

Captain Arvind Kathpalia vs Govt. Of Nct Of Delhi & Anr on 7 March, 2023

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1626/2023
CAPTAIN ARVIND KATHPALIA

.....
Through: Mr.Maninder Singh, Senior A
with Ms.Isha Khanna, Ms.Smr
Asmita, and Mr.N.Arora, Adv

versus

GOVT. OF NCT OF DELHI & ANR.

Through: Mr.Mukesh Kuma
with Insp.Loke
Airport.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 07.03.2023

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 1626/2023 and CRL.M.A. 6153/2023

3. This petition is filed with the following prayers:

"A. Pass an order calling for the records Criminal Case No.6564/2020 titled as State vs Captain Arvind Kathpalia with respect to FIR No. 475/2018 pending in the Court of Ms.Nabeela Wali ACMM-01 Patiala House Court, New Delhi; and B. Pass an order quashing of the FIR No. 475/2018, dated 24-082018, under Section 465/466/468/471 IPC and Section 11 of Aircraft Act 1934, Police Station IGI Airport and the Chargesheet filed in Criminal Case No, 6564/2020 titled as State vs. Captain Arvind Kathpalia and all the proceedings emanating therefrom;"

4. The learned senior counsel for the petitioner says on 19.01.2017 the petitioner was to operate a flight from Delhi to Bangalore but he missed the mandatory breath analyzer test prior to boarding the flight and even post returning to Delhi.

5. It is alleged the petitioner had reached Delhi and went to the doctor stationed at the airport where he was asked to make an entry in a register for such purpose. He put an entry and his license number in the said register, which apparently is a bone of contention. It is alleged by the State the petitioner had forged the said entry.

6. Admittedly, a Writ Petition (C)3231/2017 was filed by the Indian Commercial Pilots Association which noted five offences are alleged against the petitioner viz. a) firstly, he evaded the Pre-Flight Breath Analyzer examination at New Delhi on flight AI-174; b) he voluntarily refused to take the Post Flight Breath Analyzer examination at Bengaluru, in spite of being informed by flight dispatcher; c) he again refused to take the Pre-Flight Breath Analyzer Examination before attending to his flying duties on flight AI-173 from Bengaluru to New Delhi on the same night; d) he evaded the Post-Flight Breath Analyzer Examination on his arrival in New Delhi, after flying flight AI-173 and e) he made a false entry by filling up the Pre-Flight Examination Register for flight AI-174 and AI-173 after landing at Delhi.

7. It is submitted the Co-ordinate Bench of this Court passed an order dated 17.08.2017 and gave following directions:

"(i) the issue with regard to the proposed appointment of Captain Kathpalia to the Board of Air India is not being examined in this petition and is left open to be examined and determined in an appropriate petition, if so filed;

(ii) the action of the DGCA in treating the offence committed by Captain Kathpalia as one offence and awarding the punishment of only suspension of his ATPL for three months does not warrant any interference. It is clarified that the observations with regard to the punishment of suspension of ATPL for three months awarded to Captain Kathpalia are without prejudice to the appeal filed by Captain Kathpalia against the said punishment;

(iii) the Disciplinary Authority is directed to conduct a disciplinary enquiry in the conduct of Captain Kathpalia with regard to making an entry in the Pre-Flight Medical Examination Register and antedating the same and to take appropriate action in accordance with law;

(iv) Air India is directed to identify and fix responsibility on the officer(s) who were responsible and failed to immediately bring the infraction on the part of Captain Kathpalia to the notice of the DGCA, and thereafter to take appropriate action in accordance with law;

(v) Both DGCA and Air India, are directed to examine the interpretation and functioning of CAR to ensure that there is no possibility, in the future, of anyone circumventing the mandatory requirement of the Pre- Flight Breath Analyzer Examination, with impunity;

(vi) DGCA is further directed to take into account the observations in this judgment, with regard to the interpretation and application of CAR, and consider whether any amendment is required in CAR to ensure that the objects for enacting CAR are achieved."

8. In lieu thereof a departmental enquiry was conducted by the Air India which fully exonerated the petitioner for the offence of forgery.

9. It is argued by the learned senior counsel for the petitioner per Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and Another (2020) 9 SCC 636 it was held once the accused is exonerated in the departmental enquiry, no criminal case can be fastened upon him. The relevant paras are as under:

"12.After referring to various judgments, this Court then culled out the ratio of those decisions in paragraph 38 as follows:-

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

13.It finally concluded:

"39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.""

10. He argued despite there being no iota of evidence qua forgery, the charge sheet, Annexure P1 says:

"It has also come from the version of alleged Arvind Kathpalia to light that on 19.01.2017 Arvind Kathpalia appears to have missed Pre Flight Breath Analyser Test before operating AI-174 due to oversight resulting from work pressure as he reached around at 1700 Hrs. after attending the meeting at SJ Airport to pilot a flight AI-174 scheduled to fly at 1745 Hrs. It is also pertinent to mention here that alleged Arvind Kathpalia was having lawful authority to write in PFME register being a crew because it is noticed that every crew member do write his/her details in PFME register.

Investigation conducted so far proves that alleged Arvind Kathpalia did not take Pre Flight Breath Analyzer Test and to get him checked under post flight breath analyzer test made the alleged entry in PFME register. Allegations of threat to doctor Nitin are pertaining to the post alleged offence so they cannot be part of the investigation in the present matter. Further no other complaint has been received in police station from Dr. Nitin in this respect. This act of alleged Arvind Kathpalia does not amount any of the offence i.e. 201/202/204/217/279/280/506/120B IPC alleged in present FIR, hence the same have been removed.

The investigation has revealed that Arvind Kathpalia has committed an offence u/s 465/466/468/471 IPC & 11 Aircraft Act 1934 for his actions for not taking BA Test before boarding the flight AI-174 Delhi to Bangalore to pilot it and by interpolating his name, signature and other details in pre flight breath analyzer register of crew who had taken the pre flight breath analyzer test. Hence charge sheet against Arvind Kathpalia (name and address mentioned in column no. 11) has been prepared and the same is sending for trial please."

11. In view of the above, let a status report be filed by the State how the offence of forgery is made out, prior to the next date with an advance copy to the learned counsel for the petitioner.

12. List on 19.05.2023. As it is submitted the matter is listed on 10.03.2023 for arguments on charge. The learned Trial Court may adjourn the matter post the date given in this petition.

13. Order dasti.

YOGESH KHANNA, J.

MARCH 07, 2023 DU