

AFR
Reserved
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transfer Application No. 364 of 2-10

Friday, this 12th day of May , 2017

Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Hari Babu Nishad No. 15772017-H Rank Gunner DS, son of late Shiv Ram Nishad, resident of village Hirapur, Tehsil Kalpi, District Jalaun.

..... Petitioner

By Legal Practitioner Shri Shailendra Kumar Singh, learned counsel for the petitioner.

Versus

1. Union of India, through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. G.O.C-in-C, Headquarter Southern Command, Pune-1.
3. Colonel Officer Commanding, Troops HQ 614 (1) Mech AD Bde, Camp Jhansi.
4. B. Jaggu Babu 15775051 64(1) Mech AD Bech. Jhansi.

..... Respondents

By Legal Practitioner Shri D.K.Pandey, learned counsel for the Respondents, assisted by Maj Piyush Thakran, OIC Legal Cell

ORDER

Per Justice Devi Prasad Singh, Member (J)

1. Being aggrieved with the impugned order of dismissal from service dated 20.10.2005 passed in pursuance to Summary Court

Martial (in short, SCM) proceedings and the rejection of his statutory complaint dated 30.10.2005 preferred against the said punishment before the General Officer Commanding-in-Chief, Southern Command vide order dated 08.02.2006, the petitioner filed a writ petition bearing No.26226 of 2006 in the Hon'ble High Court of Judicature at Allahabad, which was transferred to this Tribunal in pursuance to powers conferred by Section 34 of the Armed Forces Act and registered as T.A.No. 364 of 2010.

2. We have heard Shri Shailendra Kumar Singh, learned counsel for the petitioner and Shri D.K.Pandey, learned counsel for the respondents, assisted by Maj Piyush Thakran, OIC Legal Cell, and perused the record.

3. Petitioner Hari Babu Nishad, Rank Gunner (Driver Special) was enrolled in the Indian Army on 05.02.2000. He rendered approximately six years' of service. It is alleged that on 05.03.2005, one B. Jaggu Babu, Gunner (Operator Fire Control) had gone to Vijaya Bank, Jhansi at 10-45 a.m to withdraw an amount of Rs.4,000/- from his account through cheque. The said cheque could not be encashed on account of insufficient amount in the account. While in Bank, B. Jaggu Babu was informed that about 10-15 minutes earlier, an amount of Rs.5000/- was withdrawn from his account through cheque by an army personnel of his own Brigade. He came back to the Unit and made queries to find out the person, who had withdrawn the amount from his account. He reported the

matter to Senior JCO, Sub (TIFC) PS Manhas. It is alleged that Sub (TIFC) PS Manhas had been earlier informed by Hav MK Singh that around 1000 hrs the same day, Gunner (DS) Hari Babu Nishad (petitioner) had gone to Vijaya Bank, Jhansi with his permission. A search of the box of petitioner Hari Babu Nishad was carried out by Sub (TIFC) PS Manhas in the presence of the witnesses, which lead to the recovery of Rs.5,000/- from the trunk of the petitioner, for which he could not give any satisfactory explanation. Information was given to Col Sreejayan MP, Officiating OC Camp, who investigated the case and thereafter a Court of Inquiry was ordered. There is a specific averment in Para 8 the counter affidavit that on 11.03.2005, the petitioner voluntarily came to the office of Col Sreejayan MP alongwith Senior JCO, Sub (TIFC) PS Manhas and confessed the offence committed by him in the presence of Sub (DS) S Sarkar and Hav MK Singh. He also gave a confessional statement in writing dated 11.03.2005, copy of which has been filed as Annexure CA-1 to the counter affidavit.

4. A perusal of aforesaid confessional statement given in writing by the petitioner to OC Camp shows that it is hand-written in Hindi, wherein the petitioner, accepting the guilt with regard to withdrawal of the amount of Rs.5,000/- by him, tendered his apology. This confessional statement has been signed by the petitioner in Hindi as well as in English on 11.03.2005. The averments made in Para 8 of the counter affidavit as aforesaid have

been denied by the petitioner in Para 8 of the rejoinder affidavit, wherein it is stated that the petitioner was beaten badly by Senior JCO Sub PS Manhas and his associates and under threat and duress, he had signed some papers.

