
(2006) 03 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Criminal W.P. No. 132 of 1998

Krishna Nand

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 354

Citation : (2006) 4 RCR(Civil) 395 : (2006) 4 RCR(Criminal) 553

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : R.S. Randhawa, for the Appellant; Gurpreet Singh, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—Prayer in the present petition, filed under Article 226 of the Constitution of India, is for the issuance of a writ, order or direction quashing the finding and sentence, returned by the Summary Court Martial, whereby the petitioner was dismissed from service.

2. The petitioner was charged with an act prejudicial to good order and military discipline. It was alleged that on 1.1.1994, the petitioner went out of the unit lines towards North Officers Colony, stopped Ms. Anuja Sharma d/o Capt. Avinash Kumar of 574 Engineer Park, who was cycling on the road in the said colony, and improperly put his hand on her neck. On a complaint filed, summary of evidence was recorded. During the recording of the summary of evidence, statements of Ms. Anuja Sharma, Capt. Avinash Kumar, Capt. Jagjit Singh and Capt. Harbinder Singh were recorded. The petitioner cross-examined Ms. Anuja Sharma and Capt. Harbinder Singh but declined to cross-examine Capt. Avinash Kumar and Capt. Jagjit Singh. Thereafter, papers were forwarded to the Commanding Officer, under Rule 22 of the Army Rules (for short herein after referred to as "the Rules") and a tentative charge sheet, dated 5.1.1994,

prepared u/s 69 of the Act, i.e. for committing a civil offence, namely, using criminal force to a woman with intent to outrage her modesty, in terms of Section 354 of the IPC. The charge sheet eventually served on the petitioner on 4.5.1994 was for the commission of an offence, u/s 63 of the Act i.e. an act prejudicial to good order and military discipline. The allegations levelled, were that the petitioner improperly put his hand on the neck of Ms. Anuja Sharma d/o Cap. Avinash Kumar. The charges were read out and explained to the petitioner. The petitioner accepted his guilt. The Court ascertained from the petitioner as to whether he understood the nature of the charges to which he had pleaded guilty. The petitioner was also informed of the general effect of the plea and the difference in procedure, which was to be followed as a consequence of his admission of guilt. Thereafter, the petitioner was asked whether he desired to make any statement with reference to the charge or in mitigation of punishment. The petitioner made a statement that he had a wife and three children, the eldest being eight years old, who were all dependent upon him and, therefore, leniency be shown.

3. After the conclusion of Summary Court Martial, the petitioner was punished with dismissal from service.

4. Counsel for the petitioner contends that a perusal of the record reveals that on 5.1.1994 a tentative charge sheet was framed, charging the petitioner u/s 69 of the Act, for commission of a civil offence, namely, an offence, u/s 354 of the IPC i.e. outraging the modesty of a woman. However, the charges were subsequently modified to one u/s 63 of the Act; an act prejudicial to good order and military discipline. As the initial charge framed was one u/s 69 of the Act, namely, using criminal force to a woman with intent to outrage her modesty, the petitioner should have been tried for the aforementioned charge. The respondents did not do so as they were aware that such a charge would not withstand scrutiny even before a Summary Court Martial and, therefore, abandoned this charge and framed a charge, u/s 63 of the Act, namely, for an act prejudicial to good order and military discipline. It is, thus, argued that by abandoning the charge of outraging the modesty of a woman, the respondents, in essence, admitted their inability to establish such a charge and, thus, on the same set of facts, they could not have framed a charge, u/s 63 of the Act. It is further contended that the charge was actually converted from one u/s 69 of the Act to one u/s 63 of the Act, as trial, by Summary Court Martial, for an offence, u/s 69 of the Act, is prohibited, except in accordance with Section 120 of the Act. As the respondents had already decided the punishment, to be imposed, the charge sheet was altered to one u/s 63 of the Act, so as to enable the Commanding Officer to conduct a Summary Court Martial.

5. The next contention, urged by counsel for the petitioner, is that the charge sheet was served upon the petitioner, in violation of the mandatory provisions of Rule 34(1) of the Rules. The charge sheet was served on 4.5.1994, whereas Summary Court Martial was held on 7.5.1994, a period of less than 96 hours.

Rule 34(1) of the Rules mandates service of a charge sheet 96 hours prior to the convening of a Summary Court Martial and, therefore, the proceedings stand vitiated.

6. Another contention, urged by counsel for the petitioner, is that the offending act, i.e. one of catching hold of the neck of a girl cannot be said to be an act prejudicial to good order and military discipline. It is further contended that in case the statement of the minor, namely, Ms. Anuja Sharma is perused, she has not deposed that the petitioner caught her from the neck. She has specifically deposed that the petitioner caught her sweater near her neck. She immediately jerked away from his grip, turned towards her house and shouted for her father. It is contended that the particulars of the act, charged, namely, catching hold of the neck of a girl are not borne out from the statement, made by the girl, during the summary of evidence.

