

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

% *Judgment Reserved on: July 01, 2013*
Judgment Pronounced on: July 03, 2013

+ **W.P.(C) 3995/2011**

EX.CONSTABLE QAMARUDDIN Petitioner
Represented by: Mr.Shankar Raju, Advocate

versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Represented by: Mr.Gautam Gupta, Advocate with
Mr.Aditya Madan, Advocate.

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The Summary of Allegations served upon the petitioner, working at the relevant time as a Constable with the Delhi Police, read as under:-

“It is alleged against Constable Qamaruddin, No.1970/C (PIS No.28820046), while posted at Police Station/Kamla Market left the Police Station and reached at I.G.I. Airport alongwith two persons named Shri Nazir and Irshad Ahmed in a taxi on the night intervening 13/14.7.97 They entered the Departure Transit Hall with the help of Const.Mange Ram, Wireless Operator after taking the delivery of two bundles wrapped in news paper containing the foreign currency worth ₹28,04,797/- from Shri Nazir to deliver the same to Shri Irshad Ahmed who was to travel to Dubai by EK-702 Flight. Constable Qamaruddin, No.1970/C had confessed that he had put bundles containing foreign currency inside the hand bag of Shri Irshad Ahmed in the Departure Transit Hall which was subsequently

seized by the Custom Officer from Irshad Ahmed. Shri Irshad had also admitted that seized currency was handed over to him by Const.Qamaruddin, No.1970/C inside the Departure Transit Hall after the clearance from Immigration/Customs were got done by him. The Constable was arrested on 18.7.1997 u/s 104 of the Customs Act, 1962 and produced before the ACMM, Patiala House, New Delhi who remanded him in the judicial custody till 2.8.97.

The above act on the part of Constable Qamaruddin, No.1970/C amounts to grave misconduct, disgraceful and act of an unbecoming police officer in violation of CCS (Conduct) Rules, 1964, which renders him liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

2. As per the procedure contemplated by the Delhi Police (Punishment & Appeal) Rules, 1980 an Inquiry Officer was appointed before whom the Department led evidence in support of the Summary of Allegations. Six witnesses were examined. They were : (i) R.K.Sharma, Superintendent Customs (PW-1), (ii) A.K.Goel, Superintendent Air Customs (PW-2), (iii) Inspector Rampal Singh, Addl.S.H.O., P.S.Kamla Market, (PW-3), (iv) SI Satpal Singh, (PW-4), (v) Satnam Pal, Intelligence and Preventive Officer, Customs (PW-5) and (vi) Rajiv Bhatia D.C. Customs (PW-6).

3. As per PW-1 he was on duty in the departure area of IGI Airport on July 14, 1997 when at about 9.30 A.M. passengers of flight No.BK703 were proceeding towards the aircraft. On suspicion he checked one Irshad from whom foreign currency in sum of ₹74,178/- was recovered from the pocket and ₹27,30,619/- was recovered from the handbag. Irshad had no document evidencing legal possession of the foreign currency and hence the same was seized vide seizure memo Ex.PW-1/A. PW-2 corroborated PW-1 with further testimony that he recorded Irshad's

statement Ex.PW-2/A as per which Qamaruddin had not only provided him with the air ticket but had also given to him the foreign exchange. Irshad confessed to have smuggled foreign currency twice earlier in connivance with Qamaruddin. In his own handwriting, Irshad gave a confessional statement Ex.PW-2/B. As per Irshad, Ct.Mange Ram, posted at IGI Airport, had helped him in obtaining security clearance. Ct.Mange Ram gave a statement Ex.PW-2/F on July 16, 1997 disclosing that Ct.Qamaruddin i.e. the petitioner, posted at PS Kamla Market, had requested him to facilitate Irshad's entry in the Airport and help him in security clearance. Ct.Qamaruddin gave a confessional statement on July 17, 1997 admitting handing over the foreign exchange to Irshad and corroborating Irshad's confessional statement. As per PW-3, he had sent SI Satpal to verify Ct.Qamaruddin being arrested in connection with smuggling foreign exchange. PW-4 corroborated PW-3. As per PW-5, Qamaruddin was arrested on July 18, 1997. As per PW-6 he had seen the search warrant authorizing Customs Officer to search the house of Qamaruddin.

