

Before Rajiv Narain Raina, J.

KATAR SINGH —Petitioner

versus

STATE OF HARYANA AND OTHERS —Respondents

CWP No.17818 of 2013

August 16, 2013

Constitution of India, 1950 - Art. 226 - Narcotic Drugs and Psychotropic Substances Act, 1985 - S. 15 - Petitioner, a Head Constable in police was charged for offences under S.15 of the NDPS Act - Subsequently acquitted by giving benefit of doubt - However, trial Court recorded that conduct of investigating officer not up to the mark as he did not depose qua the relevant testimony - Clear attempt to bail out a fellow police officer - Simultaneously a departmental inquiry initiated against the Petitioner - Finding by inquiry officer that petitioner had secured acquittal by manipulating and ensuring that proper evidence was not led - Based on above finding, punishment of stoppage of two future annual increments with permanent effect imposed - Petitioner's appeal and revision dismissed - In writ petition before the High Court, held that though acquittal giving benefit of doubt does not suggest that a person is not innocent, but having regard to flawed and manipulated evidence before the trial court, no interference was called for, particularly when the investigating officer was castigated by the criminal court - Writ petition dismissed.

Held, that there is a little doubt for the proposition that giving of benefit of doubt as reason for acquittal is not to suggest that the man is not innocent. I would agree with Dr. Redhu that if the man is punished only on account of the fact that he was given benefit of doubt by the trial Court may not be sufficient if the fact of the gravamen of the domestic charge of misconduct is discernible to the naked eye that there was abject failure of the prosecution to bring home the charge rooted in faulty investigation. The Special Judge, Sonapat has recorded that the SHO Ramphal while appearing in the witness box did not depose to the relevant testimony which he ought

to have done. The finding seen in reality is that he bailed out the petitioner, a fellow policeman from a drug charge. I am afraid, the petitioner can have no benefit of faulty investigation and tailored deposition of prosecution witnesses. It appears rather plain to me that a policeman was ultimately protecting a kinsmen little knowing the consequences of his actions when tested years later in judicial review exercised by this Court under Art. 226 of the Constitution of India. The conduct of the SHO Inspector Ramphal deserves to be put under the scanner and I would, therefore, direct the Director General of Police, Haryana to personally look into this aspect since he has had no occasion to examine this case which ended on its administrative side before the Additional Director General of Police, Administration, Haryana-cum-Revision Authority.

(Para 8)

Further held, that I have no reason to hold that the reason assigned by the punishing authority is either improper or irrelevant or not germane to the punishment imposed. The Special Judge, Sonapat has virtually passed strictures against SHO Inspector Ramphal. Therefore, the doubt remains and an overwhelming doubt is sufficient pressure on the mind of a reasonable man to reach the same conclusion as arrived at by the Senior Superintendent of Police, Sonapat in his order dated 23.01.2012. The by product of the findings of the Special Judge on dishonest investigation of a serious drug charge inhibit me to interfere in the matter. The petitioner may be innocent of the charge for the rest of the world but not in the world of a disciplined force. The burden of proof of drug dealing by a policeman on object failure of prosecution to support the prosecution case initiated by it after investigation is light in my view. Trial Courts are not meant to be used for personal ends or bargaining counters by corrupt policemen. The police force should not bring a charge against a policeman and put him to trial only to later make a deal by withholding oral testimony to derail the prosecution case. This Court is conscious that honorable acquittal and acquittal by giving the benefit of doubt have little difference. But in this case this question does not arise because the benefit of doubt which has led to acquittal rests on the slender balance of failure of the Investigation officer and the SHO Ramphal to honestly depose in support of the prosecution case based on the challan presented.

(Para 9)

Suresh Kumar Redhu, Advocate, *for the petitioner*.

RAJIV NARAIN RAINA, J.

(1) A charge was laid against the petitioner, an Exemptee Head Constable (EHC) of grave misconduct while posted at Police Station Murthal of drug dealing. This was on a disclosure statement of one Sonu Mandal r/o Uttar Pradesh in the course of investigation that the petitioner was involved in sale of contraband poppy straw at Satnam Dhaba, Grand Trunk Road, Murthal to truck drivers and other wayside customers. A criminal case was registered against the petitioner in FIR No.25 dated 22.01.2009 at Police Station Murthal for offences under S.15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The Special Judge, Sonapat was constrained after trial to acquit the accused including the petitioner by judgment dated 07.02.2011 by giving the accused the benefit of doubt. The trial Court expressed its anguish on the conduct of the Investigating Officer and SHO Ramphal who derelicted in duty by not deposing to relevant testimony which he ought to have done in the witness box to bring home the charge of which he was part and parcel culminating in presentation of challan before the Special Judge. The Special Judge in his order recorded as follows:-

“There is yet another serious infirmity which has remained unexplained. The investigating officer has stated that when the two samples and the residue parcel were produced in the Court of learned Chief Judicial Magistrate, Sonapat on 23.1.2009 than the Chief Judicial Magistrate, Sonapat Shri R.P. Goel, who affixed his own seal on the parcels and initialed them also. However, neither there is any initials were found nor any of his seal on the sample which was received in Forensic Science Laboratory, Madhuban as is clear from the report Ex. PID, which shows the seal of ‘RS’ and ‘SS’ and ‘RP’ on the sample parcels. Meaning thereby that the sample was not the same which was duly signed and sealed by the learned Chief Judicial Magistrate, Sonapat also besides the investigating officer Rajender Singh, Deputy Superintendent of Police Banwari Lal and Station House Officer Inspector Ramphal.

