

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

% *Judgment Reserved on: August 12, 2013*
Judgment Pronounced on: August 23, 2013

+ **W.P.(C) 7447/2008**

D.V.GAUTAM Petitioner
Represented by: Ms.Saahila Lamba, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Represented by: Ms.Zubeda Begum, Advocate with
Ms.Sana Ansari, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. On July 31, 1996, a police team comprising Inspector R.P.Tyagi, SI D.V.Gautam i.e. the petitioner, SI Shashi, HC Attar Chaudhary, HC Suresh Chand, Const.Naresh and Lady Const.Raj Kumari conducted a raid at Kashish Banquet Hall, Vikas Marg, New Delhi and claimed that six persons named Raghubir Singh, Sukhmal Jain, P.M.Mahesh, Lata, Alka and Reshma, were found there, involved in prostitution. Accordingly, FIR No.260/1996 for offences punishable under Sections 3, 4 and 5 of Immoral Trafficking (Prevention) Act, 1956 was registered against said persons and they were arrested in connection with the said FIR.

2. On September 10, 1996, i.e. nearly 40 days after the raid was conducted and FIR was registered, one Madhubala claiming to be the

wife of accused Raghubir Singh, made a complaint against the petitioner, Inspector R.P.Tyagi and one Const.Dutt to Sh.Y.S.Dadwal, the then Additional Commissioner of Police, stating therein that the accused Lata, Alka and Reshma had come from Bombay to Delhi to perform at a stage show and were staying at Kashish Hotel in Delhi; on July 31, 1996, Lata, Alka and Reshma were leaving the Hotel to go to New Delhi Railway Station when said three police officers came to the Hotel and foisted a false case against the accused persons; the 3 police officials forcibly took away ₹25,000/-, a gold/diamond ring and some valuable documents from Raghubir Singh; ₹20,000/- from Sukhmal Jain and ₹15,000/- from Lata, Alka and Reshma while taking their personal search; that the petitioner kept the money and articles snatched from the accused persons as also a Maruti car belonging to R.P.Chaudhary and Raghubir; a quarrel had taken place between Inspector R.P.Tyagi and the petitioner over money/articles snatched by them from the accused persons; petitioner, in connivance with some other persons damaged the property of R.P.Chaudhary and registered a false case against him and further that the petitioner used the car for 14 days and thereafter returned the same to them in a damaged condition.

3. Pursuant thereto a Vigilance (Preliminary) enquiry was conducted by Inspector Jagdev Chaudhary. During said enquiry, aforesaid 6 accused persons and various other persons were examined by Inspector Jagdev Chaudhary. Their statements were recorded by him. He submitted a report concluding that prima facie the allegations levied by Madhubala against the petitioner and two other police officials were correct.

4. In the meanwhile, after completing the investigation in FIR No.260/1996, a charge sheet was filed and on February 27, 1998 the concerned Magistrate took cognizance and summoned the accused.
5. In view of the Vigilance/Preliminary enquiry report submitted by Inspector Jagdev Chaudhary, on July 17, 1998, Sh.Y.S.Dadwal, who had by then risen to the ranks of a Joint Commissioner of Police, ordered departmental action against the petitioner and six other police officers who had conducted a raid at Kashish Hotel on July 31, 1996.
6. On July 27, 1997 a summary of allegations was served upon the aforesaid 7 police officers and the same reads as under:-

“It has been alleged that Inspr.Rajinder Prasad Tyagi No.D/1875, SI D.V. Gautam No.D-3019, W/SI Shashi No.D-181, HC Attar Singh No.141/E, HC Suresh Chand No.57/E, Ct. Naresh No.670/E and L/Ct. Raj Kumari No.1659/E conducted a raid on 31.7.96 and registered a false case FIR No.260/96 u/s 3/4/5 ITP Act-1956 of PS. Preet Vihar. The raid was conducted without any authority of law as Inspr./Spl. Staff has not been notified as a Special Police Officer under the I.T.P. Act 1956 vide notification No. F.5/69/80/Home (P)/Estt. dated 14.12.88 issued by Delhi Admn.; now GNCT Delhi.

In the said case, 6 persons namely Raghubir Singh s/o Sh. Rishal Singh r/o H.No. 309, Ram Nagar, Krishna Nagar, Delhi, Sukhmal Jain s/o Lt. Sh. Sita Ram Jain r/o A-43, Krishna Nagar, Delhi, P.M. Mahesh s/o Sh. P. Mohan r/o H.No.19/B Pocket-M, Sarita Vihar, New Delhi and three girls Alka, Reshma and Lata were arrested.

It is further alleged that W/SI Shashi No. D-181 recorded D.D. No. 10-A dated 31.7.96 at 1.25 P.M. vide which she departed for Kashish Banquet Hall, Vikas Marg, Delhi, where she conducted personal search of Lata, Reshma and Alka who were arrested in case FIR No.260/96, u/s 3/4/5 ITP Act. This has been corroborated by L/Ct. Raj Kumari No. 1659/E. It is,

however alleged that this version is false and fabricated. According to D.D. No. 11 dated 31.7.96 of Special Staff the police party which recorded then departure at 12.15 P.M. to conduct the raid included two police/DHG women i.e. Lady Ct. Raj Kumari No.1659/E and lady DHG Munesh No.2545. However, according to DD No.7-A dated 31.7.96 of PS. Kalyan Puri, lady Ct. Munesh No. 2545/DHG had been sent to S.D.N. Hospital at 12.15 P.M. along with injured Reshma. Obviously, therefore, Munesh Kumari could not have gone as indicated vide D.D. No. 11 dated 31.7.96 of Spl. Staff. This is corroborated by the facts that if two police/DHG women had accompanied the police party then there would have been no need to summon W/SI Shashi No. D-181 to the spot. They would have no need for her to have recorded her departure vide D.D. No. 10-A dated 31.7.96 at 1.25 P.M. After all, two women are enough to conduct the personal search of three women and to escort them. Interestingly, W/SI Shashi Bala mentioned nothing about any search conducted by her in her return report recorded vide D.D. No. 60-B dated 31.7.96 of PS. Kalyan Puri. The clinching evidence is the said statement of W/DHG Munesh No.2545 who has categorically stated that she did not accompany the raiding party and she was present in the PS. Kalyan Puri and had conducted the search of the accused in the toilet of the police station at about 1.30 P.M.

There is entry at 1200 hrs. on 31.7.96 written "D4 departure" with a signature of SI D.V. Gautam in the register maintained in the Hotel. However, Inspr. Rajinder Singh Tyagi's Rukka dated 31.7.96 and DD No.11 of 31.7.96 of Spl. Staff, it is mentioned at 12.15 P.M. an informer came and informed SI D.V. Gautam who was present in the Spl. Staff office about the prostitution etc. If SI D.V. Gautam was present in hotel at 12 noon as the entry obviously indicates, then obviously Inspr. Rajinder Singh Tyagi's rukka and daily diary are patently false.

It is further alleged that SI D.V. Gautam has extorted ₹30,000/- from Sukhmal Jain, ₹25,000/- from Ragbir Singh Chowdhary and ₹15,000/- from Alka Jagannath Dalvi. SI D.V. Gautam further took into possession Car No.BL-5C-A/5490 (Maruti Zen) of Raghbir Singh but he neither made any seizure memo, nor deposited the car in the Malkhana of

PS. Preet Vihar and used the vehicle/car for his personal gain for 14 days and returned it to the wife of the owner in a damaged condition causing a loss of ₹1 lakh.

