

Sunil Kumar Vs Telco Ltd.

Court: Jharkhand High Court

Date of Decision: Nov. 22, 2010

Citation: (2011) 1 JLJR 488 : (2011) 1 JCR 377 : (2011) 3 LLJ 682 : (2011) LLR 611

Hon'ble Judges: Bhagwati Prasad, C.J; Poonam Srivastava, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard counsel for the Appellant.

2. The Appellant before us was an employee as Pharmasist. He was found in possession of certain drugs kept in the dickey of his scooter

regarding which he had no explanation to offer. His case was that these drugs, which were found from the dickey of his scooter which was opened

by him after taking out the key from his own pocket, were not kept by him. It was claimed by the Appellant that it had been planted by somebody

else. By this explanation the employee wanted to say that he was not the person responsible for keeping the drugs in his scooter"s dickey. He was

tried at the departmental proceeding and it was held that he was guilty of stealing the same from the department in which he was working and he

was ordered to be punished.

3. The matter was taken up by the Labour Court and the Labour Court, after exercising its power u/s 11A of the Act, disposed of the matter by

coming to the conclusion that the findings of the enquiry as arrived at are not vitiated. Orders of the Labour Court was challenged before the Single

Judge of this Court and the learned Single Judge found that there was nothing wrong in the judgment of the Labour Court and the findings arrived

at by it were perfect.

4. The aforesaid orders have been challenged before us in this LPA on the ground that the ownership of the drugs recovered at the instance of the

Appellant was not established in the Labour Court. On being asked specifically whether, at the time when the issues were being framed, any

question was raised by the Appellant that the issue regarding ownership was required to be framed, learned Counsel for the Appellant was not in a

position to tell anything. It can not, therefore, be said that this aspect was pressed before the Labour Court, that this issue was required to

be framed. In view of the fact that this question has arisen in the mind of the lawyer at a later stage and this was not pressed at appropriate stage,

we cannot say that the ownership of the drugs was at all a question which was required to be gone into. There was no convincing explanation of

the Appellant as to how the drugs came into his scooter's dickey. Simply asserting that the drugs were kept by somebody else in his scooter, is a

kind of explanation which stands with no supportive evidence. No motive of third person has been brought on record or pressed to establish that

the drugs had been planted by somebody else in Appellant's scooter's dickey. If this fact that the drugs were kept in his scooter by somebody

else is not found supported by any evidence whatsoever, then mere assertion of the employee that it was kept by somebody else cannot be said to

be of any value. The drugs were not found in his conscious possession cannot be disputed. Once it is held that it was from the possession of the

Appellant, then the onus was on the Appellant to prove otherwise and the same was not claimed to be his own property, then the allegation that

these were stolen cannot be said to be without foundation.

5. In the aforesaid background, it was not required to be proved that these were the drugs purchased by the department by producing cash

memos etc. It can be said that this was a kind of a trial, in which it was not required. In the departmental proceeding, the Appellant only denied the

allegation. Sufficient evidence were led by the department. The rules of evidence do not *stricto sensu* apply in departmental proceeding. In any

case, the argument of the learned Counsel that this question should have been answered by labour court does not have any support from law or

fact. If no such attempt before the labour court was made to raise the question, no fault can be found in this order impugned. Appellant never

raised any grievance for getting the issues amended. It is noteworthy that the Appellant was earlier in another case found stealing drugs and this

was the second delinquency. We do not think that any illegality has been committed by the courts below. There is no force in this appeal, which is

accordingly dismissed.