
(2007) 07 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 658 Of 2000

Dhian Singh

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 01-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 JKJ 67 : (2007) KashLJ 287 : (2008) 1 SriLJ 299

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : V.K.Magoo, Surinder Kour, Advocates appearing for the Parties

Judgement

Petitioner, Dhian Singh, has filed this writ petition through Mrs. Kamaljit Kour, his wife, questioning General Officer Commanding, 10Infantry

Division's order dated 28.01.1998, convening Summery General Court Martial and for quashing the findings returned by Summery General Court

Martial on 30th of April, 1998, besides seeking quashing of Chief of Army Staff's Order dated 27th of June, 2000, rejecting petitioner's statutory

appeal preferred under Section 166 of the Army Act. A mandamus claiming liberty too has been sought for by the writ petitioner.

Shorn of details, the petitioner's case, in nut shell, is that he had been suffering from unspecified psychosis and was made a scape goat for his false

involvement if, a murder case with a charge on him that he was responsible for firing and killing three army personnel, namely, JC178573L

Subedar Nirmal Singh, No. 3378920L Company Havildar Major Baldev Singh and No. 3375568F Hav. Kaur Singh of his Unit besides firing at

Sepoy Harbinder Singh with an intention to kill him. Supporting his case, the petitioner says that immediately before and during the occurrence the

petitioner did not have fit mental condition and taking advantage of his mental condition, a blind murder case has been foisted on him. He submits

that he had been diagnosed by the Army as suffering from a mental disease, namely, unspecified psychosis and it was precisely for this reason that

he had not been given any field duties. Describing unspecified psychosis as a disease where a person is prone to aggressive behaviour during the

recovery time, the petitioner says that the findings of the Summery General Court Martial, holding him guilty of all the charges framed against him

under Section 69 of the Army Act and contrary to Sections 302 and 307 of the Ranbir Penal Code.

Urging that his conviction was bad in law, because holding him fit for trial, the Summery General Court Martial had erred in violating Army Rules

and Army Act. Army Rules 23 and 58, besides Army order 37/38 of 1983 are stated to have been violated by the Summery General Court

Martial.

Denying as factually incorrect, the case put up by the petitioner in his petition, the respondents submit that Army Rules and the Provisions of Army

Act were complied with in letter and spirit and the proceedings of the Summery General Court Martial were commenced after being satisfied that

the petitioner was fit to take trial. It has been specifically denied that the petitioner was not able to understand the trial and had been prejudiced in

any manner whatsoever during the trial. Respondents say that complying with the requirements of Army order 37 of 1983, the petitioner had been

referred to 170 Military Hospital from where he was sent to Command Hospital, Northern Command, for necessary investigation. The petitioner

was found fit to undergo the trial. Giving history of the petitioner, it is stated that he had been placed in a low medical category with the diagnosis

UNSPECIFIED PSYCHOSIS"" on 4th of August, 1995 whereafter he was provided treatment from Military Hospital and had undergone

medical recategorization periodically. Though initially he was graded as GEE (ternp) but in the last review board the petitioner was upgraded and

placed in low medical category i.e. BEE (Psy) permanent with effect from 4th of August, 1997. 470 Military Hospital had, on review medical

board, held on 19th of August, 1997, confirmed his diagnosis as that of Unspecified Psychosis'. Giving details of the prosecution case the

respondents say that it was at about 1920 hours of 29th of August, 1997 that the petitioner, after returning from 170 Military Hospital and having interview with the Adjutant was sent to his Company Headquarter, where he reached at 1745 hours. It was at about 1920 hours that he picked up rifle 7.62 mm SLR Butt No. 152, registration No. BN0124, loaded with Magazine containing 15 rounds, belonging to No. 3380828 LINK (TS)