The above act of omission and commission on the part of Inspr. Rajinder Singh Tyagi No. D/1875, SI D.V. Gautam No. D-3019, W/SI Shashi No.D-181, HC Attar Singh No.141/E, HC Suresh Chand No.57/E, Ct. Naresh No.690/E and L/Ct. Raj Kumari No.1659/E amount to gross misconduct and negligence and misuse of power in the discharge of their official duty and render them liable for departmental action under Delhi Police (Punishment & Appeal) Rules 1980.”

7. In the meantime, accused Raghubir Singh filed a revision petition before the Additional Sessions Judge assailing the legality of the order dated February 27, 1998 passed by the Magistrate taking cognizance of the offence and summoning the accused therein, which revision petition was dismissed vide order December 03, 1998, which reads as under:-

“This is a Revision Petition filed by the Petitioner. I have heard the Counsel for the Petitioner and Ld. APP and gone through with the facts and circumstances. On perusal of the Revision I observe that the Revisionist has not taken any single ground to challenge the impugned order dated 27.2.98 instead he has reiterated his own version of the matter and his enmity with SI D.V. Gautam. In the impugned order the M.M. had taken cognizance of the offence on 27.2.98 and it has been submitted that when enquiry was conducted by Y.S. Dadwal ACP he was assured and communicated that case be cancelled but inspite of that Ld. M.M. Smt. Pinki has passed the impugned order and taken cognizance of the offence punishable under section 3,4,5 T.I.P. Act. According to my view this cannot be the ground for setting aside the impugned order and even otherwise on going through the file I observe that the application dated 13.11.97 was filed by V.K. Tyagi sub inspector Special staff East before the M.M. which was taken up for consideration and after holding number of proceedings the same was held not maintainable vide order dated 19.2.98 and the record which was summoned was sent back then the challan was filed in the court on 27.2.98 on that

day the impugned order was passed by the M.M. No ground has been shown as to why on such assurance court should not have taken cognizance of the matter. The revision is dismissed. (Emphasis Supplied)

8. Before the Enquiry Officer commenced recording of evidence i.e. examined the cited departmental witnesses, admittedly the petitioner made several requests in writing that he be supplied the statements recorded by Insp.Jagdev Chaudhary during preliminary enquiry, but the same were not supplied to the petitioner on the ground that the said statements were not relied upon by the department.

9. At the enquiry, the department examined thirteen witnesses. Briefly, we note the gist of the testimony of the said witnesses.

10. In his statement Raghubir Singh PW-3, reiterated the contents of the complaint filed by his wife Madhubala. Additionally, he stated that the petitioner had extorted a sum of ₹25,000/- from him after arresting him. 3-4 days thereafter, the petitioner took a sum of ₹95,000/- from the owner of his shop on the pretext of getting him i.e. Raghubir Singh released on bail. The petitioner had also taken a fan, air-conditioner, lunch box and a sum of ₹5,000/- from his shop. On being cross-examined, to questions No.7, 11, 12, 13, 19 and 20 put to him during cross-examination, Raghubir Singh gave answers and since said testimony of Raghubir Singh would be relevant for further discussion, we note the said questions and their answers. They read as under:-

“Q No.7:- You have stated in your statement in chief that I and a person named Rakesh had visited him in Tihar Jail and demanded money from you whereupon a Sikh gentleman had given ₹95,000/- to me. This fact has not been stated in the complaint. Why so?

Ans. Said fact has been stated in the complaint.

Q No.11:- It has come to be known that you had withdrawn money from your bank on the day of your arrest from Kashish Banquet. How much money had you withdrawn?

Ans. I had withdrawn ₹25,000/- from the bank.

Q. No.12:- How much money was recovered from you in your personal search?

Ans. About ₹200/- or ₹300/- or ₹400/-.

Q. No.13:- How much money was with you at the time of your arrest?

Ans. About ₹20,000/-

Q No.19:- Have you recovered the articles seized at the time of your personal search from PS Preet Vihar? If yes, how?

Ans. Yes I have recovered. My lawyer had filed an application in said regard.

Q No.20:- Did you lodge any complaint with respect to your personal search?

Ans. No.” (Translated Version)

11. Lady Const.Munesh PW-4, deposed that she has no knowledge about her statement recorded in the Vigilance enquiry. That she did not read her statement recorded in the Vigilance enquiry and was made to sign said statement. That Raghubir Singh was sitting with the Inspector at the time when her statement during Vigilance enquiry was recorded. It would be relevant to note the following portions of her cross-examination:-

“Q No.3. Had Inspector Vigilance recorded your statement by his own will or had recorded your statement?

Ans. Inspector had himself written the statement and I had just signed on the same.

Q. No.4. How do you know that the person who was sitting with Inspector Vigilance was Raghubir Singh only?

Ans. I knew him as he was arrested at the raid and taken to Police Station Kalyan Puri.” (Translated Version)

12. P.M.Mahesh PW-5, deposed that he was Manager of Kashish Hotel on July 31, 1996, on which date a raid was conducted at said hotel. It would be note the following portion of his cross-examination:-

“Q. No.4:- Was any person known to you was present at the time when Inspector Vigilance Jagdev Singh recorded your statement?

Ans. Raghubir Singh was present at that time with Inspector.

Q. No.5:- Did Raghubir Singh or any other person asked you to give statement against the police officers?

Ans. Raghubir Singh asked him to state the facts which happened with him (Raghubir Singh) but I refused to do say so on the ground that the said facts are not in my knowledge.

Q No.4:- You have stated that police had kept you, Raghubir, and Sukhmal Jain in one room. Did any police officer demand or take any money from any of you?

Ans. No one had demanded or given money in my presence.

Q No.5:- Raghubir Singh has leveled allegation against me that he had given a sum of ₹25,000/- to me. Did he have such huge amount of money with him?

Ans. He had given no money in my presence and I have not seen ₹25,000/- with him.

Q No.7:- Do you have knowledge about the fact that Inspector Jagdev Singh along with Raghubir had gone to Bombay to record their statements?

Ans. Raghubir had told me that he along with Insepctor Jagdev Singh had gone to Bombay.

Q. No.8:- I have come to know that Raghubir along with MLA Gyan Chand had gone to the owner of Kashish hotel and

demanded money from him on the ground that lot of money is being spent in the enquiry. Do you have knowledge about said fact?

Ans. One day Raghbir and Gyan Chand had come and met the son of the owner of the hotel and told him that lot of money is being spent in the vigilance enquiry and that he should share some expenditure. They left after drinking water-tea. Thereafter he told me that if they come again refuse them for money, whatever will happen we will see in the court.”
(Translated Version)

13. Sukhmal Jain PW-6, deposed that he was arrested by the police from Kashish Hotel on July 31, 1996. Nothing objectionable happened with him at the police station. He was released on bail 4-5 days after his arrest. Few days thereafter he came to know that wife of Raghbir had lodged a case against the police officers with the Vigilance Department when Raghbir Singh along with an Inspector came to his house. Inspector Vigilance recorded his statement wherein he narrated the above facts. It would be relevant to note the following portion of his cross-examination:-

“Q No.1:- Wife of Raghbir had filed a complaint wherein she leveled certain allegations against some police officials. Did you inform her anything about the incident in question?

Ans. I did know or ever met wife of Raghbir Singh and did not inform her anything about the incident.

Q. No.3:- You have stated that Raghbir, Mahesh and you were lodged in one room. Are you aware that Raghbir was having huge sum of money with him? If yes, how much?