51. *When there are so many infidelities in the prosecution case and there were contradictions in the statements of the official witnesses, there was no need for any independent corroboration but as per the prosecution and as per the statement of the investigating officer no person from the public was even asked to join in the investigation. Therefore, the accused are certainly entitled to be acquitted.*

52. *In view of the discussion above, the prosecution has miserably failed to prove its case against the accused Somu Mandal as well he too entitled to be acquitted.*

53. *Before parting with the judgment, it must be observed that the conduct of the investigating officer and the then Station House Officer Inspector Ramphal had not been up to the mark. Neither the investigation officer seems to have been done his duty well nor the then Station House Officer Inspector Ramphal who while appearing into the witness box did not dispose the relevant testimony which he ought to have done. Proper action against such defaulting officials in accordance with the conduct rules should be taken by the appropriate authority.*

54. *For the reasons recorded above, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt against any of the three accused and giving the accused benefit of doubt all of them are acquitted of the charges framed against them."*

(2) Alongside the criminal trial, a departmental enquiry was initiated against the petitioner on 24.01.2009 on the same charge. The petitioner was placed under suspension and the Deputy Superintendent of Police, City Sonapat was appointed enquiry officer. The report went against the petitioner. The charge based on the story in the criminal trial was proved by returning a finding that the petitioner had secured acquittal "*due to not giving proper evidence by the prosecution witnesses before the Court*". Therefore, the pleaded case of the petitioner in paragraph 6 of the writ petition that the reason for bringing home the charge in the domestic enquiry that the petitioner was acquitted by giving benefit of doubt and not having secured honorable acquittal is not entirely true.

(3) On the basis of the findings arrived at in the enquiry proceedings, the punishing authority, i.e., the Senior Superintendent of Police, Sonapat while agreeing with the findings recorded on 29.12.2011 imposed major punishment of stoppage of two future annual increments with permanent effect by the impugned order dated 23.01.2012 (P-3).

(4) Dissatisfied with the punishment order, the petitioner filed an appeal before the Inspector General of Police, Rohtak Range, Rohtak which was rejected by order dated 04.03.2012 (P-5). The revision petition brought before the Additional Director General of Police, Administration, Haryana cum-Revision Authority failed on 10.12.2012 (P-7).

(5) This petition has been filed assailing the three orders confirming punishment.

(6) Heard learned counsel for the parties.

(7) Dr. Redhu relies on the judgment of the Supreme Court in *Roop Singh Negi versus Punjab National Bank and others (1)*, and the Division Bench decisions of this Court rendered in *Shiv Kumar Goel versus State of Haryana and another (2)*, *Smt. Poonam Rani versus Uttar Haryana Bijli Vitran Nigam Ltd. (3)*, and *Shashi Kumar vs. Uttar Haryana Bijli Vitran Nigam and another (4)*. There is no doubt with the legal propositions enunciated in these decisions. However, in none of these cases did the trial court pass strictures against prosecution witnesses belonging to the police department in actively helping out a policeman and suborning justice.

(8) That the standard of proof required in a criminal trial and in disciplinary proceedings are different in degrees is not open to any doubt whatsoever. It is sufficient in domestic enquiries to bring home the charge of preponderance of probabilities. This is not a case where the benefit of doubt has been acquitted with honorable acquitting. There is a little doubt for the proposition that giving of benefit of doubt as reason for acquittal is not to suggest that the man is not innocent. I would agree with Dr. Redhu

(1) 2009(2) SCC 570

(2) 2007(1) SC 739

(3) 2008(1) SC 819

(4) 2005 (1) SC 576

that if the man is punished only on account of the fact that he was given benefit of doubt by the trial Court may not be sufficient if the fact of the gravamen of the domestic charge of misconduct is discernible to the naked eye that there was abject failure of the prosecution to bring home the charge rooted in faulty investigation. The Special Judge, Sonapat has recorded that the SHO Ramphal while appearing in the witness box did not depose to the relevant testimony which he ought to have done. The finding seen in reality is that he bailed out the petitioner, a fellow policeman from a drug charge. I am afraid, the petitioner can have no benefit of faulty investigation and tailored deposition of prosecution witnesses. It appears rather plain to me that a policeman was ultimately protecting a kinsmen little knowing the consequences of his actions when tested years later in judicial review exercised by this Court under Art. 226 of the Constitution of India. The conduct of the SHO Inspector Ramphal deserves to be put under the scanner and I would, therefore, direct the Director General of Police, Haryana to personally look into this aspect since he has had no occasion to examine this case which ended on its administrative side before the Additional Director General of Police, Administration, Haryana-cum-Revision Authority.

(9) I have no reason to hold that the reason assigned by the punishing authority is either improper or irrelevant or not germane to the punishment imposed. The Special Judge, Sonapat has virtually passed strictures against SHO Inspector Ramphal. Therefore, the doubt remains and an overwhelming doubt is sufficient pressure on the mind of a reasonable man to reach the same conclusion as arrived at by the Senior Superintendent of Police, Sonapat in his order dated 23.01.2012. The by product of the findings of the Special Judge on dishonest investigation of a serious drug charge inhibit me to interfere in the matter. The petitioner may be innocent of the charge for the rest of the world but not in the world of a disciplined force. The burden of proof of drug dealing by a policeman on abject failure of prosecution to support the prosecution case initiated by it after investigation is light in my view. Trial Courts are not meant to be used for personal ends or bargaining counters by corrupt policemen. The police force should not bring a charge against a policeman and put him to trial only to later make a deal by withholding oral testimony to derail the prosecution case. This Court is conscious that honorable acquittal and acquittal by giving the benefit

of doubt have little difference. But in this case this question does not arise because the benefit of doubt which has led to acquittal rests on the slender balance of failure of the Investigation officer and the SIO Ramphal to honestly depose in support of the prosecution case based on the *challan* presented.

(10) For the foregoing reasons, I would dismiss this petition.
Ordered accordingly.

P.S. Bajwa