Harjinder Singh, who had gone to fetch a glass of water for Subedar Nirmal Singh, because of the low medical category the petitioner had not been given any weapon. Petitioner fired approximately 12 rounds on Subedar Nirmal Singh, CHM Baldev Singh and Hav. Kaur Singh who were sitting together, from a distance of approximately 3 to 5 meters. The whether was clear and visibility around 100 meters. After firing at above named three persons, the petitioner proceeded towards the langer where he was challenged by Sepoy Harbinder Singh. The petitioner fired at him also but missed him. Subsequently he dropped his rifle and tried to escape, after throwing away the weapon. Sepoy Harbinder Singh, however, overpowered him and he was placed under close arrest. Baldev Singh and Kaur Singh died on spot whereas Subedar Nirmal Singh succumbed to injuries while being evacuated to Advance Dressing Station, Pallanwala. The Court of Inquiry was ordered by HQ 52 Infantry Brigade and FIR was lodged with Police Station Pallanwala on 21st of August, 1997. After completion of Court of Inquiry the petitioner was taken in civil custody on 28th of August, 1997. Learned Judicial Magistrate 1st Class, Akhnoor, was approached by the competent Military authority for handing over the petitioner to the Military authorities. The petitioner was handed over to Military authorities on 29th of September, 1997.

After complying with the Army Rules and the provisions of the Army Act, including the Court of Inquiry and hearing the petitioner on charge, recording of Summery of Evidence was ordered by the competent authority. Petitioner was asked to sign the statements of the witnesses, examined by him under Army Rule 22. He, however, refused to sign. He was there after, in compliance to the provisions of Army Order 37 of 1983, referred to 170 Military Hospital from where he was sent to Command Hospital, Northern Command for necessary investigation. The Command Hospital held him fit to undergo the trial.

The petitioner had been arraigned for trial of offences under Section 69 of the Army Act, contrary to Sections 302/307 of the Ranbir Penal Code.

The charges were split and were four in number. General Officer Commanding, 10 Infantry Division, pursuant to his orders, directed the trial of the

petitioner by Summery General Court Martial. Exercising his right of having a defence counsel, petitioner applied and was provided Shri Jatinder

Choudhary, Advocate, J&K High Court, as his advocate. Mr. Mohinder Kapoor, Advocate of J&K High Court was appointed as the

prosecution counsel.

After full dressed trial the Summery General Court Martial held the petitioner guilty of the charges and proposed life imprisonment and dismissal

from service as punishment.

Aggrieved by the finding and sentence recorded by the Summery General Court Martial, the petitioner had come to this Court on an earlier

occasion also in writ petition, OWP no. 867 of 1999. On this writ petition coming up for consideration, this Court took a view that the remedy by

way of appeal was more appropriate for the petitioner as the issues raised by the petitioner may not be gone into in detail in exercise of writ

jurisdiction of the Court. The writ petition was, thus, permitted to be withdrawn by the petitioner, reserving liberty to him to file and route his

statutory petition/appeal. After the judgment of this Court on 27th July, 1999 the petitioner preferred a statutory petition/appeal, which after its

consideration, was rejected by the Chief of the Army Staff on 27th June 2000.

Mrs. Surinder Kour, learned counsel for the petitioner, submits that the trial held by the Summery General Court Martial stood vitiated because the

petitioner was not medically fit to take the trial and no medical examination had been carried out before commencing the trial. She submits that the

petitioner, having been proved to be insane at the time of commencement of the trial, could not be fastened with the conviction and punishment.

She further submits that the respondents had violated the provisions of Army Rule 23 while recording Summery of Evidence. The noncompliance,

according to the learned counsel, too renders the conviction and sentence unsustainable. It has been additionally urged by learned counsel for the

petitioner that the Summery General Court Martial had not properly appreciated the evidence and the conclusion arrived at by the Summery

General Court Martial was against the weight of evidence, which the parties had produced during the trial.

Mr. Magoo, learned Assistant Solicitor General, produced the records of the Summery General Court Martial alongwith the documents,

evidencing due compliance of the Army Rules. Learned counsel submits that the guilt of the petitioner stood sufficiently proved by the evidence,

which the prosecution had led in the case and trial of the petitioner had not been prejudiced in any manner what so ever.