Ans. I do not know if Raghbir was having huge sum of money with him. However he was having ₹2,000-2,500/- with him at the time of his personal search.” **(Translated Version)**

14. Inspector Jagdev Singh PW-7, deposed that he conducted a Vigilance enquiry in respect of the complaint filed by Madhubala, wife of

Raghubir Singh, and found that the allegations contained in said complaint are correct. It would be relevant to note following portion of his cross-examination:-

“Q. No.26:- As per your enquiry, what were the circumstances of recovery of Maruti car?”

Ans. Maruti car was in a damaged condition and parked without there being any lawful entry to said regards. Const. Gurmail Singh accompanied by the son of complainant went to ISBT where they found the scooter of D.V. Gautam in the parking. The D.V. Gautam took out key of the car from the dicky of his scooter and handed over the same to the son of the complainant. This incident happened 3-4 days after the registration of FIR.

Q. No.26:- The Metropolitan Magistrate had called the file of Vigilance Enquiry conducted by you and asked questions from you regarding the queries raised by Addl. CP/NDR but you were not able to give answer to any question. Why so? The Magistrate had passed strictures against you in said regards which I am showing you and Enquiry Officer and would also present later with my defence.

Ans. Ld. Magistrate had after reading the file of Vigilance Enquiry had discussed in great detail about the queries raised by Addl.CP/NDR on 2-3 hearings and I had satisfactorily answered each and every question of Magistrate. The remarks stated by you as strictures are not strictures but the decision given by the Court taking cognizance of the case and rejecting the request of SI Spl. Staff for cancellation of case wherein Court had observed that police department cannot interfere in the jurisdiction of the Court. After carefully examining the evidence Jt.CP/NDR (Addl. CP/NDR) had directed DCP/East to make a request for cancellation of the case. After taking cognizance Ld. MM did not tell any reasoning to the police statement due to which the department, if desirous, could have appealed against the order of the MM in the High Court.” (Emphasis Supplied) (Translated Version)

15. Alka PW-9, Lata PW-10 and Reshma PW-11, deposed that in the month of July, 1996 they had come from Bombay to Delhi to perform at a stage show. On July 31, 1996, they were present at Kashish Hotel in Delhi when the police officers came there and falsely implicated them in a case of prostitution and arrested them in connection with said false case. They were taken to the police station where the petitioner misbehaved with them and took away ₹15,000/- from the purse of Alka.

16. It would be relevant to note the following portion of cross-examination of Alka PW-9:-

“Q No.1:- When you had come here last time for giving your statement you had stated that only you would give a statement and that your statement be construed as statement of other two ladies. When the same was not agreed upon then all of you refused to give your statement. Thereafter on the next day you were present in the court from where you left along with Inspector Jagdev and Raghubir but you did not give your statement in the enquiry on said day. Subsequently you have given a prepared statement. Why so?”

Ans. That day we had not gone with Raghubir. We had straightaway gone there.

Q No.7:- All your belongings were seized by Inspector Tyagi. Did you all sign on the seizure memo?

Ans. Yes. We had signed.

Q No.8:- As per the seizure memo, a money bag containing ₹850/- and two coins etc was found in your belongings. In your application seeking return of your belongings you had made a mention of ₹750/-. You have not mentioned about ₹15,000/- in the application filed by you before the Magistrate seeking return of your belongings?

Ans. I do not know what was written.

Q No.9:- Did you ever made any complaint before the Inspector who had produced you and investigated the case,

ACP Sir before whom you were produced, the Magistrate before whom you appeared many times or lawyer regarding the atrocities committed upon you by the police? Did you inform your relatives in Bombay about the same?

Ans. Nobody listened to us and lodged us in jail.

Q. No.12:- You have leveled allegations against me that I had taken money from you. State the formation of the money taken from you? In whose presence and where was the money was taken? What was the time? Who did you inform said fact? Did you complain regarding this to higher officials, Magistrate or your lawyers?

Ans. I will not answer this question now.

Q No.13:- ₹2,400/- was recovered from Raghubir and he stated said amount only in the application filed by him seeking return of his belongings. ₹170/- was recovered from P.M. Mahesh and he stated said amount only in the application filed by him seeking return of his belongings. ₹850 /- was recovered from you and you have stated the amount of ₹750/- only in the application filed by him seeking return of his belongings. Do not these circumstances indicate that police action was correct?

Ans. All these talks are incorrect. I had more money with me.” (Emphasis Supplied) (Translated Version)

17. It would be relevant to note the following portion of cross-examination of Lata PW-10:-

“Q No.1:- When he had arrested you with others from Kashish Banquet Hall and produced you in court where your lawyers were present with you. Did you ever complain about the police to the senior police officers, Ld. Magistrate before whom you were prepared many times or your lawyer?

Ans. No.

Q No.6:- As per seizure memo prepared by Inspector Rajinder Prasad Tyagi which was signed by all three of you ₹850/- was recovered from the money bag. In your application seeking return of your belongings you have shown

₹750/-. Is it not correct that that if you had more money you would have surely mentioned the same in your application?

Ans. Whatever money was there it was written.

Q. No.8:- You stated in your statement that misbehavior was committed with you at the time of your arrest. Did you complain about the same to ACP Sir before whom you were produced, Ld. Magistrate before whom you were prepared many times or your lawyer?

Ans. We did not get an opportunity at that time.

Q No.9:- You could have complained about the same even after going to Bombay. Did you made any complaint before recording of your statement by Inspector Jagdev?

Ans. I did not make because my reputation could have been spoilt.

Q No.12:- You have stated in your statement that money was taken from Alka. State what was denomination with your money? When and where was it taken? What was the time? Who was present at that time? Why did you not tell the said fact to your lawyer or the Magistrate?

Ans. It was 100 rupees notes but I did not see completely. They were taken in evening. I do not know the same. Mr.Rakesh, Mr.Tyagi and petitioner were present there. We did not give any opportunity.

Q No.13:- You were arrested in the case at about 7 PM. Lady Police had conducted your personal search and Inspector Tyagi had seized your belongings then how come the sum of ₹15,000/- remained with Alka? You were produced before ACP Sir at about 8 PM. Why did you not tell him?

Ans. The money was taken in the evening after the arrest. We did not opportunity to tell said fact to ACP Sir.

Q No.17:- Did you inform about the facts relating to money and misbehavior to the male members who were arrested with you?

Ans. No.

Cross by Inspr. R.P. Tyagi

Q No.3:- You have stated in your statement dated 14.12.98 that these people were drunk and were about to rape us. You did not tell these facts to the your lawyers or the Lady Magistrate. Why so?

Ans. We did not give any opportunity. No one let us talk.

Q No.8:- You did not complain about the same to the Magistrate, police, court or any other authority either in Delhi or Bombay. Why so?

Ans. We did not do so to protect my reputation” (Emphasis Supplied) (Translated Version)

18. It would be relevant to note the following portion of cross-examination of Reshma PW-11:-

“Q No.1:- When you were arrested with your accomplices from Kashish Banquet Hall then you were produced before the Court where your lawyers were present. Did you complain to senior police officers, Magistrate before whom you were produced or your lawyers?

Ans. Yes we had complained to the lawyers as also the Judge.

Q No.5:- All your belongings were seized in the hotel including a money bag containing ₹850/-. You had mentioned a sum of ₹750/- in your application seeking return of belongings. You did not mention the sum of ₹15,000/- in your application. Had you people possessed said amount then you would have surely mentioned said amount in application?

Ans. We had stated about the sum of ₹15,000/- possessed by Alka in the application filed for return of belongings.

