SUPREME COURT OF INDIA

Union of India & Ors.

Vs.

Rabinder Singh

C.A.No.7241of 2002

(J.M.Panchal and H.L.Gokhale,JJ.,)

29.09.2011

JUDGMENT

H.L.Gokhale,J.,

1. This appeal by Union of India through the Secretary to Government, Ministry of Defence seeks to challenge the judgment and order passed by a Division Bench of the Punjab and Haryana High Court in L.P.A. No.996 of 1991 dated 2.7.2001 whereby the Division Bench has allowed the appeal filed by the first respondent from the judgment and order rendered by a Single Judge of that Court dated 31.5.1991 in C.W.P. No.995-A of 1989 which had dismissed the said Writ Petition filed by the first respondent.

2. The Division Bench has allowed the said petition by its impugned order and set aside the proceedings, findings and sentence of the General Court Martial held during 24.6.1987 to 1.10.1987 against the first respondent by which he was awarded the punishment of Rigorous Imprisonment (R.I.) for one year and cashiering.

The facts leading to this appeal are as follows:-

3. The first respondent was deployed between 1.2.1984 and 3.10.1986 as the Commanding Officer of the 6 Armoured Regiment which was a new raising at the relevant time in the Indian Army. The unit was authorized for one signal special vehicle. In case such a vehicle was not held by the unit it was authorized to modify one vehicle with ad-hoc special finances for which it was authorized to claim 75% of Rs.950/- initially and claim the balance amount on completion of modification work.

4. It is the case of the appellant that the unit had sent a claim for 75% of the amount (i.e. Rs.450/- as per the old rates) for modification of one vehicle, but the same was returned for want of justifying documents by the audit authorities. Yet the respondent proceeded to order modification of some 65 vehicles in two lots, first 43 and thereafter 22. There is no dispute that he countersigned those bills, and claimed and received an amount of Rs.77,692/- by preferring four different claims. The case of the appellant is that not a single vehicle came to

be modified, the money was kept separately and the expenditure was personally controlled by the respondent. No such items necessary for modification were purchased, but fictitious documents and pre-receipted bills were procured. Though, the counter-foils of the cheques showed the names of some vendors, the amount was withdrawn by the respondent himself. When the annual stock- taking was done, the non-receipt of stores and false documentation having taken place was found entered in the records.

5. (i) This led to the conducting of the Court of Inquiry on 13.10.1986 to collect evidence and to make a report under Rule 177 of the Army Rules, 1954 framed under Section 191 of the Army Act, 1950. On conclusion of the inquiry a disciplinary action was directed against the respondent. (ii) Thereafter, the summary of evidence was recorded under Rule 23 of the Army Rules, wherein the respondent duly participated. Some 15 witnesses were examined in support of the prosecution, and the respondent cross- examined them. He was given the opportunity to make a statement in defence, but he declined to make it.

6. Thereafter, the case against the respondent was remanded for trial by a General Court Martial which was convened in accordance with the provisions under Chapter X of the Army Act. The respondent was tried for four charges. They were as follows:-

> "The accused, IC16714K Major Deol Rabinder Singh, SM, 6 Armoured Regiment, attached Headquarters 6(1) Armoured Brigade, an officer holding a permanent commission in the Regular Army is charged with:-
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> (1) such an offence as is mentioned in Clause (f) of Section 52 of the Army Act
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> (2) with intent to defraud, in that he, at field on 25 June 84, while commanding 6 Armoured Regiment, when authorized to claim modification grant in respect of only one truck one tonne 4 x 4 GS FFR, for Rs. 950/-, with intent to defraud, countersigned a contingent bill No.1096/LP/6/TS dated 25 June 84 for Rs.31692/- for claiming an advance of 75% entitlement of cost of modification of 43 vehicles, which was passed for Rs.31650/-, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles. Such an offence as is mentioned in clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 5 March 85, while commanding 6 Armoured Regiment, with intent to defraud, countersigned a contingent bill no.1965/ULPG/85/TS dated 5 March 85 for Rs.20962.50 for claiming an advance of 75% entitlement of cost of modification of 22 vehicles, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles. Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 9 Feb 85, while commanding 6 Armoured Regiment, with intent to defraud, countersigned a final contingent bill No.1965/LP/02/TS dated 9 Feb 85 for Rs.18150/- for claiming the balance of the cost of modification of vehicles, which was passed for Rs.18149.98 well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles. Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 9 Sep 85, while commanding 6 Armoured

