

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
-
W.P.NOS.25028 AND 25452 OF 2013
-
COMMON ORDER (Per the Hon'ble Sri Justice G.Chandraiah)

Heard the learned Government Pleader for Services – I (Telangana) and the counsel for the contesting respondents.

2. Since the issue involved in both the writ petitions is connected and arises out of the common order passed by the Andhra Pradesh Administrative Tribunal in O.A.No.9181 and 9385 of 2011 dated 22.2.2013, they are heard together and are being disposed of by this common order.

3. The contesting respondents i.e., the 1st respondent in both the writ petitions have been working as constables in Kukatpally Police Station. Alleging that on the night of 6.7.2009, they went to the house of one M.Shiva Kumar, which is situated in the area called Gokul plots, which is within the jurisdiction of Miyapur Police Station, posed themselves as constables of Miyapur Police station and extorted an amount of Rs.4,300/- from him, by threatening to book a case against him for playing card and running prostitution. The said Shiva Kumar informed the incident to his friend Mr. Bali Reddy over phone and he in turn informed the same to the Sub Inspector of Police – K.Pakeerappa over phone. As per the instructions of Sub Inspector, the Miyapur Police, who were on patrolling duty, went to Malaysian township and found the 1st respondent in W.P.No.25028/2013 in drunken condition and took him to the police station on that night. Mr. Shiva Kumar refused to give complaint, though he identified the contesting respondents and one Balaraju, as constables, who extorted money from him on the previous day night. The respondents refunded the money and based on the preliminary enquiry conducted by Circle Inspector of Police, Miyapur, they were placed under suspension. Based on these allegations, the following charge was framed against them:

“Sri Lakshmana Raju, P.C. 2975, Sri Balaraj, P.C.4252 and Sri Sridhar, P.C., 258 of Kukatpally Police Station, Cyberabad have exhibited grave misconduct by extorting an amount of Rs.4,300/- from one Sri M.Shiva Kumar at Gokul Plots by threatening him on the plea of booking of a case (play cards) by posing themselves as Miyapur Police, violating Rule 3 – (1 to 3) of APCS (Conduct) Rules, 1964.”

4. Denying the above charge, the respondents submitted their written statement and not being satisfied with the same, enquiry officer was appointed and he conducted enquiry against all of them. During the course of enquiry, he examined V.Bal Reddy, as P.W.1, V.Nagendra Babu, S.I., of Police, Miyapur Police Station, as P.W.2, K.Ramulu, Head Constable of Miyapur Police Station as P.W.3, Y.Narasimha Reddy, Inspector of Police, Miyapur Police Station as P.W.4, K.Pakeerappa, S.I. of Police, Miyapur Police Station, as P.W.5, Sri Vijay Kumar, IPS, DCP as P.W.6 and marked the statements of the witnesses recorded during the course of preliminary enquiry and other documents as exhibits Ex.P-1 to P-8. Based on the evidence, the enquiry officer submitted his report holding the charges as proved and after serving copy of the enquiry report and calling for the remarks of the respondents, the Commissioner of Police, imposed the punishment of dismissal from service and the appeal filed by them also ended in dismissal. Hence, they filed O.A.Nos.9181 and 9385 of 2011 and by the impugned common order dated 22.2.2013, the Tribunal set aside the order of dismissal passed by the writ petitioners and allowed the O.As. Challenging the same, the Government filed the present writ petitions.

5. The learned Government Pleader appearing for the writ petitions vehemently contended that the Tribunal has not appreciated the material evidence available on record and only on the ground that the victim was not examined, set aside the order of dismissal passed by the disciplinary authority. He stated that strict rules of evidence are not applicable to departmental enquiries and only preponderance of probabilities were to be weighed and sufficiency or otherwise of evidence cannot be gone into and it has to be seen whether there is 'some evidence' pointing the guilt of delinquent employee. In support of this contention, the learned counsel relied on the decisions of the Apex Court reported in *STATE OF HARYANA V. RATTAN SINGH*^[1], and *NAND KISHORE PRASAD v. STATE OF BIHAR*^[2]. He submitted that in the instant case, the respondents, have extorted the amount from the victim and this fact was spoken to by one Bali Reddy, who was informed by the victim and in turn he informed the S.I. Police of Miyapur Police station, who caused the arrest of the respondents and the victim also identified them in the police station and the respondents returned the amount and before the enquiry officer, the official

witnesses and the Balireddy who gave the information to the S.I. of Police, have categorically deposed about the incident. Relying on the judgment of the Apex Court in J.D.JAIN v. MANAGEMENT OF THE STATE BANK OF INDIA^[3], he submitted that even assuming that there are no direct witnesses to the incident, but the evidence of other witnesses if taken to be as hearsay evidence, is admissible when it seeks to establish not the truth of the statement, but only the fact that it was made. He reiterated stating that the victim has identified the respondents and stated before the official witnesses about the incident and the official witnesses deposed about the same before the enquiry officer.

Therefore, all these facts and circumstances and the evidence on record, probablizes the act committed by the respondents and in view of this evidence on record, the enquiry officer rightly held that the respondents are guilty of the charge framed against them and the said finding of fact ought not to have been interfered with by the Tribunal. With these submissions, he sought to set aside the impugned common order of the Tribunal and to sustain the punishment imposed on the contesting respondents.