Q No.6:- Did you see said money?

Ans. Yes.

Q No.7:- What was the denomination of said rupees? When was it taken? When and where was it taken? What was the time? Who all were present?

Ans. It was loose money. Some notes were in 10, some were in 5. All these were present. It was taken when we were going to the court. It was around 2-2.30 P.M.

Q. No.8:- How much money was recovered in your personal search? Did you sign the memo of personal search?

Ans. I do not know.

Q No.9:- Did you inform about the allegations of misbehavior to any Lady Police Officer, Ld. Magistrate, your lawyer or senior police officer?

Ans. Yes, I told to the lawyers. (Illegible)

Q No.10:- When you were present in the DE on an earlier occasion Alka had stated that only she would give statement and other two ladies will not give statement and her statement be construed as statement of other two ladies whereupon EO asked you to be give separate statements but none of you gave statement on said day. Why so?

Ans. We had come on her responsibility.” (Emphasis Supplied) (Translated Version)

19. At this juncture it may be noted that the order sheet dated December 09, 1998 recorded by the Enquiry Officer records that all the delinquent police officials and three females: Lata, Alka and Reshma were present but their statement was not recorded; order sheet dated December 14, 1998 records that the statements of Lata, Alka and Reshma were recorded but the petitioner was not present on said day and the order sheet dated March 17, 1999 records that the petitioner has cross-examined Lata, Alka and Reshma.

20. Madhubala PW-12, the wife of Raghubir Singh, stated that on the night of arrest of her husband, 4 persons had come to her house and told her that the petitioner and Inspector Tyagi are asking for money. Three days after the incident she went to meet the petitioner at the police station

to take her car which was parked at the police station as told to her by her lawyer. The police officers refused to give the car to her. She had not seen the car in the police station. On a second occasion when she had gone to the police station she saw her car lying parked at the rear of the police station. Few days thereafter the car was found in a damaged condition in Kashmiri Gate. It would be relevant to note following portion of her cross-examination:-

“Q No.2:- The present complaint was made by you after how many days of arrest of your husband?”

Ans. After 18-20 days of the arrest. The complaint was made after bail of my husband.

Q No.13 Have you ever met persons arrested along with your husband?

Ans. I know persons living in Delhi. I do not know about the rest.

Q No.22 On what basis have you leveled allegations pertaining to other accused persons in your complaint?

Ans. When I had gone to the court for purposes of bail the other accused persons told her that the police are troubling them for no rhyme or reason. The details must be known to my husband.

Q No.36 You have stated in your statement that Gautam and Tyagi had asked for money and you came to know of said fact at about 01.30 AM in the night itself but you have not stated said fact in your complaint. Why so?

Ans. It has been stated in the complaint.

“Questions Nos.38, 39 and 40 are missing”

38 Ans. He told me not to file application for return of car and that I would return car in the morning. He gave me the car 15 days after having harassed me at bus terminal.

39 *I do not know that car is registered in whose name. My husband would know the same.*

40 *I do not remember the number of the car. It was red colored car.*

Cross by Inspr. R.P. Tyagi of PW-12 Smt. Madhu Bala w/o Raghubir Singh

Q No.5 You had stated in the answer given by you on 3-2-99 that on 2-3 P.M. when your husband was produced in court you were present in the court. Did you, your husband or the three girls complain to Ld. Magistrate regarding the allegations or torturing or misbehaving with the three girls with the intention of outraging their modesty at that time?

Ans. We were there for 5-10 minutes and I do not remember anything about that time and my mind was troubled.

Q No.12 You have stated in your statement dated 14-1-99 that Tyagi and Guatam had asked for money which you came to know on the night of 31-7-96. You have not stated in the complaint made by you after 40 days the facts relating to demand of money or leveled any allegation against me. Why so?

Ans. The demand of money at the night has been narrated by me in detail in the compliant.

Cross by W/SI Shashi No. D-181

Q. No.3:- You had not raised any objection at the time when the order regarding return of seized articles was passed by the Court or while taking seized articles. Why did you level allegations after 40 days? What is the reason for said delay? Is this all after thought?

Ans. All these facts would be known to my husband.

21. Ansar Ahmed PW-13, the owner of Kashish Hotel, deposed that the police had conducted a raid at the hotel on July 31, 1996, in which raid the manager of his hotel and three ladies were arrested. It would be relevant to note the following portion of his cross-examination:-

“Q No.4:- Manager P.M. Mahesh had answered to one of the questions that after he was released on bail one of the persons arrested with him Raghubir Singh who had arranged the stay of the girls at the Hotel and subsequently made the complaint had come to you and asked for money and told you that lot of money is being spent in connection with complaint lodged against the police and that you should share the expenditure but you refused to do so. Is it correct?”

Ans. Yes. I had refused.” (Emphasis Supplied) (Translated Version)

22. Thereafter, as required by the Delhi Police (Punishment & Appeal) Rules, 1980, formal charges were drawn up by the competent authority against the petitioner and the other police officers; which we note reflects the indictment contained in the Summary of Allegations.

23. The petitioner and the other police officers denied the charge framed against them whereupon the Enquiry Officer proceeded to record the evidence of the defence witnesses.

24. Delinquent, Inspector R.P.Tyagi examined 7 witnesses. Briefly, we note the gist of the testimony of the said witnesses.

25. R.K.Chaudhary DW-1, deposed that he was the lawyer of accused Lata, Alka and Reshma and had got them released on bail. The three accused persons never informed him of being beaten, or money being extorted from them by the police.

26. D.K.Tyagi DW-2, deposed that Sukhmal Jain and Raghubir Singh had engaged him as a lawyer for obtaining bail and that they never told him of being beaten or money being extorted by the police from them.

27. HC Satbir Singh DW-4, deposed that he was posted as Malkhana Moharar at Preet Vihar Police Station. He had returned the articles seized

during investigation to the accused which were deposited in the Malkhana and the same were taken by the accused without any objection raised.

28. Pankaj Arora DW-5, deposed that Raghubir Singh was involved in prostitution. On one occasion Raghubir Singh along with Inspector Jagdev Singh came to him and informed him that Inspector Jagdev is conducting an enquiry in a case relating to prostitution registered against him. Raghubir and Jagdev told him to give false statement in favour of Raghubir at the enquiry conducted by Inspector Jagdev but he refused to do so. On the day he was arrested in the present case, Raghubir had visited him in the morning and asked him to lend ₹3,000/- to him. He told him that he has called girls from Bombay and they are staying at Kashish Hotel. He did not lend money because he had none. Thereafter he and Raghubir went to Punjab National Bank at Jagat Puri where Raghubir withdrew ₹2,500/- from his account.

29. The petitioner examined three witnesses in his defence, and out of which we find that only testimony of two needs to be noted. Const.Gurmail Singh DW-2, deposed that he was posted at Special Staff on July 31, 1996. Inspector Jagdev Singh forced him to make a false statement at the Vigilance enquiry. On one occasion, he along with the wife of one of the accused had gone to ISBT to get the scooter of the petitioner which was parked there. This incident had no connection whatsoever with any car as written by Inspector Jagdev Singh and that he had not seen any car in the Special Staff. Rakesh DW-3, deposed that on July 31, 1996 he had given information to the petitioner about the illegal activities of Raghubir at Kashish Hotel. On one occasion Inspector Jagdev Singh forced him to come to the police station where he wrote a statement and forced him to append his signatures on said statement.

