
(2009) 10 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4597 of 1997

Ex. Constable Papu Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Border Security Force Act, 1968 — Section 117, 14, 17, 46, 64
Border Security Force Rules, 1969 — Rule 159, 43
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 354, 451

Citation : (2009) 10 RAJ CK 0042

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—Seeking an appropriate writ, order or direction to quash the Summary Security Force Court's proceedings, those resulted into dismissal of the petitioner from service, this petition for writ is preferred.

2. The petitioner was enrolled with Border Security Force as Constable in the year 1988. While posted with 66 Battalion at Jaisalmer he was placed under open arrest on 09.06.1995 alleging commission of an offence on 07.06.1995 punishable under Sections 354 and 451 IPC, triable u/s 46 of the Border Security Force Act, 1968 (hereinafter referred to as "the Act of 1968"). The officiating Commandant, 66 Battalion vide order dated 09.06.1995 detailed Shri J.S. Aulakh, Deputy Commandant to prepare record of inquiry against the petitioner and to complete the same in all respect by 14.06.1995. The record of inquiry was prepared from 12.06.1995 to 20.06.1995, however, the Commandant ordered to record additional evidence by an order dated 21.06.1995. Shri J.S. Aulakh recorded additional evidence on 21.06.1995 and remitted the record of inquiry to the Commandant. An offence report as per Rule 43 of the Border Security Force Rules, 1969 (hereinafter referred to as "the Rules of 1969") was also prepared and then the Commandant, 66 Battalion ordered for an another record of inquiry

vide order dated 16.02.1996 by Shri S.K. Swami, Assistant Commandant. In pursuant to the order aforesaid another record of inquiry was prepared and concluded on 19.02.1996. The Commandant, 66 Battalion vide letter dated 22.02.1996 proposed trial of the accused petitioner by Summary Security Force Court by himself in terms of Section 70 of the Act of 1968. Accordingly, Summary Security Force Court was convened and the charge sheet dated 22.02.1996 was issued. The petitioner availed service of Shri Chain Singh of 192 Battalion, Border Security Force, Jaisalmer as "friend of the accused". The proceedings of the Summary Security Force Court were concluded on 20.03.1996 and the petitioner was sentenced by "dismissal from service". The sentence awarded was promulgated by the Commandant, 66 Battalion as per provisions of Rule 159 of the Rules of 1969 and a promulgation certificate was issued on 20.03.1996 itself. As per the petitioner, copy of the Summary Security Force Court proceedings was not supplied to him and he was also not apprised about right of filing the statutory petition as per the provisions of Section 117 of the Act of 1968. The proceedings concerned were supplied to the petitioner subsequently and then he preferred a petition as per Section 117 of the Act of 1968 before the Director General, Border Security Force with numerous contentions including that no reference by the competent authority was made as required under Sub-section (2) of Section 74 of the Act of 1968 to try the petitioner by Summary Security Force Court. The Chief Law Officer (D & L) by a communication dated 20.03.1997 informed the petitioner that his petition has been rejected by the Director General after careful consideration of all the points raised therein, thus, being aggrieved by the award of sentence and rejection of statutory petition, this petition for writ is preferred with the contentions that; (1) as per Section 74(2) of the Act of 1968, when there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a Petty Security Force Court for trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the Sections 14, 17 and 46 of the Act, but in the present case without making such reference the petitioner was tried for Section 46 by a Summary Security Force Court; and (2) the Director General rejected the petitioner's statutory petition without adequate application of mind.

3. Per contra, as per the respondents the petitioner was tried by the Summary Security Force Court within the framework of the Act of 1968 and the Rules of 1969. The Commandant, 66 Battalion after careful study of the case, based on gravity of the charge decided to hold Summary Security Force Court to meet the ends of justice. The respondents also stated that the petition of the petitioner u/s 117 of the Act of 1968 was examined by the competent authority and the same was rejected being devoid of merit.

4. Looking to the averments made in para 15 of the reply to the writ petition that the Commandant, 66 Battalion decided to hold Summary Security Force Court, this Court vide order dated 09.04.2009 directed the respondents to make available the notings wherein the Deputy Inspector General, Border Security

Force, Jaisalmer took a decision to try the petitioner by holding Summary Security Force Court. In pursuant thereto certain documents are placed on record by the respondents on 22.10.2009.

5. Heard counsel for the parties.

6. The first contention of counsel for the petitioner is that the entire proceedings of Summary Security Force Court deserves to be quashed being wholly unauthorised and without jurisdiction as the Commandant, 66 Battalion proceeded with the Summary Security Force Court proceedings though no reference, as required u/s 74(2) of the Act of 1968 was ever made.

7. Section 74 of the Act of 1968 reads as follows:

74. Powers of a Summary Security Force Court.-(1)Subject to the provisions of Sub-section (2), a Summary Security Force Court may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the Sections 14, 17 and 46 of this Act, or any offence against the officer holding the court.

(3) A Summary Security Force Court may try any person subject to this Act and under the command of the officer holding the court, except an officer, or a subordinate officer.

(4) A Summary Security Force Court may pass any sentence which may be passed under this Act, except the sentence of death or of imprisonment for a term exceeding the limit specified in Sub-section (5).