> Regiment, with intent to defraud, countersigned a final contingent bill No.1965/LP/04/TS dated 9 Sep 85 for Rs.6987.50/- for claiming the balance of the cost of modification of vehicles, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles."

7. The General Court Martial found him guilty of all those four charges, and awarded punishment of R.I. for one year and cashiering. The proceedings were thoroughly reviewed by the Deputy Judge-Advocate General, Headquarter, Western Command who made the statutory report thereon. These proceedings were confirmed by the confirming authority on 20.6.1988 in terms of Sections 153 and 154 of the Army Act. The respondent preferred a Post Confirmation Petition under Section 164 of the Army Act which was rejected by the Chief of the Army. This led the respondent to file the Writ Petition as stated above which was dismissed but the Appeal therefrom was allowed leading to the present Civil Appeal by special leave.

8. We have heard Shri Parag P. Tripathi, learned Additional Solicitor General appearing on behalf of the appellant and Shri Seeraj Bagga, learned counsel appearing on behalf of the respondent.

9. Before we deal with the submissions by the rival counsel, we may note that the respondent was charged under Section 52 (f) of the Army Act, 1950 and the Section was specifically referred in the charges leveled against him.

Section 52 reads as follows:-

> "52. Offences in respect of property - Any person subject to this Act who commits any of the following offences, that is to say,-
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> (a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or
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> (b) dishonestly misappropriates or converts to his own use any such property; or
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> (c) commits criminal breach of trust in respect of any such property; or
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> (d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or
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> (e) willfully destroys or injures any property of the Government entrusted to him; or
>
> (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, shall, on conviction by court-martial, be

liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned."

10. Shri Tripathi learned ASG appearing for the appellant submitted that the Division Bench erred in holding that the particulars of the charges did not include the wrongful gain to the respondent and corresponding loss to the army, nor was it proved, and therefore the charge of doing something with intent to defraud had not been conclusively proved. In his submission, sub-section (f) is in two parts. In fact, the Division Bench of the High Court also accepted that there are two parts of this Section. The respondent was charged with the first part which is `doing something with intent to defraud'. Therefore, it was not necessary to mention in the charge the second part of the sub-section which covers `wrongful gain to one person or wrongful loss to another'.

11. The offence with which the respondent was charged was doing something with intent to defraud. According to the respondent, the act attributed to him was only to countersign the contingent bills. The fact is that the Army got defrauded by this countersigning of the contingent bills by the respondent, inasmuch as no such purchases were authorized and in fact no modification of the vehicles was done. That being so, the charge had been established. The respondent cannot escape from his responsibility. It was pointed out on behalf of the appellant that assuming that the latter part of section 52 (f) was not specifically mentioned in the charge, no prejudice was caused to the respondent thereby. He fully understood the charges and participated in the proceedings.

12. Shri Seeraj Bagga, learned counsel for the respondent on the other hand, submitted that Rule 30 (4) and Rule 42 (b) of the Army Rules mandatorily require the appellant to make the charges specifically. His submission was that the charges were not specific and the respondent did not get an idea with respect to them and, therefore, he suffered in the proceedings. We may quote these rules. They read as follows:-

> "Rule 30(4). The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence."
>
> "Rule 42 (b). That such charge disclose an offence under the Act and is framed in accordance with the rules, and is so explicit as to enable the accused readily to understand what he has to answer."

