

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**O.A NO. 266 OF 2010**

**PANKAJ KUMAR**

**...APPELLANT**

**VERSUS**

**THE SECRETARY TO  
THE GOVT. OF INDIA AND OTHERS**

**...RESPONDENTS**

**FOR APPLICANT**

**MR. P.P RALHAN, ADVOCATE**

**FOR RESPONDENTS**

**MR. AJAI BHALLA, ADVOCATE**

**CORAM**

**HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER  
HON'BLE LT. GEN. S.S.DHILLON, MEMBER**

**JUDGMENT  
30.09.2010**

1. The appellant – Pankaj Kumar challenged the order dated 13.4.2009 of the Summary Trial, whereby he was convicted for the offence under Section 379 IPC in conjunction with Section 77(2) of the Navy Act, 1957 and sentenced to undergo rigorous imprisonment for 90 days and dismissal from Naval service.

2. Briefly stated, the facts giving rise to this appeal are: The appellant joined the Navy as Steward on 4.4.2002. On 14.10.2008, he joined the ship "INS ANGRE". Thereafter on 20.11.2008, he was transferred to "INS JARAWA" with a joining time of five days. Supposedly at the instance of H.K Pradhan, who had enmity with the applicant, the appellant was given one laptop and a mobile phone to be handed over to the relatives of Vijay Sharma, Leading Electrical Mechanic (Air Radio) of Indian Naval Ship Angre at Jaipur. The appellant boarded the train from Mumbai with the laptop and the mobile phone. On 21.11.2008, the aforesaid Pradhan and Vijay Sharma informed the military police staff over telephone that the appellant had stolen the laptop and mobile phone. The appellant was caught by MCO Staff at Jaipur with the alleged stolen articles. He was handed over to the Military Police at Jaipur. On pleading 'not guilty', the

appellant was put to trial. After sifting the evidence, the CO convicted him, as stated above.

3. According to counsel for the appellant, the entire case has been fabricated against the appellant. The Laptop and the mobile phone allegedly recovered from the appellant were borrowed by him from Vijay Sharma. When the Laptop and Mobile phone were given to him by Vijay Sharma, no culpability could be alleged against him. Further, the appellant was tried for a civil offence under Section 77 of the Navy Act, 1957. He ought to have been tried by the Criminal Court of competent jurisdiction. When he was put to summary disposal (trial), the statutory provision ought to have been followed, before initiating proceedings against him and also while awarding the punishment.

4. This appeal is resisted by the respondents contending, inter alia, that there was ample evidence to prove that the appellant had committed theft of the Laptop and the mobile phone belonging to Vijay Sharma. When Vijay Sharma found his locker, wherein the Laptop and the Mobile phone were kept, broken open, he reported the matter to higher authorities. He had suspicion with regard to the involvement of the



appellant as he was convicted earlier for similar offence. Such suspicion further got strengthened because on that day the appellant was to move for his next place of posting. When he brought the matter to the notice of his superior officers, they informed the Army officers at Jaipur, who caught hold of him with the stolen articles. The CO had taken into consideration all these aspects while passing the impugned order in the summary trial. The respondents would contend that there was no reason for the authorities to take any action against the appellant arbitrarily. The appellant pleaded guilty to the charge levelled against him and furthermore, he chose not to cross examine any of the prosecution witnesses.

5. In order to appreciate the salient points raised by counsel for the parties, it would be appropriate to refer to the evidence of the prosecution witnesses. Vijai Sharma, whom the stolen articles belonged to, has made it clear that on 20.11.2008, at about 1915 hours, after handing over duty as Quarter Master at MOC (MB) to the next QM, when he went to his block, he found his Laptop and the mobile phone were stolen by breaking open the locker. He enquired about it to Nitu Singh, who was there at that time. He was told that the appellant had left the station on

transfer. He suspected the appellant as he was the prime accused in another theft case. At about 2000 hours on the same date, he reported the matter to the duty Regulating Staff. He identified the items recovered from the appellant as belonging to him. "Panchnama" was prepared in the presence of two witnesses, viz. Rahul Mehra and Suraj Maithani. It also bore the signature of the appellant. It has come out in evidence of these two witnesses that the stolen articles (Laptop and the mobile phone) belonged to Vijay Sharma. The testimony of Vijay Sharma remained unassailed. So is the position with the statement of Lt. Col. R.S Shekhawat. Further, the prosecution version also gets corroboration from the recovery memo, which bore the signature of the appellant. Other formal witnesses were also examined in the inquiry .

6. It has next been contended by learned counsel for the appellant that the punishment awarded to the applicant is grossly disproportionate to the gravity of offence allegedly committed by him and it is not in tune with the relevant provisions. Furthermore, the offence being of civil nature, dismissal from service is unwarranted and for the offence allegedly committed by the appellant, maximum punishment has

already been given. In this regard, reference is drawn to Regulations 13 and 37 of the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965.