5. We have perused the alleged confessional statement of the petitioner contained in Annexure CA-1 to the counter affidavit, which is reproduced as under:

Jheku vks0 lh0 dSEi egksn;
 eSa uEcj 15772017,p Mh0,l0 gjh ckcw
 gsMDokVj flEl-ou Qksj ,s0Mh0 fcxzsM
 dSEi esa vkids v.Mj dek.M lsokjr gWw]
 eSa fnukad 4@03@05 ekpZ dks jMkj ikdZ
 M~;wVh ij x;k Fkk vkSj ogkW cSBdj
 M~;wVh ij Fkk mlh le; eSaus ps;j ij ,d
 jftLVj iMk ns[kk tks jftLVj eSi jhfMWx
 dk Fkk eSa mls i<us yxk dqN nsj ckn
 mlesa ls psd cqd fudyk eSaus ns[kk
 vkSj lkspk bls dSls Hkjrs gS eSaus mls
 Hkj fn;k mlh le; esjs fnekd esa ykyp
 vk x;k eSaus lkspk D;k eSa bls isls
 fudky ldrk gWw vkSj fnukad 5 ikWp ekpZ
 dks eSa cSad x;k eSaus :0 ikWp gtkj
 tXxw ckcw ds ,dkmUV ls fudky fy;s] tks
 tXxw ckcw ds Fks A Jheku esjs ls xYrh
 gks x;k Lohdkj djrk gWw vkSj ekQh
 ekWxrk gWwA

vkidk

vkKkdkjh

flikgh gjh

ckcw

Haribabu

11/03/05

6. The aforesaid confessional statement of the petitioner is Exhibit A to the SCM proceedings. In view of the provisions contained in Section 73 of the Evidence Act, we have compared the handwriting of the contents of letter bearing the petitioner's signatures over it with admitted signatures on TA and other records, both seem to have been written by same person. Since his signatures on the said letter have been admitted by the petitioner while filing reply to the contents of Para 8 of the counter affidavit, it may be safely inferred that whole contents including signatures on the confessional statement (supra) is in petitioner's hand-writing. Even the signature in English tallies with the signature made by the petitioner in English on the confessional statement.

7. A Court of Inquiry, presided by IC-38616X Col RB Bapat, was carried out from 07.03.2005 to 30.03.2005. It is alleged that during Court of Inquiry, the petitioner confessed his guilt, giving sequence of events in detail. During Court of Inquiry, Sub Pawan Singh was examined as Witness No. 1 but the petitioner declined to cross-examine him. Witness No. 2 is Hav MK Singh, who was also not cross-examined by the petitioner. Witness No. 3 is B. Jaggu Babu, from whose account the amount of Rs.5000/- had been withdrawn. He too was not cross-examined by the petitioner. Witness No. 4 is the petitioner himself. In his statement dated

28.03.2005 during Court of Inquiry, he admitted the guilt with regard to withdrawal of the amount of Rs.5000/- from the bank account of B. Jaggu Babu. Witness No. 5 is Col Sreejayan MP. The Court of Inquiry recorded the finding of guilt against the petitioner.

8. It appears that one Kunj Behari Agarwal, a Handwriting and Fingerprint Expert had tallied the handwriting of the petitioner with the admitted handwriting. He submitted a report to the Sub Inspector, Police Station Sadar Bazar, Jhansi with the opinion that the writings and signature on the disputed cheque marked as 'D' were written by the same person, who wrote the admitted withdrawal form marked as A-1 to A-4 and specimens S-1 to S-5, all are written by one and the same person. Thus, in the opinion of the said Handwriting Expert, signature on the disputed cheque in the name of B. Jaggu Babu was in the petitioner's handwriting.