30. Thereafter, the petitioner submitted his statement of defence to the Enquiry Officer highlighting therein that the charge framed against him is false for the following reasons:-

(i) Sukhmal Jain did not mention of alleged extortion of ₹30,000/- from him by the petitioner in his statement recorded during the departmental enquiry;

(ii) The statements of Sukhmal Jain, Pankaj Arora, Gurmail Singh and Rakesh recorded at the departmental enquiry clearly brings out that there was connivance between Inspector Jagdev Singh and Raghubir Singh to falsely implicate the petitioner in the present case;

(iii) Evidence adduced in the departmental enquiry clearly brought out that Raghubir Singh is a man of dubious reputation and has been involved in prostitution/immoral trafficking of women;

(iv) In his statement recorded at the departmental enquiry, Raghubir Singh had stated that petitioner had taken ₹25,000/- from him at the time of his arrest and ₹95,000/- at a later occasion and that the allegation pertaining to ₹95,000/- did not find mention in the complaint filed;

(v) Raghubir Singh stated that he had withdrawn ₹25,000/- from his bank account on the day of his arrest, which claim is fallacious inasmuch as the bank statement of Raghubir produced by the petitioner before the enquiry as also the statement of Pankaj Arora show that Raghubir had withdrawn only ₹2,500/- from his bank on the day of his arrest, which amount tallies with the personal search memo prepared by Inspector Tyagi at the time of his arrest; which records that ₹2,400/- was found in his possession;

(vi) On September 09, 1996, Raghubir Chaudhary filed an application in the Trial Court seeking return of ₹2,400/- seized by the police when he was arrested. Nowhere in said application Raghubir made a mention of ₹25,000/- taken by the petitioner at the time of his arrest;

(vii) Sukhmal Jain had stated that ₹2,000-2,500 were recovered from Raghubir at the time of his arrest and P.M.Mahesh had stated that Raghubir was not carrying a sum of ₹25,000/- at the time of his arrest;

(viii) Madhubala, wife of Raghubir, did not state in her statement recorded at the disciplinary enquiry that a sum of ₹25,000/- was taken by the petitioner from Raghubir Chaudhary at time of his arrest;

(ix) The complaint was made by the wife of Raghubir 40 days after the incident in question, which fact assumes relevance in light of the fact that Raghubir Singh or the other accused persons did not complain to any authority including the Trial Court or superior police officers regarding any extortion by the petitioner despite having several opportunities in said regard;

(x) The luggage of the three (female) accused persons was seized by Inspector R.P.Tyagi and their personal search was conducted by SI Shashi at Kashish Hotel wherein ₹850/- and 2 coins were found in a money bag. The claim made by said accused persons that the petitioner had taken ₹15,000/- from the bag of Alka after they were taken from hotel to police station is fallacious inasmuch as no money could have been possessed by said three ladies after they were personally searched at hotel; and recovery effected entered in the seizure memo;

(xi) The three (female) accused gave different answers when questioned about details of taking of the sum of ₹15,000/- from the bag of Alka by the petitioner;

(xii) Accused Reshma filed an application in the Trial Court seeking return of the sum of ₹850/- seized by the police at the time of her arrest. Nowhere in said application Resha made any mention of ₹15,000/- being taken by the petitioner at the time of her arrest;

(xii) The three (female) accused did not complain to any authority including Trial Court or any superior police officer regarding any extortion by the petitioner, despite having several opportunities in said regard;

(xiii) The advocates of the accused examined by the petitioner and Inspector R.P.Tyagi categorically stated before the Enquiry Officer that the accused at no point complained about alleged extortion of money by the petitioner;

(xiv) No evidence whatsoever regarding use of car of Raghubir by the petitioner has surfaced in the enquiry;

(xv) The police team had reached the hotel in a Government vehicle as is clear from the DD entry recorded in connection with the raid pursuant where to the FIR was registered. No vehicle was seized by the police in the present case;

(xvi) There are material contradictions in the version of Madhubala, wife of Raghubir, regarding the vehicle allegedly used by the petitioner;

(xvi) Madhubala stated that the vehicle was recovered from Kashmeri Gate whereas Jagdev Chaudhary had deposed that vehicle was recovered from PS Kalyan Puri;

(xvii) The ownership of vehicle was doubtful inasmuch Madhubala pleaded ignorance about the registration number and ownership of vehicle in her cross-examination by the petitioner;

(xviii) An entry was made by the petitioner in the Register of Kashish Hotel to the effect that the (female) accused persons had not checked out of the hotel till 12.10 Noon and the same does not relate to the time when said entry was made; and

(xix) The accused persons had falsely implicated the petitioner since he was instrumental in their arrest inasmuch as one Rakesh had given information about their illegal activities to the petitioner.

31. On February 21, 2000, the Enquiry Officer submitted a report to the Disciplinary Authority. On the issue of the charge that the raid was conducted without authority of law, it was opined by the Enquiry Officer that raid was conducted by Inspector R.P.Tyagi with the express knowledge of his superior officers and that there were some procedural lapses on his part without any *mala-fide* intention inasmuch as he was notified as a Special Officer under Prevention of Illegal Trafficking of Women Act, 1956, particularly when the Magistrate has taken cognizance of the FIR registered against the accused and the case was pending trial.

32. On the issue of false implication of the accused by the police, it was opined by the Enquiry Officer that the record of the case shows that accused Raghubir Singh was a man of dubious reputation and has been involved in cases relating to illegal trafficking of women. The

explanation furnished by the accused that the three female accused had come from Bombay to Delhi to perform in a stage show was patently false and the criminal record of Raghubir Singh, of indulging in flesh trade, indicates that the ladies had come to Delhi for anything else other than performing at a stage show.

33. On the issue of making of false DD entries, it was opined by the Enquiry Officer that W/SI Shashi Bala has not been very particular about mentioning the details of the action taken by her during course of raid and hence she could be faulted only to this extent and that the petitioner incorrectly made an entry in the hotel register on account of overzealousness. (The entry being the one explained by the petitioner as per para 30 xviii above.)

34. It would be relevant to note following portion of the findings of the Enquiry Officer in said regards:-

“Though lady DHG Munesh in her statement during departmental enquiry has stated that she was made to sign a statement written by Inspr. Vigilance during preliminary enquiry and she has stated that she had joined the raiding party on 31.7.96 headed by Inspr. R.P. Tyagi and had stated contrary to it during her statement to Inspr. Vigilance, the two versions of lady DHG Munesh – one during preliminary vigilance enquiry and other during DE are contradictory to each other and it could only be presumed that she has retracted from her statement only to save these defaulters. W/SI Shashi Bala had recorded her arrival vide DD No. 60-B dt. 31.7.96 at PS Kalyan Puri after conducting a raid at Kashish Banquet Hall. Though during preliminary enquiry she has not been corroborated by lady DHG Munesh who has categorically stated that the ladies were searched in the toilet of PS Kalyan Puri at around 1.30 P.M. But W/SI Shashi during her departure, arrival DD entry has mentioned about

the raid being carried out at Kashish Banquet Hall....”
(Emphasis Supplied)

35. With respect to charge(s) of extortion of money from the accused persons and use of car of Raghubir by the petitioner, it was opined by the Enquiry Officer as under:-

“Mr.Raghubir Choudhary, Sukhmal Jain and Lata have alleged money being extorted by SI D V Gautam when they were arrested in the PS and under these circumstances independent witnesses can not be expected to be present but circumstances certainly indicate that SI D V Gautam has indulged in extortion of money from these people. It has also been alleged during course of enquiry that SI D V Gautam took Maruti Zen Car of Raghubir Choudhary in his possession but he neither made any seizure memo nor deposited the car in Police Station (Malkhana) and used the car for his personal gain for around 14 days and returned it to the wife of the owner after persistent efforts. Though the records are not available as the same was not prepared by SI D V Gautam but the recovery of his scooter from the parking at ISBT and attendant circumstances indicate that SI D V Gautam has been using the car of the complainant without making any record in the police station (malkhana) for his personal gain for almost 14 days.” **(Emphasis Supplied)**

36. With respect to the other delinquents it was opined by the Enquiry Officer as under:-

“About the role of HC Attar Singh, No. 141/E, HC Suresh Chand, No. 235/E, Ct. Naresh, No. 690/E and W/Ct. Raj Kumari, No. 1659/E nothing have specifically been attributed by the complainant and other PWs as they have been acting at the instance of their senior officers present on the spot and under the circumstances they were supposed to act according to the instructions of the senior officers and hence no specific fault could be attributed to them.”

