from Jeddah and most of its passengers were cleared within about 15 minutes. The PRO B.K.Poonacha accompanied the pax to the petitioner since he had arrived

on an emergency certificate. The petitioner filled out the EC forms. The pax appeared to be flustered and kept asking the petitioner why he was taking so much time. The petitioner then obtained the required signatures on the EC form and returned the same to the pax.

18. ASI Hukam Singh, DW-3 deposed that he was on duty on January 5, 1995. A flight arrived from Jeddah and the passengers were cleared within 20 minutes. After that the PRO B.K.Poonacha assigned one Emergency Clearance passenger each to about five officers. The complainant-pax was assigned to the petitioner and after the formalities were completed all passengers were cleared.

19. The Inquiry Officer submitted a report believing the version of Naseem Ahmed and suffice would it be to state that of the 13 witnesses examined by the department it was only he who deposed as per the charge; the other witnesses simply deposed to the petitioner being on duty at the Immigration and being required to complete the Immigration procedure pertaining to Naseem Ahmed who was travelling on Emergency Certificate; the petitioner interacting with Naseem Ahmed. The Inquiry Officer dealt with the deposition of the three defence witnesses who were cross-examined with reference to the details of 60 other passengers who had likewise travelled on Emergency Certificates on various dates spanning 40 days and within which period was included January 05, 1995. Since the three defence witnesses could not recollect particulars pertaining to clearance granted to said 60 persons but could do so only with respect to Naseem Ahmed i.e. deposed the sequence of events concerning officers with whom Naseem Ahmed and the petitioner had interacted, the Inquiry Officer opined that the possibility of the three witnesses being tutored cannot be ruled out.

20. Agreeing with the report of the Inquiry Officer, vide order dated February 12, 1996, the Disciplinary Authority levied the penalty of

dismissal from service upon the petitioner against which appeal filed was rejected vide order dated June 14, 1996 and further revisional remedy failed when the Revision Petition was rejected by the Commissioner of Police vide order dated March 26, 1997.

21. Petitioner's challenge to his being indicted and punished before the Central Administrative Tribunal as per OA No.510/1997 failed when the Tribunal dismissed the same vide impugned judgment and order dated September 20, 2000.

22. While dismissing OA No. 510/1997 the Tribunal held that the standard of proof required at a departmental proceeding is low and that it was sufficient if on the preponderance of probability the evidence pointed towards the guilt of the defaulter.

23. Suffice would it be to state that it is the duty of an Inquiry Officer to keep in view the entire evidence led and be careful while analyzing the creditworthiness of the deposition of a witness who may have a possible motive to falsely implicate somebody.

24. It is true that at a domestic inquiry it is the weight of preponderance which determines as to on which side a case rests, but while determining the preponderance of probability one has to apply oneself with reason and not be mechanical. More often than not lies is weaved in a manner where the mirage of truth is created and thus all signages which are relevant to weigh the preponderance have to be noted and weighed adequately.

25. We find that the testimony of such witnesses who deposed regarding the identification parade carried out on March 09, 1995 has no relevance with reference to the events which transpired on January 05, 1995. Thus, the testimony of PW-2, PW-3, PW-5, PW-7, PW-8, PW-9, PW-10, PW-12 and PW-13 has no bearing and need not be discussed.

26. As noted by us above two witnesses had not responded to the

summons sent by the Inquiry Officer and they were PW-4 and PW-6. Thus there is nothing to discuss about said witnesses.

27. With reference to the testimony of PW-11 and PW-14 briefly noted by us in para 11 and 12 above it stands out that W/Insp.Prem Soni PW-11 was the one to whom the petitioner had passed on the EC Form after he had filled the same and she penned her remarks on the form and thereafter the petitioner accompanied by Naseem Ahmed proceeded to the desk of AFRRO for further formalities to be completed. She categorically stated that she made inquiries from the pax with respect to his travelling on an emergency certificate and whether he had any complaint to which he replied in the negative. AFRRO K.S.Gogarh, PW-14, deposed that when the pax was presented before him for signing the clearance certificate he had enquired from the pax whether anyone had misbehaved with him and taken any money from him and the pax replied in the negative.

28. It assumes importance that W/Insp.Prem Soni and AFRRO K.S.Gogarh had inquired from Naseem Ahmed whether he was harassed or any money was extorted from him and this would be natural keeping into account that Naseem Ahmed was traveling without a passport on an emergency certificate and he was in a vulnerable situation and hence an easy prey for somebody to extract money from him. The information given by the two witnesses has been completely overlooked by the Inquiry Officer and in particular the fact that the written complaint made by Naseem Ahmed was filed after 10 days of the alleged incident.

29. With reference to the testimony of all the witnesses who were examined, the cross-examination brings out that it was impossible for anybody to extort money from any passenger inside the Immigration Hall where apart from the Clearance Officers and their supervisors 15 to 20 persons from the Immigration Help Department and security personnel

remained present.

30. To overcome the virtual improbability of any money being extorted from him within the precincts of the Immigration Hall, we find that Naseem Ahmed while deposing as PW-1 stated, as per the indictment, that he was taken to an adjoining room where under threat of dire action he was made to part with 8000 Riyals. The Inquiry Officer has overlooked the fact that in his written complaint Naseem Ahmed, while laying there the facts pertaining to money being extorted from him never mentioned that he was taken to the adjoining room.