9. Hearing of the charge took place on 02.04.2005 under Army Rule 22 and Summary of Evidence was recorded on 07.04.2005. The petitioner was interviewed by Col R Soral, OC Troops, 614 (I) Mech AD Brigade Camp on 16.04.2005, in which he requested for leave. The petitioner was asked to wait till finalization of the ongoing disciplinary case. During the course of Inquiry, Jawahar Lal Raina of Vijaya Bank, Jhansi deposed before the SCM that the original cheque bearing No. 721549 was handed over to the Police vide Exhibit 11 of SCM proceedings. The SCM was convened on 08.10.2005 in pursuance to Special Regimental Order Part-I dated

01.10.2005. On the petitioner's request, friend of accused was changed and Capt Jasbir Singh was detailed as friend of accused in place of Lt Col OT Jacob. Charge-sheet was handed over to the petitioner both in Hindi and English languages on 01.10.2005 alongwith copy of Summary of Evidence, copies of first, second and third Additional Summary of Evidence, copy of charge-sheet in English and in Hindi, one each page. The charge framed against the petitioner is reproduced as under:

“CHARGE SHEET

The accused No. 15772017H Rank GUNNER (DRIVER SPECIAL) Name HARI BABOO NISHAD of HQ 614 (I) Mech AD Bde Camp, is charged with:

<u>Army Act</u>	<u>SUCH AN OFFENCE AS IS MENTIONED IN</u>
<u>Section 52 (f)</u>	<u>CLAUSE (f) OF SECTION 52 OF THE ARMY ACT</u>
	<u>WITH INTENT TO DEFRAUD</u>

in that he,

at Jhansi, on 05 Mar 05, with intent to defraud, forged the signatures of No 15775051N Gunner (Operator Fire Control) B Jaggu Babu of the same unit on a blank cheque bearing machine No 721549 and thereby withdrew an amount of Rs 5000/- (Rupees five thousand only) from Vijaya Bank Jhansi saving bank account No 5499 of the said No 15775051N Gunner (Operator Fire Control) B Jaggu Babu.

Place: Jhansi
Dated: 10 Oct 2005

Sd./- Illegible
(Ravindra Soral)
Colonel

*Officer Commanding Troops
HQ 614 (I) Mech AD Bde Camp*

10. During SCM proceedings, the petitioner pleaded not guilty. However, on conclusion of trial, he was held guilty and sentenced to Rigorous Imprisonment for two months with dismissal from service by the impugned order dated 20.10.2005 (Annexure CA-8 to the counter affidavit. The petition filed by the petitioner on 30.10.2005 addressed to the General Officer Commanding-in-Chief, Southern Command was rejected by order dated 08.02.2006, impugned in this petition.

11. It may be noted that B. Jaggu Babu, from whose account in Vijaya Bank, Jhansi the petitioner is alleged to have withdrawn the amount of Rs.5000/-, had lodged an FIR with P.S. Sadar Bazar, Jhansi without naming any person.

12. While assailing the impugned order of punishment dated 20.10.2005, learned counsel for the petitioner Shri Shailendra Kumar Singh submitted that the Bank Cashier had not appeared in Court of Inquiry and the provisions of Rule 180 of the Army Rules, 1954 have not been followed; the original cheque was not produced and the Photostat copy of the cheque cannot be relied upon in the absence of original one and the opinion of Shri Kunj Behari Agrawal, who is a private Handwriting Expert, is not trust-worthy.

13. In response to the arguments advanced on behalf of the petitioner, Shri D.K.Pandey, learned counsel appearing for the

respondents, assisted by Maj Piyush Thakran, OIC Legal Cell submitted that the original cheque was with the police, but the confessional statement given by the petitioner in his handwriting (supra) with signatures in Hindi and English and his admission to the effect that these were his signatures, are strong evidence supporting the opinion expressed by the private handwriting expert (supra) engaged by the police. The petitioner's involvement in the commission of offence has been proved by unbreakable chain of events, right from approaching the bank and withdrawing money, followed by recovery from his own trunk. No plausible explanation has been given by the petitioner with regard to the possession of Rs.5000/- recovered from him, which establishes the fact that it was the same money which he had withdrawn from the account of B. Jaggu Babu in Vijaya Bank, Jhansi. The petitioner's departure to the Bank has been established by cogent and trustworthy evidence. The Army was well within its jurisdiction to proceed against the petitioner through SCM. The opinion of handwriting expert is based on the contents of original cheque, which was handed over to the police. Photostat copy of the cheque is available, which has not been disputed by the petitioner. Since the petitioner admitted his guilt and declined to cross-examine the witnesses, rather recorded his own statement, there is sufficient compliance of Rule 180 of the Army Rules, 1954.