37. The petitioner submitted a representation/reply against the report of the Enquiry Officer essentially reiterating the same grounds as raised by

him in his statement of defense. Vide order dated May 30, 2000, the Disciplinary Authority awarded the punishment of forfeiture of two years approved service permanently for a period of two years entailing proportionate reduction in his pay and that the petitioner would not earn increment during the period of reduction and on expiry of this period the reduction will have the effect of postponing his future increments. (It is pertinent to note that save and except the petitioner and W/SI Shashi the other delinquent officers were exonerated by the Disciplinary Authority. W/SI Shashi was awarded the punishment of censure by the Disciplinary Authority.) Vide order dated June 12, 2003 the Appellate Authority rejected the appeal filed by the petitioner.

38. Aggrieved by the aforesaid, the petitioner filed an application being OA No.1553/2004 under Section 19 of the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Princial Bench, New Delhi. Vide order dated February 04, 2005 the Tribunal allowed aforesaid OA on the ground that penalties of reduction of pay and deferment of increments cannot be imposed together in terms of the provisions of Rule 8(d)(ii) of Delhi Police (Punishment and Appeal) Rules, 1980. However, liberty was granted to the Disciplinary Authority to pass a fresh order.

39. Vide order dated April 13, 2005, the Disciplinary Authority awarded punishment of forfeiture of two years of approved service permanently entailing proportionate reduction in the pay of the petitioner. Vide order dated June 29, 2006 the Appellate Authority rejected the appeal filed by the petitioner.

40. Yet again, the petitioner filed an application being OA No.2452/2006 before the Tribunal assailing the legality of the aforesaid orders dated April 13, 2005 and June 29, 2006 passed by the Disciplinary and Appellate Authorities respectively.

41. Vide order dated March 25, 2008 the Tribunal dismissed the application filed by the petitioner essentially for the reasons:-

(i) Nothing turns upon allegations of bias leveled by the petitioner against Sh.Y.S.Dadwal inasmuch as he has not been impleaded as a party in the application, merely because Sh.Y.S.Dadwal had assured the accused persons that case registered against them would be cancelled does not imply that he was personally interested in the matter and in any case, no prejudice has been caused to the petitioner for someone other than Sh.Y.S. Dadwal had acted as his Disciplinary/Appellate Authority;

(ii) There is no merit in the contention advanced by the petitioner that non-supply of the statements of witnesses recorded during the preliminary enquiry and report of the preliminary enquiry has vitiated the enquiry proceedings for the reasons Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 prescribes that the preliminary enquiry is only a fact-finding enquiry and that the preliminary enquiry shall not form part of formal departmental record; more so it being settled legal position that the report of the preliminary enquiry and statements of witnesses of preliminary enquiry are required to be supplied to the delinquent employee only if the same are relied upon in the enquiry; no prejudice whatsoever has been caused to the petitioner due to non-supply of said documents and vigilance enquiry conducted in the instant case cannot be termed as preliminary enquiry in terms of Rule 15 of the Delhi

Police (Punishment and Appeal) Rules, 1980 in view of ratio of law laid down by the Full Bench in OA No.340/2004 titled as 'Ranvir Singh v Govt. of NCT of Delhi';

(iii) That statements of Raghubir, Lata, Alka, Reshma and Madhubala recorded during departmental enquiry establish that the petitioner had extorted money from the accused persons and unauthorizedly used the car of Raghubir for 14 days; and

(v) Courts are not expected to re-appreciate the evidence led during the enquiry or substitute their own decision with that of the authorities for the courts do not sit in appeal over the orders passed by the authorities.

42. Thereafter the petitioner filed an application before the Tribunal seeking review of its order dated March 25, 2008, which was dismissed vide order dated July 01, 2008.

43. Aggrieved by the aforesaid, the petitioner has filed the present petition under Article 226 of the Constitution of India.

44. From the afore-noted conspectus of facts, it is apparent that the petitioner had challenged the orders passed by the departmental authorities essentially on following 2 counts:-

A Departmental enquiry was conducted in violation of principles of natural justice.

B Finding returned by the Enquiry Officer that the petitioner had extorted money from the accused persons and unauthorizedly used the car of accused Raghubir is perverse, in that, no prudent person would have reached said conclusion and the departmental authorities as also the

Tribunal has mechanically accepted the findings returned by the Enquiry Officer.

45. Pertaining to principles of natural justice being violated, the petitioner has complained that two violations have been by the department/Enquiry Officer in the departmental enquiry. They are:-

(i) Non-supply of statements of witnesses recorded during the vigilance/preliminary enquiry to the petitioner, due to which he could not 'effectively' cross-examine the witnesses who were examined (again) at the departmental enquiry; and

(ii) Statements of accused Lata, Alka and Reshma were recorded in the departmental enquiry in the absence of the petitioner, due to which he could not effectively 'cross-examine' said witnesses.

46. It is not in dispute that a Vigilance enquiry (which was in the nature of a preliminary enquiry) was conducted by Inspector Jagdev Singh and during which he recorded the statements of various persons; who were examined as witnesses of the department at the regular departmental enquiry and the report of said enquiry formed the basis to initiate departmental action against the petitioner and other delinquents. It is further not in dispute that almost all the witnesses who were examined during the Vigilance enquiry, including the accused persons, were (again) examined at the departmental enquiry. In order to effectively defend himself the petitioner was entitled to know the statements which were made by the witnesses during the vigilance enquiry. The petitioner was not to remain in dark. The record of the case clearly indicates that the action of the department of not supplying statements recorded at the vigilance enquiry has caused huge handicap to the petitioner in cross-

examining the witnesses. A perusal of the gist of evidence adduced at the enquiry noted by us in the foregoing paras shows that there was a marked difference between the statements given by some of the witnesses at the two enquiries i.e. the vigilance and disciplinary enquiry. Had the petitioner been supplied with the statements recorded during the vigilance enquiry he could have cross-examined the witnesses with respect to the inconsistency between the two statements. Not only this, the petitioner could have pointed out the inconsistencies between the two statements of such witnesses in his statement of defense in order to show that the evidence of such witnesses is not creditworthy. It is apparently a case where prejudice has been demonstrably shown on account of not supplying statements of departmental witnesses recorded during the preliminary vigilance enquiry.

47. Law on this aspect is well settled.

48. In the decision reported as AIR 1961 SC 1623 State of Madhya Pradesh vs. Chintaman Sadshiva Vaishampayar the respondent who was a police officer was dismissed from service on certain charges. The High Court quashed the order of dismissal on the ground that the enquiry was held in violation of the principles of natural justice inasmuch as the statements of witnesses recorded during the preliminary enquiry was not supplied to the respondent as a result of which he could not effectively cross-examine the witnesses examined at the departmental enquiry. The Constitution Bench upheld the view taken by the High Court.