4. After prosecution led evidence, as per the Delhi Police (Punishment & Appeal) Rules, 1980, finding sufficient evidence to frame a charge, following charge was framed:-

“ I, GURMUKH SINGH, ACP/Operations-C, charge you, Constable Qamaruddin, No.1970/C (PIS No.28820046), (under suspension) that while posted at Police Station/Kamla Market left the Police Station and reached at IGI Airport alongwith Nazir and Irshad in a Taxi on the night of 13/14-7-1997. You entered in the departure transit hall with the help of Constable Mange Ram, Wireless Operator after taking two bundles containing foreign currency worth ₹28,04,797/- wrapped in news paper from Nazir to deliver the same to Irshad who was to travel to Dubai by flight No.EK-702. You confessed that you had put two bundles containing foreign

currency inside the hand bag of Irshad Ahmed in the departure transit hall which was seized by Custom Officer from Irshad Ahmed. Sh.Irshad Ahmed also admitted that seized foreign currency was handed over to him by you, Constable Qamaruddin, No.1970/C inside departure transit hall after immigration/customs clearance. You, Constable Qamaruddin, No.1970/C were arrested on 18-7-1997 u/s 104 Customs Act, 1962 and produced before A.C.M.M. Patiala House who remanded you in judicial custody upto 2-8-1997.

For the above act you, Const. Qamaruddin, No.1970/C were placed under suspension vide order No.10792-820/HAP/AC-II/C dated 06-08-1997.

The above act on the part of you, Constable Qamaruddin, No.1970/C admounts to grave misconduct, disgraceful and act of an unbecoming of a police officer in violation of CCS (Conduct) Rules, 1964 which renders you liable for punishment under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

5. Petitioner was permitted to lead defence evidence. He examined four witnesses. DW-1, Ct.Shiv Kumar deposed that he and the petitioner were on duty till 8.00 A.M. of July 14, 1997 at P.S.Kamla Market. DW-2 Ct.Rajinder deposed that on July 13/14, 1997 he and Ct.Qamaruddin were on duty in the Court of Shri Gurdeep Singh, MM, Tis Hazari Courts. Shah Alam DW-3 deposed that on the night intervening July 13/14, 1997 he had left Nazir Khan and Irshad at the Airport and that nobody else was with them. Irshad who appeared as DW-4 deposed that in the year 1997 while working in Dubai he came in contact with one Qamaruddin who had asked him to take clothes from Delhi and for which Qamaruddin paid him money. He repeated the activity of taking clothes at the asking of Qamaruddin thrice. On July 13, 1997 Qamaruddin along with Rizwan and Shah Alam took him to the Airport where Qamaruddin handed him over two packets of foreign currency. When he was sitting in the Transit Hall, he was arrested by the

Customs Officers and that petitioner was not the Qamaruddin who gave him the money.

6. Highlighting the fact that two days after he made the confessional statement dated July 17, 1997, petitioner retracted the confession recorded by the Custom Officers under Section 108 of the Customs Act, we note that the Inquiry Officer submitted a report holding the petitioner guilty and in the report he simply noted the testimony of the witnesses and recorded a cryptic finding that the evidence established that petitioner was at the Airport and had handed over the foreign exchange to Irshad.

7. Supplying the report of the Inquiry Officer to the petitioner for his response and agreeing with the report of the Inquiry Officer vide order dated April 12, 2010 the disciplinary authority levied the penalty of dismissal from service upon the petitioner against which appeal filed was rejected by the appellate authority on June 29, 2010. Petitioner's challenge to the penalty levied before the Central Administrative Tribunal has resulted in a failure inasmuch as O.A.No.2237/2010 filed by the petitioner challenging the penalty levied upon him has been dismissed vide order dated February 22, 2011.

8. The impugned order passed by the Tribunal has not dealt with the core issue which petitioner raised before the Tribunal and before that before the Inquiry Officer as also the disciplinary and the appellate authority. The issue was whether there was any evidence other than the retracted confessional statement made by the petitioner before the Custom Officers on July 17, 1997 alleging the same to be the result of being coerced to do so.