14. We have considered the exhaustive submissions made by the parties' counsel and also perused the original record. During the course of SCM proceedings, the following documents were produced by the prosecution, which themselves speak of their significance:

LIST OF EXHIBITS

- | | |
|---------------|---|
| 1. Exhibit-1 | Vijaya Bank Jhansi Cheque Bearing Machine No 721550 |
| 2. Exhibit-2 | Photocopy of Pass Book of Saving Account NO 5499. |
| 3. Exhibit-3 | Application dated 12 Apr 2005 given by Gnr(OFC)B Jaggu Babu. |
| 4. Exhibit-4 | Application dated 28Apr 2005 given by Gnr (OFC) B Jaggu Babu. |
| 5. Exhibit-5 | One complete Set of S of E till 07 Apr 2005 alongwith its exhibit A&B. |
| 6. Exhibit-6 | Statement Shri Kunj Bihari Agarwal with exhibit as on 22 jun 2005. |
| 7. Exhibit-7 | Photocopy of Original Cheque. |
| 8. Exhibit-8 | Photocopy of confessional statement |
| 9. Exhibit-9 | Letter dated 09 May 05 of 614(1)Mech A D Bde Camp given to Vijaya Bank Jhansi |
| 10.Exhibit-10 | Letter dated 12 May 2005 of Vijaya Bank Jhansi given to 614(1)Mech AD Bde Camp. |
| 11.Exhibit-11 | Photocopy of Delivery Book of Vijaya Bank Jhansi. |
| 12.Exhibit-12 | Photostat copy of the letter dt 28 Apr 05 from Police Station Sadar Bazar, Jhansi addressed to Manager, Vijaya Bank Jhansi. |

- 13.Exhibit-13 True copy of certificate of
HANDWRITING AND THUMB
IMPRESSION of Shri Kunj Bihari
Ararwal.
- 14.Exhibit-14 Letter of Police Station Sadar Bazar,
Jhansi dated 11 May 05 addressed to Shri
Kunj Bihari Agarwal .
- 15.Exhibit-15 Original copy of First Additional S of E.”

16. The record produced before us indicates that B. Jaggu Babu had gone to the Bank with a cheque of Rs. 4000/- dated 05.03.2005 for withdrawal of the said amount, but on account of withdrawal of Rs.5000/- earlier to him the same day from his account, he returned back with empty hands. He also lodged an FIR (Exhibit-4) informing the police that about 15 minutes before his arrival to the Bank, an amount of Rs.5000/- was withdrawn by someone from his account. The Bank also informed him that somebody had withdrawn the said amount from his account. The statement of B. Jaggu Babu has been corroborated by other witnesses. No doubt, the report of a handwriting expert is only an opinion and not a substantive piece of evidence, but in the present case, it seems to have been corroborated by the petitioner's own letter dated 11.03.2005 (Exhibit A to SCM proceedings), where he has admitted his guilt. The handwriting as well as the signatures thereon appear to be of the petitioner, which support the opinion of handwriting expert. The petitioner's own signature was also separately taken and sent

to handwriting expert, who compared it with signature over the cheque of B. Jaggu Babu and they were found to have been made by same person.

17. During SCM proceedings, Hav MK Singh appeared as P.W.1 after the petitioner's plea of 'not guilty'. He narrated that he was on duty at Gate No. 1 and B. Jaggu Babu contacted him and asked whether petitioner Hari Babu Nishad had gone to Vijaya Bank. This witness replied in affirmative. Then he was informed by B. Jaggu Babu that someone had withdrawn an amount of Rs.5000/- from his account with the said bank. Interestingly, the petitioner had cross-examined witness Hav MK Singh at length but nothing could be elicited to discredit his testimony. No major contradiction seems to have been brought on record.

18. B.Jaggu Babu, account-holder of Vijaya Bank, Jhansi, appeared as P.W.2, who has given a detailed sketch of the loss of Rs.5000/- from his account. He was duly cross-examined by the petitioner and his statement was taken down as per provisions contained in Rule 141 of the Army Rules, 1954.

19. Sub PS Manhas appeared as P.W.3. He has given a detailed sketch of the incident and stated that the petitioner had confessed before him his guilt, saying that he had actually withdrawn the money from the bank account of B. Jaggu Babu on 05.03.2005 due to greediness. The petitioner cross-examined this witness at length but nothing could come out to discredit his testimony. He reiterated the statement given in examination-in-chief.

