

(2002) 04 CAL CK 0044
In the Calcutta High Court
Case No : Writ Petition No. 1000 (W) of 1998

Girish Chandra Rout	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 25-04-2002

Acts Referred:

Army Rules, 1954 — Rule 106 , 108, 109, 110, 111
Constitution of India, 1950 — Article 20(3), 226

Citation : (2002) 2 CALLT 385 : 106 CWN 618

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Kishore Dutta, for the Appellant; Tapas Kumar Hazra and Rabindra Nath Bag, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Banerjee, J.—Writ petitioner was member of the defence force. He was dismissed from service by applying the relevant provision of the Army Act and the Rules framed thereunder. By the Summery Court Martial procedure the writ petitioner was sentenced and awarded rigorous imprisonment for four months coupled with dismissal from service.

2. The facts of this case would depict that at about 19.45 hours on 3rd September, 1997 the writ petitioner trespassed into the family quarter of his fellow colleague Mr. G. Sampat when he was out of station on leave and his wife was alone in the quarter alongwith her minor child. At the relevant time the writ petitioner was on duty and was given sentry duty.

3. Mr. Kishore Dutta, learned counsel for the petitioner, challenged the order of punishment on following seven grounds :-

- (1) The charge was too vague to punish the writ petitioner;
- (2) The respondent authority was bias against the writ petitioner;

- (3) The purported admission on the part of the writ petitioner could not be used as the sole evidence against him to prove his guilt;
- (4) There was undue haste in proceeding against the writ petitioner;
- (5) The self-same officer who issued the charge sheet conducted the Court martial proceedings;
- (6) The entire proceedings was conducted in English and no assistance of interpreter was given to the writ petitioner;
- (7) The punishment was disproportionate to the alleged charges.

4. Mr. Dutta in support of his contention relied on the following decision :-

- (i) 1991, Vol. I, Calcutta Law Journal, Page-1 [Sk. Golap and Ors. v. Bhuban Chandra Panda and Ors.];
- (ii) 1987, Vol. II, Calcutta Law Journal, Page-344 [Director (Inspection and Quality Control) Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Anr.];
- (in) Shiv Sagar Tiwari Vs. Union of India and others,
- (iv) Willie (William) Slaney Vs. The State of Madhya Pradesh,
- (v) K.S. Srinivasan Vs. Union of India (UOI),
- (vi) 1997, Vol. 76, Factory Law Report, Page 207 [Santa Cement Works and Anr. v. Bachchan Lal Srivastava and Ors.]

5. On the first issue Mr. Dutta submitted that the charge was too vague to punish the writ petitioner. In this regard the charge is quoted below :-

"An act prejudicial to good order and military discipline in that he, at Barrackpore at about 19.45 hours on 03 September 1997 criminally trespassed the family quarter of Number 13968265Y Naik/ Nursing Assistant G Sampath when the NCO was out of station on leave."

6. Referring to the above charge Mr. Dutta submitted that criminal trespass had been defined under the Indian Penal Code which meant a trespass coupled with a mensria i.e. with a motive to create any criminal offence. The aforesaid charge neither indicated any such mensria nor any such intention of the petitioner was proved during the Court martial as such the allegation of criminal trespass was too vague.

7. On the 2nd, 4th and 5th issue Mr. Dutta submitted that a particular officer was alone responsible for conducting the said proceedings starting from issuance of the charge sheet until punishment was awarded which was an act of biasness. Moreover, he submitted that there was undue haste on the part of the respondent authority to punish the writ petitioner which was also an act of bias.

8. On the 3rd issue Mr. Dutta submitted that an admission was extracted from the writ petitioner which was used against him which was not permitted under Article 20(3) of the Constitution of India, there was no contemporaneous evidence laid in respect of the charge and the punishment was given on the basis of the so-called admission made by the writ petitioner.

9. The writ petitioner was not acquainted with English language. The entire proceeding was conducted in English and no assistance of interpreter was given to the writ petitioner.

10. On the 7th and last issue Mr. Dutta submitted that the punishment was disproportionate to the alleged offence. No discussion had been made by the respondent authority while awarding punishment in this regard.

11. To sum up his contention Mr. Dutta submitted that on the basis of the aforesaid submission the order of punishment was liable to be quashed and set aside. Mr. Dutta further submitted that in any event the writ petitioner suffered rigorous imprisonment for 4 months and taking into account of such fact the order of dismissal from service should be set aside and the writ petitioner should be reinstated in service.