6. On the other hand, the learned counsel for the respondents supporting the impugned common order, submitted that in departmental enquiry, there is no dispute that there shall be 'some evidence', but the same shall be legally acceptable. In the present case, the victim who is the direct witness, was not examined and the findings are based on hearsay evidence. He stated that in the absence of evidence of the victim that the respondents demanded amount, based on other oral evidence, it cannot be presumed that the charge is proved. In support of this contention, the learned counsel relied on the judgment of the Apex Court in COMMISSIONER OF POLICE v. JAI BHAGWAN^[4]. With these submissions, he sought to dismiss the writ petitions.

7. In view of the above rival contentions the issue that arises for our consideration is whether the impugned common order passed by the Tribunal warrants any interference?

8. There is no dispute as contended by the learned Government Pleader for the writ petitioners that in departmental enquiries strict rules of evidence are not applicable and only the preponderance of probabilities should be weighed

and there should be some evidence to connect the delinquent. But it cannot be lost sight of that 'some evidence' shall be legally admissible and if the findings of the enquiry officer are reached based on no evidence or legally inadmissible evidence, then such findings are required to be interfered with.

9. In the present case, the charge against the respondents is that they demanded the amount from the victim on the threat of booking case. The department has not taken any steps to examine the victim, whose evidence would throw light on the charge leveled against the respondents. Further, as noted by the Tribunal, though the victim identified the delinquents in the police station as the persons who extorted money from him, no proceedings were prepared and got marked during the enquiry. The findings are recorded based on the evidence of other witnesses, who are not direct witnesses to the incident. The facts in the decision reported in *COMMR. OF POLICE v. JAI BHAGWAN* (supra), relied on by the counsel for the contesting respondents, would reveal that the department sought to prove the charge against the police constable therein for demanding illegal gratification, based on his return of the amount and without examining the complainant. The Apex Court held that as there is no clear proof of taking illegal gratification, proof of demand and receiving illegal gratification cannot be drawn from returning of the amount. The Apex Court held that non-examination of complainant during departmental proceedings, denied opportunity of cross-examination to delinquent and the same is in violation of rules. The relevant portion is as under:

"15. in the present case, although there is some evidence that an amount of Rs.100/- was returned by the respondent to the complainant but there is no such direct and reliable evidence produced by the appellants in the departmental proceedings which could clearly prove and establish that the respondent demanded and received an illegal gratification of the said denomination. It seems that the proof of taking such illegal gratification has been drawn from the evidence of returning of Rs.100/- to the complainant by way of a link up.

16. It also seems quite impracticable to presume that in the presence of so many passengers, the respondents could have extorted money. The allegation of receiving Rs.100/- as illegal gratification is framed on suspicions and possibilities while trying to link it up with the instance of returning back of Rs.100 by the respondent to the complainant. There are many other shortcomings in the entire investigation and the enquiry like the statement of Mrs. Ranjana Kapoor was not recorded by the Inspector and the Inspector also did not take down in writing and also attest the complaint made by her. The statement of S.P.Narang was also not recorded by the Inspector nor did the Inspector seize Rs.100 note nor note down its number. Mr. Narang was also not examined during the course of departmental proceedings. Non-examination of the complaint and P.S.Narang during the departmental proceedings has denied the respondent of his right of cross-examination and thus caused violation of Rule 16(iii) of the Delhi Police (F&A) Rules, 1980.

17. In the absence of such a definite / clear proof supporting the case of the

appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence.

18. Therefore, in view of the facts and circumstances of the present case at hand we have no hesitation to hold that the view taken by the High Court does not suffer from any infirmity and that the present is a case of no evidence and that there is violation of Rule 16(iii) of the Delhi Police (F&A) Rules, 1980. ”

10. In the present case, the alleged victim has not filed any complaint, nor was examined during the course of enquiry to prove the fact of extorting money from him. Therefore, the respondents lost the right of cross-examining him. Further, to prove the averments that the victim identified the respondents in the police station, as noted by the Tribunal, no proceedings were drafted and marked in the domestic enquiry. The further claim of the department is that the respondents forced the victim for money and as he has no money, he was made to go to ATM and withdraw the amount and for this the department sought to rely on the C.D. of the transaction in SBI ATM with regard to withdrawing of the amount by the victim Shiva Kumar. As rightly noted by the Tribunal mere withdrawal of the amount is itself not sufficient to show that it was paid to the respondents on being threatened by them. Thus in the absence of direct evidence of the alleged victim, it cannot be said that the charge against the respondents is proved. The Tribunal considering the facts and circumstances available on record, held that it is a case of no evidence and set aside the punishment of dismissal imposed by the writ petitioners and allowed the O.A. We do not find any reason to interfere with the impugned common order of the Tribunal and the issue framed is answered in the negative. The writ petitions are devoid of any merits and the same are liable to be dismissed.

11. The writ petitions are dismissed. No costs.

12. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

U.DURGA PRASAD RAO,J

DATE: 29--02—2016
AVS

[\[1\]](#) AIR 1977 SC 1512 (1)
[\[2\]](#) (1978)3 SCC 366
[\[3\]](#) (1982)1 SCC 143
[\[4\]](#) (2011)6 SCC 376