20. Lt Col KK Kisan appeared as P.W.4. He was performing the duties of Officiating OC Camp in June 2005. He identified Hari

Babu Nishad, the petitioner and proved the SoE statements and other records. The petitioner was permitted to cross-examine this witness, but he declined to do so.

21. Col Sreejayan MP appeared as P.W.5. He was duly cross-examined by the petitioner at length. A number of questions were put to this witness by the accused. He stated that the petitioner had given his confessional statement on 11.05.2005 (supra) admitting his guilt, which was affirmed by the Court of Inquiry.

22. P.W.6 is Sub (DS) S Sarkar. He was performing the duties of MT JCO of HQ 614 (I) Mech AD Bde on the date of offence. He affirmed that he had witnessed the confessional statement made by Hari Babu Nishad in the presence of Sub PS Manhas. This witness was extensively cross-examined by the petitioner with due compliance of Rule 141 of the Army Rules, 1954.

23. P.W.7 is SI Sabhajit Singh Chauhan, who affirmed the lodging of FIR by B. Jaggu Babu with regard to withdrawal of Rs.5000/- from his account. He stated that he had obtained handwriting specimens of Hari Babu Nishad on five sheets of papers and forwarded them to handwriting expert Kunj Behari Agrawal, who had given his report (supra). The said report was forwarded to the petitioner's Unit/Command. He also stated that he had appeared during SoE. The petitioner has cross-examined this witness at length but it could not fetch anything major to discredit his testimony. He stated that the original cheque was forwarded to HQ 614 (I) Mech

AD Bde alongwith the expert's opinion of Shri Kunj Behari Agrawal.

24. Shri Jawahar Lal Raina of Vijaya Bank, Jhansi appeared as P.W.8. He stated that on 05.03.2005, B. Jaggu Babu had gone to withdraw an amount of Rs.4000/- through cheque, but it was not accepted by the Bank on account of insufficient amount in the account. On queries made by B.Jaggu Babu, it came to light that someone had withdrawn an amount of Rs.5000/- from his account earlier to him the same day. This witness was also cross-examined by the petitioner at length with due compliance of Rule 141 of the Army Rules, 1957.

25. Shri Kunj Behari Agarwal is a hand-writing expert, who appeared as P.W.9. He stated that he was doing the work of identification of handwriting and fingerprint since 1972-73 and is a qualified person. He had done more than 1500 cases in several courts of U.P and M.P and his reports have been accepted by courts in several cases. He produced an attested copy of the Certificate bearing No. 017/72-73 issued by 'The College of Examiners of Questioned Documents, Simla (India)'. He further stated that he received a letter from Police Station, Sadar Bazar, Jhansi, signed by Sub Inspector Sabhajit Singh Chauhan dated 11.05.2005 alongwith original papers i.e. report of complainant, original cheque bearing no. 721549 and specimen handwriting of Hari Babu Nishad (petitioner), etc. for expert's opinion. After receipt of request, he submitted his

opinion (supra). This witness was also cross-examined by the petitioner at length with due compliance of Rule 141 of the Army Rules, 1954.

26. P.W. 10 is Sub Inspector Udaiveer Singh, who was posted in HQ 614(I) Mech AD Bde from June 2002 to July 2005. He certified the recording of SoE of each and every witness in the presence of petitioner Hari Babu Nishad. The statement of each and every witness was translated in Hindi language, duly signed by the witness. He stated that full opportunity was given to petitioner Hari Babu Nishad to cross-examine the witnesses in accordance with the rules. This witness was also cross-examined by the petitioner at length.

27. P.W.11 Sub (TIFC) Thomas Paul and P.W.12 Nb/Sub PC Joshi were detailed as independent witnesses during recording of SoE alongwith P.W.10 Udaiveer Singh. They affirmed the entire proceedings and recording of evidence

28. P.W.13 Lt Col RK Pandey is the officer, who was detailed to record SoE and Additional SoE. He identified the signatures of Hari Babu Nishad which were made on each occasion and every day and thereafter the original statements recorded during the proceedings. He was cross-examined by the petitioner with due compliance of Rule 141(2) of the Army Rules, 1954.