7. Counsel for the respondents contends that the charge sheet, framed u/s 69 of the Act, was a tentative charge sheet and its subsequent alteration would not confer any benefit, upon the petitioner so as to enable him to contend that as charges could not be established, u/s 69 of the Act, a charge could not have been framed, u/s 63 of the Act. It is argued that an act may simultaneously give rise to an offence, under Sections 69 and 63 of the Act. The discretion to frame charges vests with the authorities, under the Act. This exercise of discretion, in the absence of any violation of the statute or Rules, cannot be pleaded or urged, as no prejudice was caused to the petitioner. It is further argued that the charge sheet was served, in accordance with the rules and there was no violation of rule 34(1) of the Rules. Even if it is presumed that the charge sheet was served in violation of rule 34(1) of the Rules, no prejudice resulted. It is further argued that there is no ambiguity in the charge sheet, as the deposition of Anuja Sharma, before the Summary Court Martial, clearly establishes that the petitioner committed the act for which he has been charged and punished.

8. The last argument raised is that as the petitioner pleaded guilty to the charge framed, he cannot be heard to urge that the charge was wrongly framed, was vague or not served upon him within the period, prescribed, under the Rules. The charges were provided to the petitioner in advance and were read over to him, before the Summary Court Martial. He accepted his guilt voluntarily. The consequences of the acceptance of guilt were explained to him, but he did not alter his plea of acceptance of guilt. It is, thus, contended that acceptance of charges, by pleading guilty, disentitles the petitioner to any relief in the present proceedings.

9. I have heard learned counsel for the parties and perused the record.

10. At the very outset, it would be appropriate to notice that while exercising jurisdiction, under Article 226 of the Constitution of India, this Court does not peruse the proceedings of a Summary Court Martial and examine the contentions, raised by the parties, as an appellate authority. The High Court does

not appraise evidence and the material on record with the object of examining the sufficiency thereof or the questions of fact that have led to the conclusion drawn thereon. Powers of judicial review are circumscribed further, where an accused has accepted his guilt. Violations of statutory provisions alone, may not be sufficient to warrant interference. The infraction of statute must be accompanied by such prejudice, as would enable a Court to return a finding that the right to a fair and just trial stood violated. Violations of the provisions of the Act or the Rules, including procedural safe guards vitiate a Summary Court Martial, where gross prejudice visits an accused.

11. The contention of counsel for the petitioner that as charges were initially framed for an offence, u/s 69 of the Act read with Section 354 of the IPC, namely, using criminal force to a woman with an intent to outrage her modesty and, therefore, could not have been altered to one u/s 63 of the Act i.e. an act prejudicial to good order and military discipline, in my considered opinion, cannot be accepted. An offending act may, and as it often does, lead to the commission of more offences than one. It is for the prosecution, after examining the material available, to arrive at a considered decision as to the offences for which a delinquent can be arraigned. If the prosecution chooses to abandon an offence for lack of evidence or otherwise and prosecute the delinquent for a lesser offence, a delinquent cannot be heard to urge that as his prosecution for one offence has been dropped, prosecution for the another offence is not sustainable. The discretion to prosecute and for what offence vests with the authority that frames the charge sheet. Even otherwise, this argument would have assumed significance, if the petitioner, had contested the correctness of the charges, as framed. The petitioner, instead pleaded guilty to the allegations levelled and the charges framed and did not retract his acceptance of guilt, when the consequences thereof were explained to him. In this view of the matter, the petitioner cannot now be heard to urge that he should have been charged for an offence, u/s 69 of the Act and not u/s 63 of the Act.

12. The next contention urged, namely, that the charge sheet was served on 4.5.2004 i.e. a period less than 96 hours, before the Summary Court Martial, cannot be accepted. No prejudice, much less grave prejudice, has been pleaded or established. Mere violation of Rules, in the absence of any prejudice, in my considered opinion, does not aid the petitioner. As noticed herein before, the petitioner accepted his guilt and, therefore, to urge thereafter that the charge sheet violated Rule 34(1) of the Rules, would not be permissible in the absence of any circumstance that could lead to an inference of prejudice, much less grave prejudice.

13. The next contention, namely, that the facts constituting the charge were contrary to the statement, made by the girl, does not merit acceptance. Whether the petitioner held the girl by her neck or from her sweater, are pure questions of facts, correctness whereof cannot be examined, in exercise of jurisdiction, under Article 226 of the Constitution of India. The petitioner accepted the correctness

of the charge as framed and the particulars of the offence as disclosed, when he accepted his guilt. The petitioner cannot now impugn the correctness or otherwise of the charge. The acceptance of guilt is an acceptance of a charge as framed, in the context of the facts that form the basis of the charge.

14. Another contention, raised by counsel for the petitioner, namely, that the charge was altered from one u/s 69 to one u/s 63 of the Act, as authorities had already decided to punish the petitioner, u/s 63 of the Act, in view of the facts and circumstances of the present case, namely that acceptance by the petitioner of his guilt, does not merit consideration.

In view of what has been stated above, there being no merit in the present petition, the same is dismissed.