

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 2002/88

Date of decision: 17-08-1993

Shri Ram Chander

... Petitioner

vs.

Delhi Administration & ors....

Respondents

For the Petitioner ... Sh. Shyam Babu, Counsel.

For the Respondents ... Sh. D. N. Goberdhan, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUDIYAL, MEMBER (A)

JUDGEMENT

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

The petitioner, a Constable in the Delhi Police, is governed by the Delhi Police Act, 1978, (the Act) and the Delhi Police (Punishment & Appeal) Rules, 1980 (the Rules). He was subjected to a criminal trial for committing an alleged offence under Section 392 of the Indian Penal Code and was given a/clean acquittal. Thereafter, disciplinary proceedings were initiated, the charge of misconduct being precisely the same as was the charge in the criminal trial. The disciplinary proceedings are still pending. The orders of the Deputy Commissioner of Police directing disciplinary proceedings and the consequential orders passed thereafter are sought to be quashed. Further, a suitable

direction or order or writ in the nature of prohibition has been prayed for restraining the authority concerned from proceeding further in the disciplinary proceedings.

2. Two First Information Reports No.68/76 and 77/76 were lodged in the Police Station Civil Lines. In First Information Report No.68/76, it was alleged that on 3.2.76 at about 8.15 p.m. near Tilak Marg Road one Gopal Singh had committed robbery and later on 5.2.76 Gopal Singh along with other associates was apprehended. In second First Information Report No.77/76, the allegation was that Shri Gopal Singh along with his co-associates Ajmer Khan and Ram Chander (the petitioner) on 3.2.76 at about 6.15 p.m. robbed one Balkishan Sharma on Tilak Marg and on 5.2.76, the petitioner along with his associates was apprehended by Balkishan Sharma and one Inderjit Jolly along with Police party accompanied by certain witnesses including Rattan Lal and Tulsi Ram.

3. The criminal cases registered on the basis of the aforementioned First Information Reports, it appears, were tried together. By two separate judgements dated 24.1.81, the Metropolitan Magistrate convicted the accused in both the cases. In both the cases appeals were filed and the judgements passed therein were set aside by the appellate court vide its order dated 22.4.81 and the cases were remanded to the Trial court with certain directions.

4. In the remanded proceedings, Gopal Singh was convicted, however, the petitioner was acquitted.

5. On 25.8.87, the Deputy Commissioner of Police passed an order that a regular departmental enquiry under Section 21 of the Act be conducted against the petitioner and Constable Ajmer Khan. The crucial words in the said order are:-

" From the perusal of the judgement, it appears that the prosecution witnesses have been won over, which attracts Rule 12(1)(b) of the Delhi Police(Punishment and Appeal) Rules, 1980."

6. Rule 12 of the Rules may be extracted:-

" 12. Action following judicial acquittal- When a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

- (a) the criminal charge has failed on technical grounds; or
- (b) in the opinion of the court, or of the Deputy Commissioner of Police, the prosecution witnesses have been won over; or
- (c) the court has held in its judgement that an offence was actually committed and that suspicion rests upon the police officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on different charge; or
- (e) additional evidence for departmental proceedings is available."

7. The substance of the aforequoted Rule, as material, is, that a Police officer shall not be punished departmentally unless in the opinion of the Deputy Commissioner of Police, the prosecution witnesses have been won over. It is contended by Shri Shyam Babu, learned counsel, who appeared on behalf of the petitioner that there is nothing in the judgement of the Metropolitan Magistrate to indicate that the witnesses have been won over. Therefore, the

impugned order of the Deputy Commissioner of Police is based on the fact which is non-existent. For examining the contentions, the judgement of the Metropolitan Magistrate has to be scrutinised. In paragraph 5 of his judgement, the Magistrate has, amongst others, treated Rattan Lal and Tulsi Ram as material witnesses. In paragraph 10, the Magistrate takes note of the argument of the Public Prosecutor appearing for the State that the prosecution witnesses Rattan Lal and Tulsi Ram have been won over by the accused persons and, therefore, have not supported the prosecution case. In para 12, it is noted that Tulsi Ram and Rattan Lal were subjected to questions put by the court and in answer to those questions they stated that since on 5.2.76 emergency was enforced the Police officials had recorded their statements on their own. In paragraph 22, the Magistrate records the finding that the prosecution witnesses Rattan Lal and Tulsi Ram have not supported the prosecution story despite lengthy cross examination by the Assistant Public Prosecutor for the State. It is to be noted that the Magistrate, in spite of the specific arguments advanced on behalf of the State by the Assistant Public Prosecutor, has not recorded any finding that the prosecution witnesses Rattan Lal and Tulsi Ram have been won over. However, there can be no getting away from the fact that the Magistrate had not only himself put questions to the aforesaid two witnesses but also permitted their cross examination at length by the Assistant Public Prosecutor. The Deputy Commissioner of Police, it is to be presumed, carefully

read the judgement of the Magistrate and also took into account the legal implications of the court permitting the cross examination of the prosecution witnesses by the Public Prosecutor. On the material contained in the judgement of the Trial Court and in the aforesaid circumstances, a reasonable person could draw the inference that the prosecution witnesses had been won over. It cannot be said that the Deputy Commissioner of Police either acted irrationally or arbitrarily in recording his opinion that the prosecution witnesses had been won over. We, therefore, find no substance in the contention that the the opinion of the Deputy Commissioner is not based on any material to be found in the judgement of the Magistrate.