29. So far as the submission of learned counsel for the petitioner with regard to non-compliance of Rule 180 of the Army Rules, 1954 is concerned, it seems to be not sustainable for two reasons; first, in

Court of Inquiry, the evidence was recorded during the presence of the petitioner, who declined to cross-examine the witnesses; and secondly, the purpose of Court of Inquiry or Summary of Evidence is to collect evidence for the purposes of contradictions. Had the petitioner not denied his guilt during SCM, there was no reason to produce 13 witnesses by the prosecution. If the prosecution had permitted the petitioner to cross-examine the witnesses after denial of guilt, then the submission of learned counsel for the petitioner that he was not permitted to be present during Court of Inquiry or Summary of Evidence seems to be not trustworthy. The petitioner himself declined to cross-examine the witnesses during Court of Inquiry and Summary of Evidence, but later on he cross-examined all the witnesses after pleading not guilty under Army Rule 22 and other provisions. This fact is enough to establish that initially the petitioner had not co-operated and declined to cross-examine the witnesses during Court of Inquiry and Summary of Evidence, but later on, he himself had cross-examined the witnesses. No major contradictions have been brought on record by the petitioner while cross-examining the witnesses after recording the plea of 'not guilty'. The charges were heard in pursuance to provisions contained in Army Rule 22. Summary of Evidence was recorded and the petitioner was given reasonable opportunity to defend himself in accordance with Army Rules 33 and 34. There is thus nothing to doubt the testimonies of the witnesses produced by the prosecution.

30. It is true that the opinion of a private handwriting expert requires further corroboration. In the present case, it is the police, who had sent the original cheque to the handwriting expert, as is evident from the statements of prosecution witnesses (supra). Merely because the original cheque is not on record, it would not vitiate the findings of SCM. The fact that the opinion of handwriting expert has been prepared on the basis of original cheque is proved by ocular testimonies of prosecution witnesses. It is true that the cashier of the Bank has not been produced to tell about the withdrawal of Rs.5000/- from the account of B. Jaggu Babu, but this sole fact is not enough to disbelieve the prosecution version, keeping in view the link evidence (supra), which establishes beyond doubt that the petitioner had gone to the Bank, followed by recovery and his confessional statement dated 11.03.2005. The Hon'ble Supreme Court in a case reported in (2003) 7 SCC 56, **Krishnan and another versus State**, held that when ocular evidence is cogent, credible and trustworthy, minor variation, if any, with the expert's evidence is not of any consequence. It would be erroneous to accord undue primacy to the hypothetical answers of expert's evidence to exclude the eyewitnesses' account which has to be tested independently and not treated as the "variable" keeping the expert's opinion as the "constant".

31. In another case reported in (2010) 15 SCC 252, **Ram Naresh versus State of U.P**, the Hon'ble Supreme Court held that in the

light of ocular evidence, the opinion of expert can in no way stand in the way of prosecution. In yet another case reported in (2011) 10 SCC 675, **Gajraj versus State (NCT of Delhi)** their Lordship of the Supreme Court held that existence of even serious discrepancy in oral evidence has to yield to conclusive scientific evidence. In the present case, the opinion of the expert being corroborated by confessional written statement of the petitioner dated 11.03.2005 seems to abundantly prove that it was the petitioner, who had withdrawn Rs. 5000/- from the bank account of B. Jaggu Babu.

32. The Hon'ble Supreme Court in a case reported in (2005) 11 SCC 600, **State (NCT of Delhi) versus Navjot Sandhu alias Afsan Guru**, held that the confessions are considered highly reliable because no rational person would make an admission against his interest unless prompted by his conscience to tell the truth. For convenience, relevant portions of the judgment are reproduced as under:

“27. We start with confessions. Under the general law of the land as reflected in the Evidence Act, no confession made to a police officer can be proved against an accused. “Confession” which is a terminology used in criminal law is a species of “admissions” as defined in Section 17 of the Evidence Act. An admission is a statement, oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a

confession. While Sections 17 to 23 deal with admissions, the law as to confession is embodied in Sections 24 to 30 of the Evidence Act. Section 25 bars proof of a confession made to a police officer. Section 26 goes a step further and prohibits proof of confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of a magistrate. Section 24 lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. Such inducement, threat or promise need not be proved to the hilt. If it appears to the court that the making of the confession was caused by any inducement, threat or promise, proceeding from a person in authority, the confession is liable to be excluded from evidence. The expression “appears” connotes that the court need not go to the extent of holding that the threat, etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonable probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to the magistrate or person other than a police officer. Confession leading to discovery of a fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of a police officer. Consideration of a proved confession affecting the person making it as well as the co-accused is provided for by Section 30. Briefly and broadly, this is the scheme of the law of evidence vis-à-vis confession. The allied provision which needs to be