(5) The limit referred to in Sub-section (4) shall be,

(a) one year, if the officer holding the Security Force Court has held either the post of Superintendent of Police or a post declared by the Central Government by notification to be equivalent thereto, for a period of not less than three years or holds a post of higher rank than either of the said posts; and

(b) three months, in any other case.

8. In the instant case the offence being a civil offence u/s 46 of the Act of 1968 could have not been tried by the Summary Security Force Court except by making the reference required in view of the provisions of Sub-section (2) of Section 74 of the Act of 1968, which prescribes that an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the Sections 14, 17 and 46 of the Act. The competent authority for granting sanction as per Section 74(2) in the present case is Deputy Inspector General, Border Security Force and to controvert the argument of the

petitioner, counsel for the respondents has placed certain documents on record on 22.10.2009. The document dated 27.06.1995 is a communication from officiating Commandant, 66 Battalion wherein recommendation was made for petitioner's trial by General Security Force Court. By letter dated 04.09.1995 the Junior Assistant Director (Law) conveyed to Station Head Quarter, Border Security Force, Jaisalmer that the Commandant, 66 Battalion may try the accused by way of Summary Security Force Court. Relevant to note here that the Junior Assistant Director (Law) signed the document dated 04.09.1995 for Inspector General, Border Security Force. No notings or considerations by the Inspector General, Border Security Force is either placed on record or shown to the court by the respondents to satisfy that issue of sanction was considered and allowed by the Inspector General himself. At the back of document dated 04.09.1995 a seal mark appears, wherein the Deputy Inspector General has put his signature. As per counsel for the respondents the signatures of the Deputy Inspector General establishes grant of sanction for trying the petitioner by Summary Security Force Court.

9. In the present set of facts the inference sought to be drawn regarding grant of sanction by the Deputy Inspector General is not at all permissible. u/s 74(2) of the Act of 1968 an exception is made regarding trial relating to Sections 14, 17 and 46 and powers to avail an exceptional mode of trial cannot be exercised in casual manner or by mechanical exercise of powers. The competent authority in such case is required to exercise its judicious discretion to reach at a specific conclusion on basis of prevailing circumstances that even for offences punishable under any of the sections those are 14, 17 and 46, an officer may be tried by Summary Security Force Court. In the present case as a matter of fact what to talk about objective consideration of issue even the casual exercise of powers is not visible. Mere putting signatures by the Deputy Inspector General behind the back of a communication made by the Chief Law Officer (D & L) is of no consequence. As such, I am having no hesitation in holding that no reference as required u/s 74(2) of the Act of 1968 was at all made before trying the petitioner through Summary Security Force Court.

10. It is stated by counsel for the respondents that the petitioner was tried objectively by the Summary Security Force Court, thus, no prejudice is caused to him and, therefore, this Court while exercising its powers under Article 226 of the Constitution of India should not interfere with the matter.

11. I do not find any merit in the argument advanced. Section 64 of the Act of 1968 provides three kinds of Security Force Courts viz. General Security Force Courts; Petty Security Force Courts; and Summary Security Force Courts. The procedure of trial in all the three Courts referred above is quite different. In General Security Force Court, a detailed procedure as prescribed under Chapter IX and X of the Rules of 1969 is required to be adhered whereas a summary procedure is required to be adhered by a Summary Security Force Court as prescribed under Chapter XI of the Rules of 1969. A General Security Force Court

is having a composition of five officers and each of whom must have held the post of Deputy Superintendent of Police for not less than three whole years and of whom not less than four are of a rank not below that of a confirmed Deputy Superintendent of Police. On the other hand, a Summary Security Force Court may be held by the Commandant of any unit of the force and the Commandant alone shall constitute the Court. In the present case at the first instance under the letter dated 27.06.1995 the officiating Commandant, 66 Battalion, Border Security Force made a recommendation for petitioner's trial by General Security Force Court. The recommendation so made was altered by the respondents for adopting trial by Summary Security Force Court without having proper sanction/reference as per provisions of Section 74(2) of the Act of 1968 and that has certainly caused a prejudice to the petitioner's defence. If the petitioner would have been tried by the General Security Force Court, he would have been certainly better avenues for his defence. If he was denied the trial by General Security Force Court to adopt an exceptional mode then that should have been done with all caution and care. The adoption of exceptional mode in routine manner has certainly caused prejudice to the petitioner's right.

12. After holding trial of the petitioner by Summary Security Force Court bad, the second contention raised by counsel for the petitioner regarding disposal of the statutory petition with adequate application of mind is not of much consequence, however, I consider it appropriate to mention that a statutory petition submitted by a member of Border Security Force is required to be considered by competent authority carefully and objectively. Such consideration is also required to be apparent in the order passed by the authority concerned. In the instant case no order passed by the competent authority is available on record. During the course of arguments I asked counsel for the respondents to make available the order passed by the competent authority and to place the same on record but the same was not found even in the original record available with counsel. This fact itself creates doubts about proper consideration of the statutory petition by the competent authority.

13. For the reasons stated above, this petition for writ deserves acceptance and, therefore, the same is allowed. The entire proceedings of the Summary Security Force Court conducted against the petitioner is quashed including its finding and sentence passed on 19/20.03.1996. The rejection of the petitioner's statutory petition is also declared illegal. The respondents are directed to reinstate the petitioner in service with all consequential benefits.

14. No order to costs.