

(1999) 09 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1050 of 1998

Baldev Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Citation : (1999) 4 AICLR 501 : (2000) 1 RCR(Criminal) 165

Hon'ble Judges : T.H.B.Chalapathi, J

Advocate : D.S. Pheruman, Anil Malhotra, Advocates for appearing Parties

Judgement

T.H.B. Chalapathi, J.

1. This petition is filed to quash the punishment imposed by the Summary Court Martial on the petitioner reducing to the rank of Sepoy and also dismissing him from service.

2. The petitioner was tried by the Summary Court Martial on being charge sheeted on the allegation that on 2nd April 1995 the petitioner committed an unnatural offence on the person of one Sane Rangaiah while the petitioner was on duty in Tiny Tots School in the regimental building at 9.30 P.M. During the court martial proceedings, four witnesses were examined and the charge against the petitioner held to be proved and on the basis of the inquiry report, the aforesaid punishment has been imposed on the petitioner.

3. The learned Counsel for the petitioner contended that no chance was afforded to the petitioner to cross examine the witnesses and there was no proof of penetration. Therefore the offence under Section 377 I.P.C. is not made out and that the evidence is not sufficient to prove the guilt of the accused. The chargesheet which is annexed as Annexure P2 reads as follows :

4. "The accused to 4460113Y LNK (TS) Baldav Singh of 5 Sikh L.I. at with Trg Bn, The Sikh L I Regt center, Fatehgarh (UP) is a charged with :

AA Sec. 46 (a) DISGRACEFUL CONDUCT OF AN UNNATURAL KIND in that the.

at Fategarh (UP) on 02 Apr 95 at about 2130 committed an unnatural offence on the person of No. 4473560F Rect. Sane Rangaiah, who was on sentry duty in the Tiny Tots School, a rect in the same Regiment.

Station : Fatehgarh (UP) Sd/

Dated : 5 Apr. 95

(IN Rai)

Col

Col. Trg. Bn

The SIKH LI RC"

5. The proceedings of summary of evidence clearly show that four witnesses had been examined. The first contention of the learned Counsel for the petitioner that the petitioner was denied the opportunity of cross-examination cannot be accepted. The court martial proceedings clearly show that opportunities were given to the petitioner to cross-examine the witnesses 1 to 4, but the petitioner declined to cross-examine. The statements of the prosecution witnesses where it has been recorded that the petitioner declined to cross-examine the witnesses were also signed by the petitioner. Therefore, the contention that no opportunity was given to the petitioner to cross-examine the prosecution witnesses has no force.

6. The next contention of the learned Counsel for the petitioner is that there is no evidence of penetration. Therefore the offence under Section 377 I.P.C. is not made out. But the fact remains that the petitioner was proceeded against for the offence under Section 46 of the Army Rules which reads as follows :

"Any person subject to this Act who commits any of the following offences, that is to say :

a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or."

7. Further the evidence of the victim who has been examined as prosecution witness No. 2 clearly indicates that Baldev Singh asked him to bend down and thereafter he started pressing his nipples and tried to tear off his shirt and he forcibly committed a disgraceful conduct of an unnatural kind with him. The statement of PW3 clearly shows that the victim PW2 came to him and woke him up after the incident and told him that Baldev Singh misbehaved him. Thus the evidence of the victim himself shows that the petitioner committed an unnatural act on his person. There is thus material to convict the petitioner. In *Union of India & others v. Himmat Singh Chahar*, 1999(2) RCR(Cr.) 784 : 1999 S.L.T. 151 it has been held by the Apex Court as follows :

"Since the entire procedure is provided in the Act itself and the Act also provides for a further consideration by the Chief of the Naval Staff and then by the Union Government then ordinarily there should be a finality to the findings arrived at by

the Competent Authority in the Court Martial proceedings. It is of course true that notwithstanding the finality attached to the orders of the Competent Authority in the Court Martial proceedings, the High Court is entitled to exercise its power of judicial review by invoking jurisdiction under Article 220 but that would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of the principles of natural justice which vitiates the entire proceeding or that the authority exercising the jurisdiction had not been vested with jurisdiction under the Act. The said power of judicial review cannot be a power of an Appellate Authority permitting the High Court to reappreciate the evidence and in coming to a conclusion that the evidence is insufficient for the conclusion arrived at by the Competent Authorities in Court Martial proceedings."

8. In this view of the matter, I do not find any ground to quash the court martial proceedings and the consequential order of dismissal of the petitioner from service.