

(1976) 08 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 159 of 1976

Bhagwan Singh

APPELLANT

Vs

The Assistant Superintendent I/C and others

RESPONDENT

Date of Decision : 27-08-1976

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : (1976) 08 P&H CK 0002

Hon'ble Judges : Gurnam Singh, J

Bench : Single Bench

Advocate : V.P. Prashar, A.A.G. Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Gurnam Singh, J.—This order will dispose of both Crl. Writ Application No. 159 of 1976 and Crl. Writ Application No. 160 of 1976 as the question of law involved on both these petitions is the same.

2. The case of Bhagwan Singh petitioner is that he was tried to by the General Court Martial at field under the Army Act for the offence u/s 302, Indian Penal Code, but was convicted u/s 304, Indian Penal Code, and sentenced to undergo rigorous imprisonment for seven years. According to Bhagwan Singh, he was arrested on 10th/11th of May, 1972 and was convicted on 23rd April, 1973. After his conviction he was sent to District Jail, Jullundur. He has now requested that he remained as under trial prisoner for 347 days and that by deducting that period from the period of his sentence, his terms of imprisonment is completed. It may be mentioned here that in para No. 2 Bhagwan Singh stated that he was convicted and sentenced to 7 years rigorous imprisonment u/s 304, Indian Penal Code, while in para No. 6, he stated that if the period for which he remained in custody during trial is set off from the actual sentence of five years, he has already completed his sentence of five. He also requested that he was placed in B class by the Army Authorities but he was given C class by the Jail authorities.

3. The case of Raminder Singh Dhaliwal is that he was tried for the offence u/s 326, Indian Penal Code, and was convicted and sentenced to undergo rigorous imprisonment for two years for the said offence, that he was put underdone arrests on 18th October, 1974, that he remained under trial from 18th October, 1974 to 5th March, 1975 and 16th July, 1975 to 28th, July, 1975 total period being 120 days.

4. Notice of both the petitioners was given to the A.G. Punjab.

5. Mr. V.P. Prasher, Assistant Advocate General, Punjab, has submitted the affidavits of Mr. B.S. Wadalia, respondent No. 1, in reply in both the petitioners. According to Mr. Wadalia, Bhagwan Singh petitioner was convicted and sentenced to undergo rigorous imprisonment for seven years u/s 304, Indian Penal Code, on 23rd April, 1973, He further stated that Bhagwan Singh has been awarded C class in compliance with the commitment warrant issued by the Military authorities.

6. In the case of Raminder Singh Dhaliwal, Mr. Wadalia submitted in his affidavit that he had no knowledge about the date of arrest of the petitioner and that he had been awarded C class in compliance with the commitment warrant issued by the Military authorities.

7. Bhagwan Singh was convicted u/s 304, Indian Penal Code, on 23rd April, 1973 and was sentenced to undergo rigorous imprisonment for seven years. His plea as stated by him in para No. 6 that his sentence was for five years appears to be wrong.

8. Both the petitioners were tried by the General Court Martial at field under the Army Act. The provisions of Section 167 of the Army Act, are that "whenever any person is sentenced by a Court martial under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the date day on which the original proceedings were signed by the presiding officer or, in the case of a summary court-martial, by the Court".

9. u/s 428, Criminal Procedure Code, 1973, the period of detention by an accused person during the investigation, enquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

10. The Word "Investigation" is defined in section 2(h) of the Code as under.

Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

The word "inquiry" has been defined in S. 2(g) of the Code as under:

Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

11. There is nothing on the record to show that the cases of the petitioners were investigated, enquired into or tried under the Code of Criminal Procedure. Under the Army Act elaborate provisions have been made and rules have been framed there under for holding an enquiry and trial of a member of armed forces. Section 4(2) of the Criminal Procedure Code, itself lays down that a special law regarding the Investigation, enquiry or trial of offences shall take procedure over the provisions of the Criminal Procedure Code. Thus the provisions of the section 428, Criminal Procedure Code, 1979 are not applicable in the present case. In criminal writ No. 40 of 1975 Ram Lubhaya Sharma v. The Union of India and others, decided by a Division Bench of this Court on December 12, 1975, a similar matter was considered and it was held that benefit of section 248 Criminal Procedure Code, can only be claimed by a person whose case is investigated, enquired into or tried under the Criminal Procedure Code. These petitions have, therefore, no force and are dismissed. The petitioners be informed.