I have considered the submissions of learned counsel for the parties and gone through the Summery General Court Martial records produced by

learned counsel for the respondents during the course of hearing of this petition.

The records of the Summery General Court Martial reveal that the petitioner had been medically examined before the commencement of the trial

and the medical certificate, forming part of records, indicates his fit condition to take the trial. The Presiding Officer of the Summery General Court

Martial, when the Court assembled for the first time, had asked the petitioner if he had any objection to be tried by him as Presiding Officer or by

any officers constituting the Court, whose names had been read over to him. The petitioner is recorded in the proceedings to have stated that he

would not object to his trial by the Presiding Officer and the Members of the reconstituted Court. The petitioner was being represented by Shri

Jatinder Choudhary, Advocate, Jammu and Kashmir High Court. The record of the proceedings of Summery General Court Martial demonstrate

that the provisions of the Army Act and the Rules framed thereunder had been complied with in letter and spirit and the petitioner had, at no point

of time, raised any such objection for noncompliance of the rules. It further comes out from the proceedings that petitioner through his advocate

had crossexamined the witnesses produced by the prosecution. He had exercised his right of leading defence evidence too in projecting that he

was suffering from insanity since 1996. The Summery General Court Martial had appreciated the prosecution and defence evidence and had

recorded a finding, proving the petitioner guilty of the offences, with which he stood charged. While finding that petitioner was guilty of all the

charges, the Court had given its reasons in support of the findings. These reasons read thus:

From the evidence on record the Court finds that No. 3384277H Sepon Dhian Singh, JC178573L Sub Nirmal Singh (deceased No. 1),

Company Havildar Major Baldev Singh (deceased No. 2), Havildar Kaur Singh (deceased No. 3) and Sepoy Harbinder Singh all of 10 SIKH

Regiment were present at Dhar post on 20 Aug 97, at the time of incident.

Regarding death of Subedar Nirmal Singh, Company Havildar Major Baldev Singh and Havilder Kaur Singh, medical evidence placed on record

by Dr. Ravinder Singh (PW16) and Capt Uberoi (PW8) have conclusively proved beyond reasonable doubt that the death of all the deceased

personnel on 20 Aug 96 were due to hemorrhagic shock as a result of gunshot wounds at vital organs.

As regards the act of the Accused causing the death of the deceased, the Court relied on the testimony of Sepoy Harbinder Singh (PW7). The

medical evidence has also corroborated his version. Evidence of Investigating Officer, ASI Jaswant Singh (PW8) regarding recovery and

subsequently seizure of Self Loading Rifle (MEVIII), live cartridge cases (MEIX), fired cartridge cases (MEVIII) from the site of incident,

corroborated by documents contemporaneously prepared by him also corroborates the testimony of PW7. The evidence of ballistic experts also

corroborate the testimony of Sepoy Harbinder Singh. As regards the contention of defence that testimony of PW 7 should not be believed as he

has not deposed truthfully. The Court is not convinced with the reasoning of the Defence Counsel in the light of ample circumstantial evidence

which has further corroborated the testimony of PW7.

The Court also considered the arguments of the defence, regarding the credibility of PW3. The Court is of the opinion that PW3 has not seen the

incident i.e. Accused firing on the deceased persons, but Court is of the opinion that his complete testimony cannot be discarded because the facts

deposed by him have been amply corroborated by other witnesses and circumstances.

The Court believes the extra judicial confession made by the Accused to PW17. The confession has been amply corroborated by PW3. Though

there is some variation as regards to some words, but the said variation does not affect the acceptability of the confession. Moreover the

confession was made voluntarily by the Accused to PW17 who is a senior officer

not inimical towards the Accused.