Shri Bagga submitted that no evidence was produced with respect to wrongful gain by the respondent and, therefore, the Division Bench was right in interfering with the judgment rendered by the Single Judge as well as in the General Court- Martial. Consideration of rival submissions -

13. We have noted the submissions of both the counsels. When we see the judgment rendered by the Single Judge of the High Court we find that he has held in paragraph 19 of his judgment that the findings of the General Court Martial were duly supported by the

evidence on record, and the punishment had been awarded considering the gravity of the offence. In paragraph 18, he has also held that the respondent was afforded opportunity to defend his case, and there was neither any illegality in the conduct of the trial nor any injustice caused to him.

14. The Division Bench, however, held that the only allegation leveled against the first respondent was that he had countersigned the contingent bills for claiming the cost of modifications of the vehicles, but there was no charge of wrongful gain against him. The Division Bench, however, ignored the fact that this countersigning led to withdrawal of an amount of Rs.77,692/- by the respondent for certain purchases which were neither authorized nor effected. The fact that the respondent had countersigned the contingent bills was never in dispute. The appellant placed on record the necessary documentary and oral evidence in support of the charges during the course of the enquiry which was conducted as per the provisions of the Army Act. We have also been taken through the record of the enquiry. It showed that these amounts were supposed to have been paid to some shops but, in fact, no such purchases were effected. The respondent could not give any explanation which could be accepted. The Division Bench has clearly erred in ignoring this material evidence on record which clearly shows that the Army did suffer wrongful loss.

15. The Division Bench also took the view that the allegation against the respondent did not come within the purview of intent to defraud. This is because to establish the intent to defraud, there must be a corresponding injury, actual or possible, resulting from such conduct. The Army Act lays down in Section 3 (xxv) that the expressions which are not defined under this Act but are defined under the Indian Penal Code, 1860 (Code for short) shall be deemed to have the same meaning as in the code. The Division Bench, therefore, looked to the definition of `dishonestly' in Section 24 and of `Falsification of accounts' in section 477A of the code. In that context, it has referred to a judgment of this Court in S. Harnam Singh Vs. State (Delhi Administration) reported in [AIR 1976 SC 2140]. In that matter, the appellant was working as a loading clerk in Northern Railways, New Delhi and he was tried under Section 477A and Section 120B of the Code read with Section 5(2) of the Prevention of Corruption Act. While dealing with Section 477A, this Court held in paragraph 13 of the judgment that in order to bring home an offence under this Section, one of the necessary ingredients was that the accused had willfully and with intent to defraud acted in a particular manner. The Code, however, does not contain a definition of the words `intent to defraud'. This Court, therefore, observed in paragraph 18 as follows:-

> "18.....The Code does not contain any precise and specific definition of the words "intent to defraud". However, it has been settled by a catena of authorities that "intent to defraud" contains two elements viz. deceit and injury. A person is said to deceive another when by practising "suggestio falsi" or "suppressio veri" or both he intentionally induces another to believe a thing to be true, which he knows to be false or does not believe to be true. "Injury" has been defined in Section 44 of the Code as denoting "any harm whatever illegally caused to any person, in body, mind, reputation or property"."

It was submitted on behalf of the respondent that in the instant case, it was not shown that there was any wrongful gain on the part of the respondent and, therefore, the Division Bench rightly interfered in the order passed by the learned Single Judge as well as by the General Court Martial.