49. It would be relevant to note the following observations made by the Constitution Bench:-

“Failure to supply the said copies to the respondent made it impossible for the respondent to submit the said two witnesses to an effective cross-examination; and that in substance deprived the respondent of a reasonable opportunity to meet the charge....

Vankatarama Aiyar, J. in *Union of India v. T.R. Varma* observed as under:

“....Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.”

It is hardly necessary to emphasize that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with the rules of natural justice.” (Emphasis Supplied)

50. In the decision reported as AIR 1974 SC 2335 State of Punjab v Bhagat Ram the copies of statements of witnesses recorded during investigation and produced at the disciplinary enquiry in support of the charges framed against the delinquent officer were not supplied, instead a synopsis of the statements had been supplied to him. The Supreme Court held that it was unjust and unfair to deny the government servant copies of statements of witnesses recorded during investigation. It would be relevant to note the following observations made by the Court:-

“The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the

Government servant is afforded a reasonable opportunity to defend himself against charges on which enquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

8. *It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges leveled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken against him.” (Emphasis Supplied)*

51. In the decision reported as AIR 1986 SC 2118 Kashinath Dikshita vs. Union of India & Ors the Supreme Court set aside the order of dismissal of a police officer on the finding that during the departmental proceedings the officer concerned was not supplied the copies of the statements made by the witnesses at pre-enquiry stage and also the copies of the documents on which reliance was placed in support of the charges, in spite of specific request being made by the officer. It would be relevant to note the following observations made by the Court:-

“The extracts quoted hereinabove leave no room for doubt that the disciplinary authority refused to furnish to the appellant copies of documents and copies of statements. When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the

charges unless the copies of the relevant statements and documents be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defense, cross-examine the witnesses, and point out the inconsistencies with a view to show that allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the Courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was any security of State or privilege."

52. To the similar effect is the ratio of law laid down by the Supreme Court in the decisions reported as (1967) SLR 759 Triloki Nath vs. Union of India, (1971) 1 SCR 87 State of Assam & Anr. vs. Mahendra Kumar Das & Ors and AIR 1982 SC 937 State of U.P. vs. Mohd. Sharif.

53. Additionally, we find that the department is not correct in contending that the statements recorded during the vigilance enquiry did not form part of the file of the departmental enquiry and that the same were not relied upon by the Enquiry Officer. A perusal of the extracts of the findings of the Enquiry Officer noted by us in the foregoing paras, particularly the portions underlined by us, clearly show that the Enquiry Officer has relied upon some of the statements recorded during the

vigilance enquiry; while returning his findings. This is another reason to hold prejudice caused to the petitioner on account of not supplying statements of witnesses recorded during the preliminary vigilance enquiry.

54. Pertaining to the next violation complained of by the petitioner, we first need to determine whether the statements of Lata, Alka and Reshma were recorded at the departmental enquiry in the absence of the petitioner.

55. As already noted hereinabove, the order sheet dated December 09, 1998 recorded by the Enquiry Officer records that all the delinquent police officials and three female accused Lata, Alka and Reshma were present but their statement was not recorded. Why were the statements of Lata, Alka and Reshma not recorded on December 09, 1998 when the petitioner was present at the enquiry proceedings? We do not know. No reason whatsoever is emerging as to why the statements of Lata, Alka and Reshma were not recorded on December 09, 1998. Thereafter the statements of Lata, Alka and Reshma were recorded on December 14, 1998 when the petitioner was not present during the enquiry proceedings; as recorded in the order sheet dated December 14, 1998. Thus, the fact of the matter is that the statements of Lata, Alka and Reshma were recorded by the Enquiry Officer in the absence of the petitioner. What was the grave urgency which prompted the Enquiry Officer to record the statements of Lata, Alka and Reshma on December 14, 1998 in the absence of the petitioner? Surely, the Enquiry Officer could have adjourned the recording of statements of Lata, Alka and Reshma to another day.

56. Rule 16(iii) of the Delhi Police (Punishment and Appeal) Rules, 1980 reads as under:-

“If the accused police officer does not admit the misconduct, the E.O. shall proceed to record the evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given the opportunity to take notes of their statements and cross-examine them. The E.O. is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statement of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record.” (Emphasis Supplied)

57. It needs no gainsaying that the testimony of a witness has to be recorded in the presence of the person against whom such evidence is sought to be used. Unless the same is done, the person against whom such evidence is sought to be used, would not be able to ‘effectively’ cross-examination the witness. It is for this reason Rule 16(iii) prescribes that ‘as far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given the opportunity to take notes of their statements and cross-examine them’.

58. Undisputedly the statements of the three ladies recorded by the Enquiry Officer were not supplied to the petitioner and thus obviously he was handicapped in cross-examining them.

59. In view of the above, we hold that the Enquiry Officer committed an illegality in examining Lata, Alka and Reshma in the absence of the petitioner, particularly when the statements of Lata, Alka and Reshma were not recorded on the day when the petitioner was present at the enquiry proceedings and no reason whatsoever is forthcoming from the record of the departmental enquiry for said omission.

60. It is trite that the Courts can interfere with the orders passed by the departmental authorities where the enquiry proceedings against the delinquent have been held in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the findings or conclusions reached by the departmental authorities are based on no evidence or the finding is perverse i.e. no prudent person would reach the conclusion in view of the evidence led.

61. To appreciate the contention of the finding being perverse, we note that on July 31, 1996 a raid was conducted at Kashish Hotel by a police team headed by Inspector R.P.Tyagi and comprised of the petitioner and other delinquents forming the members of the team. Six persons were found involved in prostitution. They were arrested and a case under Immoral Trafficking (Prevention) Act, 1956 was registered against them. The personal search of the accused was conducted by Inspector R.P.Tyagi/female police officers in case of the female accused persons, and ₹2,400/- and ₹850/- was recovered from them as recorded in the seizure memos. All the accused persons were produced before the

Magistrate who remanded them to judicial custody. All the accused were released on bail within a span of 15 days from the date of their arrest. None of the accused complained to the Magistrate, before whom they were produced or senior police officers or their lawyers that the petitioner illegally extracted any money from them or harassed them. Nearly 40 days after the arrest of the accused on September 10, 1996, Madhubala, the wife of accused Raghubir, made a complaint to Sh.Y.S.Dadwal, the then Additional Commissioner of Police, alleging therein that the petitioner and other police officers had extorted sums of ₹25,000/-, ₹20,000/- and ₹15,000/- from Raghubir, Sukhmal and female accused respectively; and unauthorizedly used their car for a period of 14 days. In view thereof, Inspector Jagdev Singh was entrusted with the task of conducting a vigilance enquiry in order to ascertain the genuineness of the aforesaid complaint filed by Madhubala. Inspector Jagdev Singh submitted his report opining therein that the allegations leveled by Madhubala are correct. On July 17, 1998 Sh.Y.S.Dadwal passed an order for initiation of departmental action against the petitioner and other police officers.