noticed at this juncture is Section 162 Cr.P.C. It prohibits the use of any statement made by any person to a police officer in the course of investigation for any purpose at any inquiry or trial in respect of any offence under investigation. However, it can be used to a limited extent to contradict a witness as provided for by Section 145 of the Evidence Act. Sub-section (2) of Section 162 makes it explicit that the embargo laid down in the section shall not be deemed to apply to any statement falling within clause (I) of Section 32 or to affect the provisions of Section 27 of the Evidence Act.

28. *In the Privy Council decision of Pakala Narayana Swami v. Emperor (AIR 1939 PC 47) Lord Atkin elucidated the meaning and purport of the expression “confession” in the following words (AIR p. 52)*

“[A] confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession...”

29. *Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. “Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law.” (Vide Taylor’s Treatise on the Law of Evidence, Vol. I.) However, before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity*

or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of the confession. The confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from consideration. So also the authority recording the confession, be it a Magistrate or some other statutory functionary at the pre-trial stage, must address himself to the issue whether the accused has come forward to make the confession in an atmosphere free from fear, duress or hope of some advantage or reward induced by the persons in authority. Recognising the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Evidence Act has excluded the admissibility of a confession made to the police officer.”

32. In the present case, the petitioner has given in writing the letter dated 11.03.2005 confessing his guilt which has been duly proved by the witnesses, hence it cannot be discredited because of minor discrepancies. The facts, which have been admitted, require no further proof under Section 58 of the Evidence Act. Signatures and the written confession dated 11.03.3005 have been admitted by the petitioner and the writing tallies with the contents of the letter which may be seen with naked eyes, hence it is a reliable piece of evidence. Voluntary confessional statement given in writing by the

accused carries weight and unless proved otherwise may be relied upon. In a case reported in *AIR 1967 SC 778*, **The State of Gujarat versus Vinaya Chandra Chhota Lal Pathi** (with Bench strength of three), their Lordships of the Supreme Court held that a Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writing. It may not be safe for a Court to record a finding about a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is relevant, but that too is not conclusive. Their Lordships further held that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. However, in a latter case reported in *(2010) 9 SCC 286*, **Keshav Dutt versus State of Haryana** (with Bench Strength of two), non-examination of handwriting expert was held to be fatal in case there is no material to indicate that the accused has admitted the guilt. In a case reported in *AIR 1968 SC 938*, **Laxmipat Choraria and others versus State of Maharashtra**, their Lordships of the Supreme Court while considering Section 45 of the Evidence Act with regard to handwriting expert held that the testimony based on photograph of the original may be admissible in case not found to be forged one. The Hon'ble Supreme Court further observed that even if the originals be not forthcoming, opinions as to handwriting can be

formed from the photographs. It is common knowledge that experts themselves base their opinion on enlarged photographs. The photos were facsimiles of the writings and could be compared with the enlargements of the admitted comparative materials. The Hon'ble Supreme Court held that if the court is satisfied that there is no trick photography and the photograph is above suspicion, the photograph can be received in evidence. It is, of course, always admissible to prove the contents of the document, but subject to the safeguards indicated, to prove the authorship. It further held that evidence of photographs to prove writing or handwriting can only be received if the original cannot be obtained and the photographic reproduction is faithful and not faked or false. So the evidence of photographs as to contents and as to handwriting was receivable.

33. Apart from the petitioner's own admission of guilt vide letter dated 11.03.2005, followed by expert's opinion and statements of other witnesses, we could not find any motive on the part of witnesses to falsely implicate the petitioner.

34. In view of above, it is our considered opinion that the petitioner has not been falsely implicated in the present case; rather the prosecution has established the charge with regard to commission of offence by the petitioner beyond reasonable doubt. The minor discrepancies do not hit the root of allegations against the petitioner, hence of no consequence.

35. Accordingly, this TA lacks merit and is hereby dismissed.

There would be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P.Singh)
Member (J)

Dated : 12 May, 2017
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