The defence has not claimed the case under exceptions of Sec 300 of R.P.C. However, the defence has claimed the case under Sec 84 of the

RPC. The Court is of the view that the mere fact that there was abnormality of mind or that the Accused had suffered from mental illness in 1995

and 1996 does not afford any protection under Sec 84 of RPC. The defence has failed to bring out anything which could constitute legal insanity.

The defence was required to prove that the Accused was incapable of understanding or knowing the nature of the act which he was doing, was

wrong or contrary to law. The Accused had gone to Dhar Post and was present in the area where the deceased were sitting. The Accused on

getting an opportunity fired recklessly on the deceased persons on account of which the deceased persons died due to multiple injuries on vital

organs. The Accused did not stop firing from a concealed position but he fired from outside the hut also. The Accused then proceeded towards

langar to kill persons working in the langar. When the accused saw that the first, round fired by him had missed PW7, the Accused tried to loan a

round manually but failed to do so as the round fell down from his hand. When the Accused saw PW7, charging on to him he threw the weapon

and started running towards the Company Commander's Hut. This is sufficient to show that the Accused was fully aware of the act committed by

him and he was not suffering from any legal insanity. Therefore in absence of plea of legal insanity it can not be said that the accused did not have

necessary mensrea.

The nature and extent of injuries as brought out by PW8 and PW16 clearly show that weapon was fired from a close range. The Court is of the

opinion that the injuries found on the bodies of the deceased persons were caused by the Accused intentionally. Further the injuries were sufficient

in ordinary course of nature, to cause death.

As regard to the fourth charge the Court relied on the testimony of the PW2, PW3, PW7 and PW17.

The Court, therefore, finds No. 3384277H Sep Dhian Singh of 10 Sikh Guilty of all the charges.

The stand taken by the respondents in their objections that the Summery General Court Martial had not violated either the provisions of the Army

Act or the Rules framed there under get substantiated from the perusal of the records of Summery General Court Martial. I, therefore, do not find any merit in the submission of petitioner's counsel that the respondents have not complied the Army Act and Rules framed thereunder while holding the trial of the petitioner. The Summery General Court Martial proceedings, which contained the Summery of Evidence too, further reveal that the Officer recording the Summery of Evidence had issued a certificate as to the compliance of the provisions of Rule 23 and its subrules, while recording Summery of Evidence in the case. The proceedings indicate that the petitioner, in whose presence the Summery of Evidence had been recorded, refused to sign the proceedings. All this indicates that the respondents had not violated the rules as alleged by the petitioner.

That apart, violation of Rules, during the process of recording of Summery of Evidence, may not be of any consequence when the petitioner had been ordered to be put up for trial under the provisions of Army Act and rules framed thereunder. Plea of the petitioner that the finding of the Summery General Court Martial, that the petitioner was guilty of offences with which he stood charged, was against the weight of evidence, cannot be gone into by this Court in exercise of its writ jurisdiction.

It is true that/Court Martial Proceedings are subject to the judicial review by the High Court under Article 226 of the Constitution of India, but this judicial review, may not permit reappreciation of evidence by the Court. It is only when a Court Martial was not properly convened or there was any challenge to its composition and the proceedings, on the basis of violation of the provisions of the Army Act and the rules framed there under, that the High Court, may exercise its power of judicial review.' The plea of Mrs. Kour, that the conviction of the petitioner is against evidence on records and the Court Martial had not properly appreciated the evidence, cannot thus be taken note for consideration. I Proceedings of the Court Martial are not to be compared with the proceedings in a Criminal Court under the Code of Criminal Procedure. Court Martial remains, to a significant degree, a specialized part of over all metalism by which the Military discipline is preserved. It is for the special need of the Armed Forces that a person subject to Army Act is tried by Court Martial for an Act which is an. Court Martial discharges judicial function and the

proceedings of the Summery General Court Martial in question indicate that do care and caution had been taken by the Summery General Court

Martial in adhering to the provisions of the Evidence Act, Army Act and Army Rules. It has discharged its responsibility to protect the rights of the

accused charged before it by providing him all the procedural safe guards.