

(2015) 12 KAR CK 0184
In the Karnataka High Court
Case No : W.A. No. 200198/2015 [GM-RES]

Jitendra Prasad

APPELLANT

Vs

Dalbir Singh Kataria and Others

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Air Force Act, 1950 — Section 121, 124, 125, 125(2)
Criminal Procedure Code, 1973 (CrPC) — Section 475
Penal Code, 1860 (IPC) — Section 324, 341, 504, 506

Citation : (2015) 12 KAR CK 0184

Hon'ble Judges : A.S. Bopanna and G. Narendra, JJ.

Bench : Division Bench

Advocate : Sachin M. Mahajan, Advocate, for the Appellant; Vikhruddin,
Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The appellant is before this Court assailing the Order dated 21.07.2015 passed in W.P. No. 203303/2015.

2. The appellant was before the learned single Judge, assailing the notice dated 06.02.2012 and communication dated 08.11.2013 in C.C. No. 245/2011 issued to the Commanding Officer of the respondent herein. The Order dated 23.02.2015 in C.C. No. 245/2011 was also assailed in the said petition.

3. The appellant is a retired Sergeant from the Indian Air Force ["IAF" for short]. The 1st respondent is a serving Warrant Officer in the IAF Station at Bidar, but presently serving at Gujarat. Due to certain altercation between the appellant and the 1st respondent, the appellant herein lodged a Private Complaint No. 9/2010 alleging assault and sought that the 1st respondent be punished for committing the offences punishable under Sections 341 , 324 , 504 and 506 of the Indian Penal Code.

4. Learned Magistrate had taken cognizance and had issued notices to the

respondent.

5. In view of the provision contained in Section 124 and 125 of the Air Force Act ["the Act" for short] read with Section 475 of the Criminal Procedure Code, the issue was as to whether the proceedings was required to be continued before the learned Magistrate or as to whether the proceedings in a Court Martial was to be taken against the 1st respondent herein under Criminal Courts and Court Martial [adjustment of Jurisdiction] Rules, 1978.

6. The 2nd respondent in that regard had exercised the option and got transferred the matter to it for proceeding against the 1st respondent through Court Martial. Learned Magistrate, by Order dated 23.02.2015 has permitted the same and transferred the proceedings of the case to enable the 2nd respondent to proceed in the matter. The appellant therefore, claiming to be aggrieved by such action had assailed the same in W.P. No. 203303/2015 [GM-RES]. The learned Single Judge, by Order dated 21.07.2015 was of the opinion that the learned Magistrate has not committed any error and the writ petition was rejected. While disposing off the writ petition, the learned single Judge has also taken note of the fact that the appellant had also assailed the said Order in Crl.R.P. No. 9/2015, which was pending at that stage.

7. Learned counsel for the appellant would submit that the aforesaid revision petition has been withdrawn on 22.08.2015, after filing this appeal. In that view, this appeal requires consideration to come to the conclusion as to whether either the learned Magistrate or the learned single Judge have committed any error in permitting the Court Martial proceedings instead of continuing the proceeding before the learned Magistrate.

8. The perusal of the provision contained in Section 124 of the Act would indicate that the learned Magistrate in a proceeding before the Court and the Commanding Officer initiating the Court Martial proceeding can exercise jurisdiction concurrently. However, in a situation when the proceedings is initiated in a Criminal Court against a serving officer who can also be proceeded against through Court Martial, the Commanding Officer would have the option to either accede to the proceedings before the Court or seek transfer of the case to proceed through Court Martial. In fact, such issue had arisen for consideration before the Hon'ble Supreme Court in the case of Balbir Singh and Another Vs. State of Punjab, ; wherein the Hon'ble Supreme Court after having taken into consideration the relevant provision has held as hereunder:

"A conjoint reading of the above provisions shows that when a criminal court and court-martial each have jurisdiction in respect of the trial of the offence, it shall be in the discretion of the officer commanding the group, wing or station in which the accused is serving or such other officer as may be prescribed, in the first instance, to decide before which court the proceedings shall be instituted and if that officer decides that they should be instituted before a "court-martial", to direct that the accused persons shall be detained in air force custody. Thus, the

option to try a person subject to the Air Force Act who commits an offence while an "active service" is in the first instance with the Air Force Authorities. The criminal court, when such an accused is brought before it shall not proceed to try such a person or to inquire with a view to his commitment for trial and shall give a notice to the Commanding Officer of the accused, to decide whether they would like to try the accused by a court-martial or allow the criminal court to proceed with the trial. In case, the Air Force Authorities decide either not to try such a person by a court-martial or fail to exercise the option when intimated by the criminal court within the period prescribed by Rule 4 of the 1952 Rules (supra), the accused can be tried by the ordinary criminal court in accordance with the Code of Criminal Procedure. On the other hand if the Authorities under the Act opt to try the accused by the "court-martial", the criminal court shall direct delivery of the custody of the accused to the Authorities under the Act and to forward to the Authorities a statement of the offence of which he is accused. It is explicit that the option to try the accused subject to the Act by a court-martial is with the Air Force Authorities and the accused person has no option or right to claim trial by a particular forum. The option appears to have been left with the Air Force Authorities for good and proper reasons. There may be a variety of circumstances which may influence the decision of the Air Force Authorities as to whether the accused be tried by a court-martial or by a criminal court. This Court in *Ram Sarup v. Union of India* opined:

"In short, it is clear that there could be a variety of circumstances which may influence the decision as to whether the offender be tried by a court-martial or by an ordinary criminal court, and therefore it becomes inevitable that the discretion to make the choice as to which Court should try the accused be left to responsible military officers under whom the accused be serving. Those officers are to be guided by considerations of the exigencies of the service, maintenance of discipline in the army, speedier trial, the nature of the offence and the person against whom the offence is committed."

There appears to be sound logic to give the first option to the Authorities under the Act to decide whether the accused should be tried by the court-martial or the criminal court. The defence of the country being of paramount importance, the Air Force Authorities would know best as to whether the accused should be tried by the court-martial or by the ordinary criminal court because the trial by the ordinary criminal court would necessarily involve a member of the force being taken away for trial by the ordinary criminal court and not being available to the Authorities and the like considerations. However, in the event the criminal court is of the opinion, for reasons to be recorded, that instead of giving option to the Authorities under the Act, the said court should proceed with the trial of the accused, without being moved by the competent authority under the Act and the Authorities under the Act decide to the contrary, the conflict of jurisdiction shall be resolved by the Central Government under Section 125(2) of the Act and the decision as to the forum of trial by the Central Government in that eventuality shall be final."

[emphasis supplied]

9. A perusal of the above would indicate that in such circumstance ordinarily the learned Magistrate is required to transfer the proceedings to enable the Commanding Officer to continue the proceeding under Court Martial Rules. Even when the Commanding Officer exercises the option of proceeding with the Court Martial, it would still open for the Criminal Court, for the reasons to be recorded, to proceed with the trial instead of giving option to the authorities under the Act which may raise a conflict requiring resolution but not if the learned Magistrate accedes to the request. Therefore, the ultimate conclusion would be that in a circumstance, where a complaint is filed against a serving officer of the IAF, on issue of notice by the learned Magistrate, if the Commanding Officer exercises the option of initiating Court Martial proceedings and expresses such opinion in the proceedings before the learned Magistrate, it would be appropriate for the learned Magistrate to transfer the matter to the Court Martial proceedings without assigning any reasons. However, if the proceedings are to be continued without acceding to the request of the Commanding Officer, the learned Magistrate would have to record reasons for exercising such option. The conclusion as made by the Hon"ble Supreme Court does not indicate that if the learned Magistrate accedes to the request of the Commanding Officer for transfer, any reasons are required to be recorded. In such event, all that is contemplated is to accept the request of the Commanding Officer and transfer the matter to the Commanding Officer.

10. In the instant facts, when notice had been issued by the learned Magistrate, the 2nd respondent-Commanding Officer has exercised the option to proceed further through the Court Martial. Hence, when the learned Magistrate has acceded and transferred the papers to the Court Martial proceeding, it is evident that the learned Magistrate did not find it necessary to proceed further before the Criminal Court by recording the reasons to that effect. Therefore, when discretion available to the learned Magistrate has been exercised, the exercise of discretion in such manner would not call for interference. In such circumstance, when the learned Magistrate does not choose to retain the proceedings before the Criminal Court, neither the complainant nor the accused is provided any remedy in law to challenge such exercise of discretion by the learned Magistrate as they have no right to confer the jurisdiction. In that view, we are of the opinion that the learned Single Judge was justified in not interfering with the order.

11. The learned counsel for the appellant however expresses the apprehension that in view of the provisions contained in Section 121 of the Act, the proceedings before the Court Martial is likely to be barred by limitation. We are of the opinion that the said issue is premature at this stage since the respondents have not taken up such contention and further in the instant facts, the issue is only at the stage of exercising the option as provided under Section 124 of the Act and the pending matter has been transferred to the Court Martial. Further, from the writ petition records itself, it is seen that the Commanding

Officer has already issued the notice at Annexure-"H" to the 1st respondent summoning the appellant to depose as a witness in the proceedings. Hence, the apprehension of the appellant in this regard is also not justified.

The appeal is therefore, devoid of merit and is accordingly disposed off. I.A. No. 1/2015 filed for stay is also disposed off as unnecessary.