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(2013) 08 DEL CK 0366

Delhi High Court

Case No: Writ Petition (C) 1840 of 2002

Sh. Jitender Kumar

APPELLANT

Vs

Govt. of NCT of Delhi

RESPONDENT

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**Date of Decision:** Aug. 13, 2013

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 186, 224, 353

**Hon'ble Judges:** V. Kameswar Rao, J; Pradeep Nandrajog, J

**Bench:** Division Bench

**Advocate:** Shekhar Kumar, for the Appellant;

**Final Decision:** Dismissed

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### Judgement

Pradeep Nandrajog, J.

On December 29, 1996, HC Dalip Singh (examined as PW-3 at the domestic inquiry) was performing duty as a Duty Officer at P.S. Chanakyapuri from 4.00 PM to 12.00 midnight when he received a telephonic message that two Constables who were armed were teasing public at Vinay Marg. Recording DD No. 13A he handed over the same to ASI Bankey Bihari (examined as PW-6 at the domestic inquiry) who proceeded to investigate. Soon thereafter the Security Officer of Ashoka Hotel informed him over telephone that police personnel who were armed had snatched a wrist watch and money from a worker of Ashoka Hotel which fact was recorded by HC Dalip Singh vide DD No. 14A. At 11.15 PM the SHO of the Police Station Inspector Sukesh Singh (examined as PW-5 at the domestic inquiry) alongwith ASI Bankey Bihari brought HC Satbir Singh and Ct. Jitender (the petitioner) to the Police Station and during their personal search a wrist watch and Rs. 190/- was recovered from the possession of HC Satbir Singh. Whereas Ct. Jitender i.e. the petitioner handed over the Rifle which was issued to him, HC Satbir Singh refused to hand over possession of the pistol and when HC Dalip Singh tried to take the pistol from HC Satbir Singh he aimed the loaded pistol at him and thereafter Ct. Jitender and HC Satbir Singh walked out of the Police Station. Aforesaid facts have been deposed to by HC Dalip Singh and corroborated by Inspector Sukesh Singh as also ASI Bankey

Bihari.

2. The witness to the recovery of a wrist watch and Rs. 190/- are not only the three police officials above noted but also Inspector D.C. Solanki (PW-1) and Ct. Pawan Kumar (PW-8).

3. In addition, ASI Bankey Bihari has deposed that on receipt of DD No. 13A when he reached Ashoka Hotel he recorded the statement of one Sanjay Kumar the victim who was robbed and further that the complainant had identified HC Satbir Singh and Ct. Jitender as the police personnel who had robbed him when all officials on patrolling duty were summoned at Afghanistan Embassy.

4. For reasons unknown the complainant Sanjay Kumar, was not examined as a prosecution witness at the domestic inquiry but was examined by the petitioner as a defence witness who affirmed being robbed by two policemen but denied that HC Satbir Singh and the petitioner were the two policemen. However, he admitted that within 10 to 15 minutes the SHO showed him a wrist watch and Rs. 190/- which he admitted being the property of which he was deprived.

5. In view of the aforesaid evidence the petitioner as also HC Satbir Singh have been found guilty of having robbed Sanjay Kumar.

6. Pertaining to the incident, an FIR for the offence of robbery as also the offence of obstructing a Government servant in discharge of his duties was registered against HC Satbir Singh and the petitioner who were acquitted for the offence of robbery but were convicted for the offence punishable u/s 224 IPC. HC Satbir Singh has been convicted for offences punishable u/s 353 and Section 186 IPC.

7. The decision acquitting petitioner and HC Satbir Singh of the charge of robbery would reveal that the complainant Sanjay Kumar who appeared as PW-1 refused to identify the petitioner and HC Satbir Singh as the two police officials who had robbed him. He only stood by the version of being robbed of a wrist watch and Rs. 190/- by two police personnel.

8. The reason given by the learned Trial Judge to convict both accused for the offence punishable u/s 224 IPC is the testimony of the police officers that the two illegally obstructed lawful apprehension. HC Satbir Singh was convicted for the offence punishable u/s 353 IPC on account of assaulting a public servant who was executing public duty and for the offence punishable u/s 186 IPC for same act. Notwithstanding the wrist watch Ex. P-1, and the currency notes Ex. P-5 being proved to be recovered from HC Satbir Singh, the learned Trial Judge held that the same could not be treated as stolen property for the reason the Public Prosecutor did not show Ex. P-1 and Ex. P-5 to Sanjay Kumar who was examined as PW-1 and in the absence of Sanjay Kumar identifying the watch to be the stolen property or Rs. 190/- stolen from him, the learned Judge ignored said evidence.

9. Challenge by the petitioner to the penalty order removing him from service failed before the Tribunal when OA No. 434/2001 filed by him was dismissed vide impugned order dated October 15, 2001.
10. The contention urged before us today is by relying upon the decision of the Supreme Court reported as [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), In said case the criminal and the departmental proceedings were based on identical set of facts, namely, raid conducted at the residence of Capt. M. Paul Anthony and recovery of incriminating articles. The Inquiry Officer indicted Capt. M. Paul Anthony on the basis of evidence led through the mouth of the police officers and the panch witnesses who effected the recoveries. Same witnesses were examined in the criminal trial and deposed full throttle against Capt. M. Paul Anthony. The recovery pertained to a mining sponge gold boll weighing 4.5 gms. and gold bearing sand weighing 1276 gms. Acquitting Capt. M. Paul Anthony, the criminal court trashed the raid and the recovery by throwing out, lock, stock and barrel the case of the prosecution, opining that evidence suggested that no search was conducted nor any recovery was made. It was in said peculiar facts that the Supreme Court observed that notwithstanding standard of proof being different at a domestic inquiry and a criminal trial, Capt. M. Paul Anthony was entitled to be held not guilty even at the domestic inquiry.
11. In the instant case we find that the petitioner and his co-accused were acquitted at the criminal trial for the offence of robbery, principally on two grounds. Firstly the complainant not supporting the case of the prosecution that the petitioner and his co-delinquent had robbed him; he only deposed of being robbed by two police personnel. Notwithstanding the wrist watch Ex. P-1 and currency notes Ex. P-5 being proved to be recovered from the co-delinquent/co-accused of the petitioner, since the exhibits were not put to Sanjay Kumar for dock identification the learned Judge opined that the same could not be treated as stolen property recovered from the petitioner and his co-accused. But we find that at the domestic inquiry said evidence has been properly led.
12. It is not the case of petitioner or HC Satbir Singh that the watch Ex. P-1 belonged to them. Besides, the watch is a wrist watch and its place would be on the wrist and not the pocket.
13. Accordingly, we hold that the petitioner cannot take any advantage of the fact that at the criminal trial he and his co-accused were acquitted for the offence of robbery. In view of the evidence led at the domestic inquiry we find that the department has led sufficient and credible evidence to sustain the charge that the petitioner and HC Satbir Singh had robbed Sanjay Kumar. They committed the act while wearing their uniform and carrying the service arms. The writ petition is dismissed but without any order as to costs.