12. Mr. Rabindra Nath Bag, learned counsel for the respondent, submitted that the writ petitioner was on duty guarding the family members staying in the quarters. While the concerned personnel was out of station on leave it was incumbent upon the writ petitioner to guard his family instead of point that he trespassed into the said quarter knowing fully well that the wife of the outstationed personnel was alone in the quarter along with her minor child. Being a member of the disciplined force this was an extreme act of misconduct and his further stay in the force would cause serious indiscipline.

13. On the question of bias, undue haste and conducting of the proceedings by the self-same officer Mr. Bag demonstrated from the record produced before me that adequate opportunity was given to the writ petitioner to defend himself. He further submitted that under Army Act and Rules framed thereunder Summary Court Martial procedure had been adopted in the instant case and the writ petitioner was accordingly punished by the appropriate authority.

14. On the question of admission Mr. Bag submitted that even though the writ petitioner admitted his guilt there were contemporaneous evidence of the witness including the victim lady and such contention of Mr. Dutta to that extent was contrary to record.

15. On the question of interpreter Mr. Bag demonstrated from the records that the submission of Mr. Dutta was not tenable.

16. On the question of disproportionate punishment Mr. Bag submitted that since the charge was proved as against the writ petitioner his further stay in the force would cause serious indiscipline amongst his fellow colleagues.

17. Lastly Mr. Bag contended that being a member of the defence force the writ petitioner should have been more cautious in performing his duty. He further submitted that the Apex Court from time to time observed that the Court of law should be slow in interfering with the order of the Court of Martial. Reliance was placed by Mr. Bag in the case of Union of India and Ors. v. Major A. Hussain reported in 1998, Madras Law Journal, Supreme Court, Page 18 and Vidya Parkash Vs. Union of India (UOI) and Others, .

18. In this back drop may I now deal with the contention of Mr. Dutta. On the question of vagueness of charge I do not find any justification in such contention. The charge was a statement of fact. The fact that the writ petitioner trespassed into the family quarter at that particular time while he was on duty, had been proved not only by his own admission but also by other contemporaneous evidence including that of the victim lady. Hence, assuming the charge was vague the writ petitioner understood the purport of the same and contested the proceedings and he was found guilty of the same. I, therefore, reject the contention of Mr. Dutta on that score.

19. On the question of bias, undue haste and the proceedings conducted by the self same official on perusal of records I do not find any basis of such contention of Mr. Dutta. Under Rule 106 to 133 and the Army Rules, 1954 framed under the Army Act the respondent authority was empowered to punish a member of the force by Summary Court Martial procedure. I do not find any violation thereof from the records.

20. On the question of admission I find justification in Mr. Bag's contention which is backed up by records. From the records it appears to me that not only the writ petitioner admitted the charge there were contemporaneous evidence to support such charge. Hence, contention of Mr. Dutta on that score is also rejected.

21. The contention of not giving any interpreter assistance is also belied by the records and as such is rejected.

22. On the question of disproportionate punishment relying on the two Supreme Court decisions I find justification in Mr. Bag's contention to the effect that the further stay of the writ petitioner in the disciplined force would cause serious indiscipline. I can not overlook the fact that the writ petitioner was not a clerical employee in a Government organisation. He was a member of the Army. Maintenance of strict and rigid discipline is the paramount concept of the Army. In this regard I like to quote the relevant passage from the case of Union of India v. Major A. Hussain. Paragraph 22 of the said Apex Court judgment is quoted below :-

"Though Court Martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the Court Martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a Court Martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure

prescribed, the High Court or for that matter any Court must stay its hands. Proceedings of a Court Martial are not to be compared with the proceedings in a criminal Court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that Court Martial remains to significant degree, a specialized part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by Court Martial for an act which is an offence under the Act. Court martial discharges judicial function and to a great extent is a Court where provisions of Evidence Act are applicable. A Court Martial has also the same responsibility as any Court to protect the rights of the accused charged before it and to follow the procedural safeguards. If one looks at the provisions of law relating to Court Martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the Court martial unless it is shown that accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient, Court Martial has jurisdiction over the subject matter and has followed the prescribed procedure and is within its powers to award punishment."

Following the said Apex Court decision and considering the aforesaid facts and circumstances I do not find any reason to interfere with the order of the respondent authority awarding punishment to the writ petitioner.

Writ petition is thus dismissed.

There would be no order as to costs.

Urgent xerox certified copy will be given to the parties, if applied for.