
(2000) 08 DEL CK 0067
In the Delhi High Court
Case No : C.W.P. No.1130/95

Balwan Singh

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 09-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Court Martial Act — Section 179
Penal Code, 1860 (IPC) — Section 302

Citation : (2001) CriLJ 1293 : (2001) 1 RCR(Criminal) 9

Hon'ble Judges : M.S.A. Siddiqui, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : Major Inderjeet Tejpal and Mr. Subhash C. Sharma, for the Appellant; Mr. Jayant Bhushan, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the court-martial proceedings held against him including the confirmation of sentence of imprisonment for life passed against him by the Court Martial.

2. Briefly stated, the facts giving rise to this petition are that a general court-martial under the Army Act (for short "the Act") was convened to try the petitioner for having committed murder of the deceased B.N. Tripathy on 30th May 1992. After conclusion of the Court-martial proceedings, the petitioner was held guilty of the offence of murder punishable u/s 302 IPC and was sentenced to suffer imprisonment for life vide orders dated 26th May, 1993. The sentences passed against the petitioner was confirmed by the confirming authority as required under the Act. The petitioner filed a petition u/s 179 of the Act before the Chief of the Army Staff against his conviction and sentence and the same was dismissed vide orders dated 28th November, 1994.

3. The petitioner has challenged validity of the impugned order of conviction and sentence on the following grounds:-

(a) that the court-martial ignored the broad features of the prosecution case and over-looked the material discrepancies in the evidence of the prosecution witnesses and the medical evidence and so its findings are vitiated;

(b) the impugned order of conviction and sentence is vitiated for non-compliance with the mandatory requirements of Rules 22,23, 24 and Rule 180 of the Army Rules;

(c) that the petitioner's prosecution was bad for want of sanction u/s 197 of the Code of Criminal Procedure.

4. At the outset, we must make it clear that the plenitude of power available to this Court under Article 226 of the Constitution is not the same as that available to a Court hearing an appeal against conviction. It is axiomatic that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and the power of judicial review is meant to ensure that the judicial or quasi-judicial tribunals exercising quasi-judicial powers do not exceed their statutory jurisdiction and correctly administer the law laid down by the statute under which they act. The judicial review is not designed to ensure that the conclusion on which such tribunal reached is necessarily correct in the eye of the Court. *B.C. Chaturvedi Vs. Union of India and others*,). In *S.N. Mukherjee Vs. Union of India*, , it was held that the proceedings in respect of court-martial can be quashed in exercise of power of judicial review if they suffer from a jurisdictional error or any error of law apparent on the face of the record. (See also *Ex. Major R.S. Budhwar Vs. Union of India (UOI) and Others*, .

5. Chapter V of the Army Rules deals with investigation of charges. Rule 22 provides that every charge against a person subject to the Act other than an Officer shall be heard in the presence of the accused, who shall have full liberty to cross-examine any witness against him and to call any witness and make any statement in his defense. The Commanding Officer shall dismiss the charge brought before him if, in his opinion, the evidence does not show that an offence under the Act has been committed. Rule 23 prescribes the procedure for taking down the summary of evidence. Rule 24 provides for remand of the accused.

6. In the instant case, the record of the court-martial proceedings reveals that a court of enquiry was ordered to investigate into the matter in accordance with the Army Rules. During the course of enquiry, in all thirteen witnesses were examined and adequate opportunity was given to the petitioner to cross-examine them. Thus, the petitioner was afforded full opportunity to be present throughout the proceedings in the court of enquiry in accordance with Rule 180 of the Army Rules and for submitting anything in his defense. That being so, no fault could be found with the recording of summary of evidence. The petitioner has been unable to show if there was any non-compliance with the Rules 22, 23 and 24. Thus, there was no flagrant violation of any procedure or provision of the Army Act/ Rules causing any prejudice to the petitioner. It is also relevant to mention that a court of enquiry is primarily a fact finding body which is required to collect

evidence and to make a report thereon. It is set up whenever an incident occurs of which true and correct position is to be ascertained at pre-charge stage contemplated by law. It is not concerned with the determination of guilt. Moreover, a reference to Rule 149 of the Army Rules may be made which lays down that a court-martial would not be held to be invalid even if there was an irregular procedure where no injustice was done. The Rule is as under:-

"149. Validity of irregular procedure in certain cases. Whenever, it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding and any sentence which the court-martial had jurisdiction to pass thereon may be confirmed, and shall, if so confirmed and in the case of a summary court-martial where confirmation is not necessary, be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid, they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any willful or negligent disregard of any of these rules."

7. The record reveals that the Commanding Officer of the petitioner requested the trial of the petitioner by a court-martial which was approved by the convening authority. The petitioner was informed that he would be tried by court-martial and was advised to submit a list of defense witnesses. The petitioner was supplied with copy of the charge-sheet, copy of the court of enquiry proceedings and summary of proceedings. A defense counsel, namely, Mr. Prabin Mahanta, Advocate was provided to the petitioner for proper conduct of the defense of the case. This was done in accordance with Rule 96 of the Army Rules, which provides that a civil counsel can also be allowed in court-martial to represent the accused subject to his being allowed by the convening officer. Thus, the petitioner was represented by a counsel of his choice. It is significant to mention that during the course of the proceedings, the defense counsel did not raise any grievance regarding non-compliance of the provisions of any rule of the Army Rules. We also find that full opportunity was granted to the petitioner to conduct his case and the proceedings could not be more fair. We further find that court-martial was presided over by an Officer of the rank of Colonel. The prosecution examined thirteen witnesses and also brought on record various documents. The petitioner was also examined by the court-martial. The court-martial meticulously juxtaposed the evidence of the prosecution witnesses on the disputed points and accepted the prosecution case. While exercising powers of judicial review under Article 226 of the Constitution, this Court cannot re-appreciate the evidence. On perusal of the record of the court-martial proceedings, we are satisfied that proceedings of the court-martial had been

conducted in accordance with the Act and Rules in a fair manner and every possible opportunity was afforded to the petitioner to defend his case. The evidence adduced by the prosecution is sufficient to sustain the conviction of the petitioner for the offence punishable u/s 320 IPC. In *Union of India and Others Vs. Major A. Hussain* 1998 SC 577, it was held that when there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not.

8. Lastly, learned counsel for the petitioner submitted that the petitioner's prosecution was bad for want of sanction u/s 197 of the Code of Criminal Procedure. We are not impressed by the said submission of the learned counsel for the petitioner. In *Union of India and Another Vs. Charanjit S. Gill and Others*, , it was held that the court-martials under the Act are not courts in the strict sense of the term as understood in relation to implementation of the Civil laws. The proceedings before court-martial are more administrative in nature and of the executive type. That being so, the provisions of Section 197 of the Code of Criminal Procedure are wholly inapplicable to the Court-martial proceedings under the Act. Consequently, we hold that the impugned order of conviction and sentence passed by the court-martial does not suffer from any legal infirmity warranting interference of this Court under Article 226 of the Constitution of India.

9. For the foregoing reasons, the petition is dismissed. No costs.