8. The learned counsel next urged that the Deputy Commissioner of Police could have formed the opinion, as he did, ~~xxxxx~~ only after the court had recorded a finding that the prosecution witnesses had been won over. This argument, if accepted, will render/ Rule 12(b) redundant. If the court had formed the opinion that the prosecution witnesses had been won over, departmental proceedings could have been initiated on the basis of the opinion of the court itself. The occasion for the Deputy Commissioner of Police forming the said opinion would not have arisen at all. In Rule 12(b), the word "or" is significant. It has been clearly used in a disjunctive sense. We, therefore, repel the contention.

9. On the basis of the certain old decisions of some High Courts, Shri Shyam Babu vehemently urged that the question of prosecution witnesses

having been won over could have only arisen if the court had declared them hostile. He submitted that it is neither the case of the respondents nor is there any indication in the judgement of the Magistrate that the prosecution witnesses Rattan Lal and Tulsi Ram had been declared hostile. This contention is untenable for the reasons given hereafter.

10. Section 154 of the Indian Evidence Act, 1872 provides that the court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

11. In SAT PAUL VS. DELHI ADMINISTRATION (AIR 1976 SC 294), it was observed:

the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms, "hostile" witness, "adverse" witness, "unfavourable" witness so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court. The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witness's demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy

of confusion, and conflict that had so long vexed the English Courts.

In the instant case, the court while exercising its discretion under Section 154 of the Indian Evidence Act, permitted the Public Prosecutor to cross-examine the prosecution witnesses. In the cross examination, the witnesses stuck to their guns and did not support the prosecution case. The Deputy Commissioner of Police, therefore, could reasonably infer that the said witnesses had been won over.

11. In HUKAM SINGH SAINI VS. COMMISSIONER OF POLICE AND OTHERS ((1987) 3 ATC 915), the facts were these. The petitioner, a Sub-Inspector in Delhi Police was charged with offences punishable under Section 161 of the Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. The Special Judge held him not guilty and acquitted him of all the charges. A departmental enquiry was ordered. The Inquiry Officer was proceeding with the enquiry on the basis of summary of allegation. From the summary of allegation, it appears, that the sole charge against the petitioner was of accepting illegal gratification, the charge for which he was prosecuted before the Special Judge. The charge of which the petitioner was acquitted and the charge which formed the departmental enquiry was one and the same.

12. The Tribunal quotes Rule 12 of the Rules and opines that having regard to the mandatory wording of the said Rule, only in the circumstances mentioned in that Rule a departmental proceeding could not be initiated and otherwise,

it is observed:-

" The plea taken by the respondents in their counter is that the prosecution witnesses were won over. That is a ground which is squarely covered by Rule 12(b) referred to above. A perusal of the judgement of the criminal court, however, shows that none of the witnesses examined for the prosecution had turned hostile. The learned Special Judge on an appreciation of the evidence, on record and in particular the prosecution evidence held that the charge was not proved. It is not a case where the accused was given a benefit of doubt or where the witnesses had turned hostile. If a witness were to turn hostile at the trial, the public prosecutor would have requested the court to declare him so and the learned Special Judge would have declared him so and permitted the prosecution to cross examine their witnesses. There would have been a specific reference in the judgement that certain prosecution witnesses had turned hostile. In the absence of any such material it cannot be concluded that the witnesses had turned hostile and that had resulted in acquittal so as to justify a departmental enquiry into the very same charge. Rule 12 bars any such enquiry."

13. This case and **HUKAM SINGH SAINI**'s case (supra) are distinguishable on facts. There, it appears, the prosecution witnesses were not subjected to cross-examination by the Public Prosecutor. There is nothing to indicate in the judgement that the Public Prosecutor had sought the permission of the court for cross-examining the prosecution witnesses. The Tribunal, as already indicated, had found that no prosecution witnesses had turned hostile. In those circumstances, the Tribunal observed that in the absence of any material, it could not be concluded that the witnesses had turned hostile and that had resulted in acquittal thereby justifying a departmental enquiry. In the instant case, as already indicated,

there was ample material to entitle the Deputy Commissioner of Police to form the opinion that the prosecution witnesses had been won over.

14. With respect to the learned Members deciding **HUKAM SINGH SAINI**'s case(supra), we are unable to subscribe to the view that, in the absence of a declaration that witnesses have turned hostile, it cannot be said that they have been won over. However, we need not refer this case to a larger Bench as in our opinion, the facts of this case are clearly distinguishable from the facts in the aforesaid case.

15. Lastly, in our opinion, the view taken by the learned Members in **HUKAM SINGH SAINI**'s case(supra) runs counter to the law declared by the Supreme Court in **SAT PAUL**'s case(supra).

16. No other point has been pressed in support of this OA.

17. The application fails and is dismissed. The interim order already passed stands automatically vacated. There shall be no order as to costs.

B.N.DHOUNDIYAL
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K.DHAON
(S.K.DHAON)
VICE-CHAIRMAN(J)

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