62. In the meantime, DCP (East) acting as per the directions of Sh.Y.S.Dadwal (as stated by Inspector Jagdev Singh in the departmental enquiry) filed an application before the Magistrate dealing with the case registered against the accused persons seeking cancellation of said case. Vide order dated February 27, 1998 the Magistrate dismissed the aforesaid application filed by the police and took cognizance of the case registered against the accused persons. Accused Raghubir filed a revision petition before the Sessions Court assailing the legality of the order dated February 27, 1998, which petition was dismissed vide order dated

December 03, 1998. It is most significant to note here that the order dated December 03, 1998 passed by the Additional Sessions Judge records that Sh.Y.S.Dadwal had assured accused Raghubir Singh that the case in question registered against him would be closed. It is not out of place to mention here that the complaint made by the wife of Raghubir was addressed to Sh.Y.S.Dadwal. There was clearly some hanky-panky going on between Y.S. Dadwal and Raghubir, who was a man of dubious reputation, and involved in several cases relating to immoral trafficking of women.

63. Furthermore, the evidence adduced during the departmental enquiry shows that Inspector Jagdev Singh, who had conducted vigilance enquiry in the matter was also involved in this hanky-panky business. As many as three witnesses; viz. Const.Munesh PW-4, Pankaj Arora DW-5 and Const.Gurmail Singh DW-2, had stated that Inspector Jagdev Singh either forced them to give statements at the vigilance enquiry or append their signatures on some papers. It is noteworthy that accused Raghubir played a very prominent role in the vigilance enquiry, in that, he was present with Inspector Jagdev Singh at the time when he recorded statements of witnesses during the vigilance enquiry, as deposed to by many witnesses. Raghubir Singh was an accused in the case relating to a raid conducted at Kashish hotel on July 31, 1996. His wife Madhubala had leveled allegations against the police officers who were part of the police team which had conducted the raid on July 31, 1996. Insp.Jagdev Singh was entrusted with the task to conduct a vigilance enquiry in order to ascertain the genuineness of the complaint filed by Madhubala. Inspector Jagdev Singh had no business to be hobnobbing with accused Raghubir Singh while conducting vigilance enquiry. The presence of

Raghubir with Inspector Jagdev Singh at the time of conduct of vigilance enquiry clearly shows the nexus between accused Raghubir and Inspector Jagdev Singh. More startling is the statement of Ansar Ahmad PW-13 and P.M. Mahesh PW-5, the owner and manager of Kashish Hotel respectively, that accused Raghubir had asked Ansar to share the expenses spent in the vigilance enquiry conducted in connection with the complaint made by him against the police.

64. There are certain other circumstances which when seen with the conduct of the accused persons, of not complaining to the Magistrate or senior police officials or their lawyers about alleged atrocities committed upon them by the petitioner and other police officers during the period they remained in judicial custody clearly indicate that the allegations contained in the complaint made by wife of accused Raghubir are false and that said complaint was lodged with a view to weaken the case of the police against the accused persons. They are:-

(i) Sukhmal Jain has nowhere stated in his statement recorded in the departmental enquiry that the petitioner or any other police officer has extorted money from him;

(ii) The complaint lodged by wife of Raghubir merely states that a sum of ₹25,000/- was extorted by petitioner from Raghubir whereas Raghubir stated in his statement that the petitioner had also extorted money from him on 2 occasions, firstly a sum of ₹25,000/- and thereafter a sum of ₹95,000/-;

(iii) Raghubir had stated that he had withdrawn a sum of ₹25,000/- from his bank account on the day of his arrest whereas the bank record shows that a sum of ₹2,500/- was withdrawn by Raghubir on said day;

(iv) It is the claim of Lata, Alka and Reshma that ₹15,000/- was taken by the petitioner from the purse of Alka when they were brought to the police station after their arrest. The personal search of said accused persons was conducted at the hotel itself at the time of their arrest and their belongings were seized at that time including a sum of ₹850/- which was found in the money bag of Alka. When all their belongings were seized by the police at the time of conduct of their personal search at hotel then how come a sum of ₹15,000/- remained in the purse of Alka alleged to have been taken by the petitioner at the police station;

(v) There is marked variation between the particulars of the money taken by the petitioner given by Lata, Alka and Reshma. Whereas Alka refused to give answer to the question relating to particulars of money, Lata stated that notes taken by the petitioner were in denomination of 100 rupees and Reshma stated the denomination to be in 5 or 10 rupees;

(vi) Raghubir, Lata, Alka and Reshma did not even mention a word about the money taken by them from the petitioner in the application filed by them seeking return of articles seized by the police, which application was filed by them before the making of the complaint by wife of accused Raghubir;

(vii) Madhubala, wife of accused Raghubir, pleaded complete ignorance about the particulars of the car allegedly used by the petitioner including the particulars relating to even ownership, registration number and color of the car; and

(viii) Const. Gurmail Singh categorically denied the assertion of Inspector Jagdev Singh that the petitioner had handed over the keys of the car to the wife of Raghubir in his presence.

65. All the afore-noted material circumstances have been glossed over by the Enquiry Officer despite the petitioner bringing the same to his notice in his statement of defence. The perversity of the findings returned by the Enquiry Officer can be adjudged from the fact that the Enquiry Officer has concluded that the petitioner had extorted a sum of ₹20,000/- from Sukhmal while no such assertion was made by Sukhmal in his statement recorded in the departmental enquiry.

66. It is also noteworthy that save and except the petitioner, the Enquiry Officer did not find any major fault with the other delinquents and attributed only minor procedural lapses to them. However, when it came to the petitioner the Enquiry Officer blindly accepted the statements of Sukhmal, Lata, Alka and Reshma as correct and ignored the circumstances pointing towards the falsity of the allegations leveled by the said persons.

67. We find that the Disciplinary/Appellate Authority have merely reiterated the findings of the Enquiry Officer and have not applied their mind to the afore-noted circumstances pointed by us which were brought to their notice by the petitioner in the representation against the findings of the enquiry officer/appeal filed by him.

68. Similar is the case with the Tribunal. The Tribunal did not look into the record of the departmental enquiry by simply recording that at a domestic inquiry the standard of proof is preponderance of probability and as long as there is some evidence to sustain the finding of guilt, the Tribunal would not re-appreciate the evidence.

69. This is only a part of the law pertaining to domestic inquiries, where the standard of proof is reduced to strong probative inference

which can be drawn from the evidence as per the law declared by the Supreme Court in the decision reported as (1977) 2 SCC 491 State of Haryana & Anr. Vs. Rattan Singh.

70. But this is only one facet of the law. It is settled law that where the grievance is that material evidence is ignored by the Enquiry Officer and in spite of attention being drawn thereto of the disciplinary authority, neither has considered the same, it is the duty of the Tribunal to note the grievance with reference to the evidence statedly ignored and thereafter determine whether the same was material. For if, a trier of a fact ignores material evidence a serious jurisdictional infirmity comes into being. Corrective action has to be taken by taking into account the said material evidence and then decide which way the wind blows. Similarly, where the grievance is that it is a case of no evidence or perverse finding, it is the duty of the Tribunal to note the exact submission with reference to the manner in which the same is sought to be made good. For example, an indictment at a disciplinary enquiry may be on wholly inadmissible evidence such as hearsay; but not hearsay of a kind as was held admissible in Ratan Singh's case (supra). It would be the duty of the Tribunal, to after noting the precise grievance, deal with the same.

71. In view of above discussion, the impugned judgments dated March 25, 2008 and July 1, 2008 passed by the Tribunal are set aside. As a necessary corollary thereof, the application filed by the petitioner is allowed and the orders dated April 13, 2005 and June 29, 2006 passed by the Disciplinary and Appellate Authority respectively are set aside. The petitioner would be entitled to all consequential benefits.

72. Cost awarded in favour of the petitioner and against the respondents in sum of ₹25,000/-.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

AUGUST 23, 2013
mamta