9. From the evidence led by the prosecution it is apparent that no witness of the prosecution has deposed of having seen the petitioner at the Airport on July 14, 1997 when Irshad was apprehended with foreign exchange possession whereof Irshad could not justify. Irshad's confessional statements Ex.PW-2/A and Ex.PW-2/B make a reference to one Qamaruddin. Ct.Mange Ram's confessional statement Ex.PW-2/F discloses that the Qamaruddin referred to by Irshad was Ct.Qamaruddin. Irshad who appeared as DW-4 has deposed that the Qamaruddin he was referring to in his confessional statement was not the petitioner.

10. Under the circumstances one would have expected the disciplinary authority as also the Tribunal to have considered the evidentiary worth of petitioner's confessional statement made by him on July 18, 1997 and as recorded by A.K.Goel, Superintendent Air Customs who appeared as PW-2 and the testimony of Sh.A.K.Goel.

11. A bird's eye view of the evidence led by the prosecution before the Inquiry Officer would evidence proof of foreign exchange, not accounted for, from Irshad who told the Custom Officers that one Qamaruddin had handed over the foreign exchange to him and that Ct.Mange Ram had helped him in obtaining security clearance and it was Ct.Mange Ram who disclosed that the Qamaruddin referred to by Irshad was the petitioner. But, Ct.Mange Ram was not examined and thus the evidence is in the form of Ex.PW-2/F the statement made by Ct.Mange Ram admissible in evidence under Section 108 of the Customs Act. We have also on record petitioner's confessional statement referred to as being made when PW-2 deposed, but regrettably the said statement has not been exhibited. The report of the Inquiry Officer makes a reference, while noting the testimony of PW-2, that as per PW-2 the petitioner made a confessional statement; whereas confessional statements

made by Ct.Mange Ram and Irshad were exhibited and have been noted by the Inquiry Officer, the one purportedly made by the petitioner has not been exhibited.

12. It is no doubt true that as per law declared by the Supreme Court in a catena of authorities, and we note only one : (2008) 16 SCC 417 Noor Aga vs. State of Punjab & Anr. statements recorded by Customs Officers under Section 108 of the Customs Act are admissible in evidence but upon proof of the statement (s) being made voluntarily, but regrettably in the instant case we do not even have on record as a proved document the statement made by the petitioner.

13. As we have highlighted hereinabove, the Inquiry Officer has simply not discussed the core issues which arose in the light of the evidence led. Neither the disciplinary nor the appellate authority have discussed the same. Regrettably, even the Tribunal has overlooked the same. As regards the report of the Inquiry Officer, as highlighted above, except for noting the evidence led before him, the Inquiry Officer has discussed nothing. As regards the disciplinary and the appellate authority, they have treated as if the Qamaruddin referred to by Irshad was the petitioner, ignoring that Qamaruddin categorically stated that the Qamaruddin he was referring to was not the petitioner. The two authorities have overlooked the fact that petitioner's purported statement recorded by PW-2 was not even exhibited. Further, the two authorities have not even considered whether the purported statement (not proved at the enquiry) made by the petitioner was voluntary or was the result of coercion. For if we were to remove from the evidence the petitioner's purported confessional statement, there would just be no evidence to establish the indictment.

14. It is true that as per law laid down by the Supreme Court in the decision reported as (1977) 2 SCC 491 State of Haryana vs. Ratan Chand even hearsay evidence as also all evidence of high probative value is admissible evidence at a domestic inquiry, but said decision which was cited by learned counsel for the respondents would have no application in the instant case because we are not concerned with hearsay evidence or evidence of a probative value. We are concerned with a case where the department did not even exhibit, much less prove, by producing the original statement statedly recorded by PW-2 and as made to him by the petitioner. The Inquiry Officer, the disciplinary and the appellate authority as also the Tribunal have not bothered to address themselves to the law declared by the Supreme Court on the admissibility of statements recorded under Section 108 of the Customs Act.

15. Accordingly, we are constrained to allow the writ petition and quash the order dated April 12, 2010 dismissing petitioner from service as also the appellate order dated June 29, 2010. Setting aside order dated February 22, 2011 dismissing O.A.No.2237/2010 we allow the Original Application and direct petitioner to be reinstated in service with all consequential benefits except back wages, which we deny to the petitioner applying the principle : *No Work No Pay*.

16. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 03, 2013
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