16. If we see the text of the charges, they clearly mention that the respondent claimed advance for 43 vehicles initially and then 22 vehicles subsequently by countersigning the contingent bills knowing fully well that his Regiment was not authorized to claim such grants. Thus, the charges are very clear, and the respondent cannot take advantage of Rule 30(4) and Rule 42(b), in any manner whatsoever. The Army had led additional evidence to prove that the amount was supposed to have been passed on to certain shops but the necessary purchases were in fact not made. In *Dr. Vimla Vs. Delhi Administration reported in*[1] a bench of four judges of this Court was concerned with the offence of making a false document as defined in Section 464 of the Code. In paragraph 5 of its judgment the Court noted that Section 464 uses two adverbs `dishonestly' and `fraudulently', and they have to be given their different meanings. It further noted that while the term `dishonestly' as defined under Section 24 of IPC, talks about wrongful pecuniary/economic gain to one and wrongful loss to another, the expression fraudulent is wider and includes any kind of injury/harm to body, mind, reputation inter-alia. The term injury would include non-economic/non-pecuniary loss also. This explanation shows that the term `fraudulent' is wider as against the term `dishonesty'. The Court summarized the propositions in paragraph 14 of the judgment in the following words:-

> "14. To summarize: the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others In short, it is a non-economic or non- pecuniary loss....."

17. In the instant case, there was an economic loss suffered by Army, since an amount was allegedly expended for certain purchases when the said purchases were not authorized. Besides, the expenditure which was supposed to have been incurred for purchasing the necessary items was, in fact found to have been not incurred for that purpose. There was a complete non-utilisation of amount for the purpose for which it was claimed to have been sought. The evidence brought on record is sufficient enough to come to the conclusion that there was deceit and injury. Therefore, it was clear that Section 52 (f) of the Act would get attracted since the respondent had acted with intent to defraud within the explanation of the concept as rendered by this Court in S. Harnam Singh (supra) which had specifically referred to and followed the law laid down earlier in Dr. Vimla (supra). We accept the submission of Shri Tripathi that the two parts of Section 52 (f) are disjunctive, which can also be seen from the fact that there is a comma and the conjunction `or' between the two parts of this sub-section, viz (i) does any other thing with intend to defraud and (ii) to cause wrongful gain to one person or wrongful loss to another person. If the legislature wanted both these parts to be read together, it would have used the conjunction `and'. As we have noted earlier in Dr. Vimla (supra) it was held that the term `fraudulently' is wider than the term `dishonestly'

which however, requires a wrongful gain and a wrongful loss. The appellants had charged the respondents for acting with `intent to defraud', and therefore it was not necessary for the appellants to refer to the second part of Section 52 (f) in the charge. The reliance by the Division Bench on the judgment in S.Harnam Singh (supra) to justify the conclusions drawn by it was clearly erroneous.

18. The respondent had full opportunity to defend. All the procedures and steps at various levels, as required by the Army Act were followed and it is, thereafter only that the respondent was cashiered and sentenced to R.I. for one year. There was no allegation of malafide intention. Assuming that the charge of wrongful gain to the respondent was not specifically averred in the charges, the accused clearly understood the charge of `intent to defraud' and he defended the same. He fully participated in the proceedings and there was no violation of any procedural provision causing him prejudice. The Courts are not expected to interfere in such situations (see *Major G.S. Sodhi Vs. Union of India reported in*[2]. The armed forces are known for their integrity and reputation. The senior officers of the Armed Forces are expected to be men of integrity and character. When any such charge is proved against a senior officer, the reputation of the Army also gets affected. Therefore, any officer indulging into such acts could no longer be retained in the services of the Army, and the order passed by the General Court Martial could not be faulted.

19. In our view, the learned Single Judge was right in passing the order whereby he declined to interfere into the decision rendered by the General Court Martial. There was no reason for the Division Bench to interfere in that order in an intra-Court appeal. The order of the learned Single Judge in no way could be said to be contrary to law or perverse. On the other hand, we would say that the Division Bench has clearly erred in exercising its appellate power when there was no occasion or reason to exercise the same.

20. In the circumstances, we allow this appeal and set-aside the order passed by the Division Bench, and confirm the one passed by the learned Single Judge. Consequently, the Writ Petition filed by the respondent stands dismissed, though we do not order any cost against the respondent.

Judgment Referred.

[1]*AIR 1963 SC 1572*
[2]*(1991) 2 SCC 0382*