Regulations 13 and 37 are extracted hereunder:

**"13. Summary punishments:- (1) The following punishments may be awarded summarily to sailors other than Artificer Apprentices and Boys under training subject to the provisions of the Act and these regulations and may be referred to by the numbers prefixed to each of them, namely:-**

**No. 1 - Imprisonment for a period not exceeding three months;**

**No. 2 – Detention for a period not exceeding three months;**

**No. 3 – Dismissal from the naval service;**

**No. 4 – Reduction in rank**

**No. 5 – Fine in respect of civil offences;**

**No. 6 – Mulcts of pay and allowances;**

**No. 7 – Reduction to the second class for conduct;**

**No. 8 – Solitary confinement in a cell or under a canvas screen for a period not exceeding fourteen days;**

**No. 9 – Deprivation of Good Conduct Badge and Good Conduct Medal;**

**No.10 – Reprimand by the Captain;**



**No.11 – Extra work and drill for a period not exceeding fourteen days;**

**No.12 – Stoppage of leave for a period not exceeding sixty days;**

**No.13 – Extra work or drill for not more than two hours in a day for a period not exceeding seven days.**

**No.14 – Admonition.**

**(2) The punishments which may be awarded to Artificer Apprentices and Boys under training shall be as set forth in Chapter III of these Regulations.**

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**37. Dismissal from naval service (No.3):-- (1) Although an offender considered unworthy of retention may be punished with summary dismissal from naval service. Such punishment shall not, save in exceptional cases, be awarded before the various punishments to which he has rendered himself liable have been inflicted upon him and found to have no effect; nor such punishment shall be awarded if the Chief of the Naval Staff considers that he is likely to reform if transferred to another ship.**

**(2) A sailor who has committed an offence deserving imprisonment shall, if his past record clearly shows that he is unworthy of retention, be punished with imprisonment and dismissal.**

**NOTE:-- (a) Imprisonment followed by discharge "S.N.L.R" (services no longer required), shall not be normally appropriate.**

(b) A sentence of dismissal shall not normally be accompanied by a sentence of detention except in the case of offender below the age of twenty one.

(3) As dismissal does not automatically entail any other punishment, (reduction in rank) or the deprivation of Good Conduct Medal or Badges shall be included in the sentence if appropriate.

(4) An order for the dismissal of a person from naval service, whether accompanied by other punishments or not shall be made only by the Chief of the Naval Staff, and no punishment shall be inflicted on such person until a decision has been obtained on the question whether such person should be dismissed from naval service or not.

(5) If a person dismissed from naval service desires it and there is no objection on the part of the local authorities to his landing, he may be dismissed abroad, and where such person desires to return home, he may be sent at the first opportunity by a naval ship or merchant vessel.

(6) Where such person is sent in a naval ship under sub-regulation (5), its Commanding Officer shall be informed of his offences, and the Commanding Officer shall not order him to work except in emergency and on arrival in India such person shall be immediately discharged to shore.

Regulation 13 states the categories of punishment, which include fine in respect of civil offences. It is strenuously argued that since the appellant was tried for the offence under Section 379 IPC, which is admittedly a civil offence, he could have been fined, when he was found guilty of the charges



levelled against him. In this regard, reliance has been placed by learned counsel for the respondents on Regulation 37, which, particularly Para 2 thereof, states that "a sailor who has committed an offence deserving imprisonment, shall, if his past record clearly shows that he is unworthy of retention, be punished with imprisonment and dismissal." In this regard, attention is drawn to the averments made in Para 7 of the counter affidavit, which read as under:

**"7. The petitioner had joined the Naval Service as Non Matric Entry recruit on 04 Apr 2002 from Indian naval Ship Circars. The petitioner has made a false statement that he had unblemished record of service up to 14 Oct 08. The petitioner is a habitual offender wherein during his period of six years of service he has been awarded following punishments prior to his present offence:-**

**(a) For improper absence from ship by Commanding Officer, Indian Naval Ship Viraat, the petitioner was awarded Stoppage of Leave for 46 days (Punishment No. 12) and Mulcts of pay and allowances (Punishment No.6) as per Regulation 13 of Regs Navy Part II (Statutory).**

**(b) For the offence of theft of Government Property while borne on the books of INS Abhimanyu on 23 Jul 08 the petitioner was awarded Detention for 90 days (Punishment No. 2) and Deprivation of First Good Conduct Badge (Punishment No. 9)."**

Learned counsel for the appellant graciously conceded that the appellant is an ex convict. But the sentence awarded to him was subsequently remitted by the appropriate authority. Whatever it be, his position would remain as that of an ex convict. If such past conduct of the appellant is taken into consideration in the context of Regulation 37(2) *ibid*, the punishment of dismissal commensurates to the gravity of the offence. Therefore, we do not find any reason to interfere with the impugned finding and sentence.

7. In the result, the appeal is devoid of merit and it is dismissed.

(S.S DHILLON)  
MEMBER

(S.S KULSHRESTHA)  
MEMBER