31. It is settled law that there is no presumption that witnesses who depose in defence misstate the facts. The reason why the Inquiry Officer disbelieved the three defence witnesses has been noted by us in para 19 above.

32. The Inquiry Officer overlooked the fact that notwithstanding the fact that the defence witnesses could not remember the sequence of events and particulars pertaining to 60 other passengers who spread over 40 days had travelled on Emergency Certificates when the defence witnesses were on duty but could do so with respect to Naseem Ahmed, the circumstances of those 60 passengers and Naseem Ahmed were different. Those 60 passengers never came back after 10 days to make a complaint and a Test Identification being conducted. It so happens that events are remembered for a few days and with passage of time memory fades. Thus, the event of a passenger travelling on an emergency certificate would remain in the mind of those who have either dealt with the passenger or noticed his/her interaction with other officers for a few days and would fade. But, if within those few days, concerning the same passenger, due to a controversy arising something else happens, the events pertaining to the said person at the time of first immigration clearance and the events pertaining to the controversy remain etched in

the memory for a longer duration.

33. A cumulative reading of the testimony of all the witnesses of the prosecution and defence would reveal that after Naseem Ahmed reached the Immigration counter the PRO, B.K.Poonacha (who was cited as PW-4 but was not examined at the inquiry since he did not respond to the summons) was the first officer to interact with Naseem Ahmed and as deposed to by DW-2 accompanied Naseem Ahmed to the petitioner who not only as per DW-2 but even PW-1 filled the EC Forms pertaining to Naseem Ahmed and immediately passed on the form to PW-11, as deposed to by her, and after she penned her remarks on the form the petitioner and Naseem Ahmed went for further processing to AFRRO K.S.Gogarh, PW-14 who completed the necessary formalities resulting in the clearance being accorded and Naseem Ahmed walking past the Immigration Counter.

34. The complete preponderance of probability lies in favour of the defence. In fact it is virtually a watertight case where the defence establishes, if one reconstructs the sequence of events as afore-noted through the spoken words of PW-11, PW-14 and DW-2, that no money was extorted.

35. To put it in point form, the patently erroneous approach and hence the wrong destination arrived at by the Inquiry Officer is the result of firstly ignoring that vis-à-vis the written complaint filed by him Naseem Ahmed, an interested person, he made an improvement of a very substantial kind i.e. it was only while deposing before the Inquiry Officer that he stated that the petitioner took him to an adjoining room. The possibility of his falsely stating is very high because he knew that it would be impossible for him to state the version of being extorted within the precincts of the immigration room where immigration counters were being manned by various clearance officers and there were many persons

from the department hovering around. The second crucial fact overlooked by the Inquiry Officer is that no witness of the prosecution has deposed that the petitioner took Naseem Ahmed to an adjoining room. The third crucial fact overlooked by the Inquiry Officer is the testimony of PW-11, corroborated by DW-2 and the testimony of PW-14, which cumulatively would reveal that on arriving at the Immigration Counter the petitioner firstly interacted with PRO B.K.Poonacha cited as PW-4 but not examined who took him to the petitioner. The petitioner filled the EC form and passed on the same to PW-11 who penned her remarks and thereafter the petitioner took the pax to the AFRRO K.S.Gogarh who signed the clearance certificate and needless to state all these officers sit at counters in the same room.

36. We cannot but overlook the fact that Naseem Ahmed did not establish as a matter of fact that he was carrying with him 8000 Riyals; but would highlight by way of caution that nobody raised said issue. Relevant it is because the money was substantial.

37. Regretfully even the Disciplinary Authority, the Appellate Authority and the Revisional Authority overlooked as aforesaid.

38. Now, somebody may put the question: Why would Naseem Ahmed make a false complaint? Firstly, it is not our job to find the possible reason why he did so for the reason law does not warrant a proof in the negative. But, the facts of the instant case do bring out a possible reason for lodging a false complaint. Evidence establishes that Naseem Ahmed was told to sit and wait till all other passengers who were travelling on a regular passport were cleared for immigration purposes. This may have had antagonized him to lodge a false complaint. One may possibly raise another question: Why the petitioner and nobody else? The possible answer would be that annoyed with a system one randomly picks up a part of the system to attack and since it was the petitioner who had after

filling up the EC Form taken Naseem Ahmed for further clearance firstly to PW-11 and thereafter to PW-14 i.e. had interacted with Naseem Ahmed much more than other officers; he got picked on.

39. The writ petition accordingly stands disposed of quashing the order dismissing petitioner from service being the order dated February 12, 1996, the order dated June 14, 1996 rejecting the appeal filed by him as also the order dated March 26, 1997 rejecting the Revision Petition as also the impugned judgment and order dated September 20, 2000 dismissing OA No.510/1997 filed by the petitioner. OA No.510/1997 is allowed with a direction that the petitioner would be reinstated in service and will be paid 50% of the wages which he would have otherwise earned till he would have superannuated had he continued in service on March 31, 2008. The entire period would be counted towards pensionable service and accordingly pension as also gratuity would be paid to him with effect from April 01, 2008. Arrears be computed and paid within 12 weeks from today.

40. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

JANUARY 08, 2012
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