

(1999) 09 SC CK 0111

In the Supreme Court Of India

Case No : Criminal Appeal No. 889 Of 1996

Madan Lal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Citation : (2002) 10 SCC 128

Hon'ble Judges : N. Santosh Hedge, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

G.B. Pattanaik and; N. Santosh Hegde, JJ.-The appellant faced a proceeding of court martial under the provisions of the Army Act, 1950 whereunder he has been found guilty and has been sentenced to imprisonment for 2 years and has also been dismissed from service. The appellant after exhausting the remedies available to him under the provisions of the Army Act moved the High Court under Article 226 of the Constitution. The Division Bench of the Delhi High Court dismissed the said writ petition by the impugned judgment and hence the present appeal.

2. Substantially, the contention raised by the appellant before the High Court was that the Court Martial had no jurisdiction to try inasmuch as the appellant was charged with the offence of attempting to commit rape and Section 70 of the Army Act excludes the same from the purview of the Court Martial. The High Court in the impugned judgment did consider the aforesaid question and interpreting Section 70 of the Army Act has come to the conclusion that only the jurisdiction of the Court Martial is ousted when the accused is charged for commission of an offence for murder or of culpable homicide not amounting to murder or rape and since the charge in the present case was attempt to commit rape the jurisdiction is not ousted and the Court Martial had the jurisdiction to try and pass appropriate orders therein. It is this conclusion of the High Court which is being assailed by the learned counsel for the appellant in this Court also.

According to the learned counsel, since under the Criminal Procedure Code the offence under Section 511 of the Indian Penal Code could be tried by which the offence attempted is triable, and the offence in question here being under Section 376, the same could have been tried only by the Sessions Judge and not by the Court Martial. In support of this contention, the learned counsel placed reliance on the decision of the learned Single Judge of the Allahabad High Court in the case *State v. Jaikaran Singh*¹. The question whether the Court Martial has the jurisdiction to try a person who commits an offence has to be adjudged from the provisions of the Army Act itself and not with reference to the Criminal Procedure Code. A bare reading of Section 70 of the Army Act makes it crystal clear that a person who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and cannot be tried by a Court Martial. But reading the charge against the appellant it appears that the charge was that he attempted to commit rape. Rape as defined under Section 375 of the Indian Penal Code, is different and distinct from attempting to commit rape. In this view of the matter the conclusion is irresistible that in respect of an offence of attempting to commit rape the jurisdiction of the Court Martial cannot be said to be ousted by virtue of Section 70 of the said Act. The decision of the learned Single Judge of the Allahabad High Court on which the learned counsel for the appellant placed reliance is not correct as it merely relies upon the provisions of the Schedule to the Criminal Procedure Code. As has been stated by us earlier, the question has to be answered on an interpretation of the Army Act and not with reference to the provisions of the Criminal Procedure Code. We, therefore, see no infirmity with the impugned judgment of the Delhi High Court so as to be interfered with by us. The appeal, accordingly, fails and is dismissed.