

(2001) 01 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1242/95

Makhan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:

Army Rules, 1954 — Rule 25

Citation : (2001) KashLJ 501

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Subash Bhat, Mandeep Reen, Advocates appearing for the Parties

Judgement

1. The petitioner is said to have used criminal force against the wife of a fellow soldier. It was alleged that he had committed an offence under

Section 354 of the Penal Code. He was tried under the Army Act. Summary Court Martial was held. As per the respondents, the petitioner had

pleaded guilty to the charges levelled against him. He was sentenced to 5 months rigorous imprisonment. This has also led to his consequential

dismissal from service. This order passed by the respondent authorities is subject matter of challenge in this petition.

It is submitted :

i. that offence under Section 69 of the Army Act could not be dealt with by Summary Court Martial; Sections 80, 81 and 84 are being cited in this regard.

ii. that the petitioner was not given an opportunity to prepare his defence. It is submitted that he was chargesheeted on 24th of Nov' 1994 and

Summary Court Martial was conducted on 30th of Nov' 1994.

iii. that the plea of guilty as recorded by the respondent authorities has been recorded without taking note of the factual position. No such plea was

taken by the petitioner.

iv. that the prosecutrix had given two version, one was given on 24th of Sep' 1994 and the other version was given on 31st of Oct' 1994.

2. It is accordingly submitted that injustice has been done with the petitioner. It is submitted that there was no proper trial and the material which

has come on the record was not properly considered.

3. The respondents have filed counter affidavit.

4. The plea taken in para 8 of the writ petition that the prosecutrix had given two version one on 24th of Sep' 1994 and other on 31st of Oct' 1994

has not been expressly contradicted. It is however, submitted that additional summary of evidence was recorded on a latter stage and this came to

be done as the petitioner did not make any effort to cross examine the prosecutrix.

5. The petitioner submits that this Court can exercise the judicial review, as the trial was completely vitiated. It is submitted that the respondent No.

3 cannot be a prosecutor, an accuser and judge of the petitioner. It is submitted that the plea of guilty was not in the words of the petitioner as an

accused person.

6. File has been perused. From the perusal of the file it becomes apparent that the prosecutrix, her husband and one other witness has stated that

the petitioner had used criminal force against the prosecutrix. He is said to have held her hands forcibly and hit her on the face. It was in this

manner he had outrage the modesty of the lady in question. A perusal of the file does indicate that the summary of evidence was recorded;

statement of the prosecutrix as witness No. 1 was recorded. The petitioner was given an opportunity to cross examine the prosecutrix under the

Army Rule 23(3). i He declined to do so. The petitioner also made the statement on 24th of Sept' 1994. This is being reproduced below :

I am serving in a B Coy, 28 Punjab. I was allotted family quarter No. 25/4 in Vikram Enclave on 06 Sep 94 and started staying there with my

wife from the same day. On 10 Sep 94, No. 2479048M Sep Baljeet Singh of D Coy of our Bn came 10 stay in quarter No. 25/3 as our

neighbours. After Sep Baljeet Singh and his wife arrived in the block, I noticed

that Sep Baljeet Singh's wife gave me a 'glad eye' or brushed against me whenever she came to our home. I realised it was deliberately being done and to attract my attention. I also started reciprocating her feelings in the same manner. On 17 Sep 94, Sep Baljeet Singh informed me in the Bn area that he was going out on duty and will therefore be late to arrive home. As such he asked me to inform his wife that she should not worry. I did so in the evening. At around 2215h on 17 Sep 94, I went to the house of Sep Baljeet Singh and rang the door bell. Sep Baljeet Singh's wife opened the door and allowed me inside. Thereafter, I was in the house till 2315h, when I heard somebody approach Sep Baljeet Singh's house. I immediately got up from where I was sitting and hid inside the bathroom which is next to the entrance of Sep Baljeet Singh's house. I saw Sep Baljeet Singh enter and go towards the bathroom. Realising that Sep Baljeet Singh's back was towards the bathroom and the exit, I slipped out quickly and came home. My wife was still sleeping as she was when I left the house and I went to sleep without disturbing her.

7. Statements of prosecutrix and her husband was again recorded on 31st of Oct' 1994. Statement of another prosecution witness namely Maj.

J.S. Suhag was also recorded. It is on the basis of the evidence which has come on the record, the petitioner has been found guilty. The petitioner

has basically been punished by recording his plea of guilty This plea of guilt as recorded is as under :

Before recoerding the plea of guilty offered by the accused, the Court explains to the accused the meaning of the charge to which he has pleaded

guilty and ascertains that the accused understands the nature of the charge to which he has pleaded guilty. The Court also informs the accused the

general effect of the plea and the difference in procedure which will be followed consequent to the said plea. The Court having satisfied itself that

the accused understands the charge and the effect of his plea of guilty accepts and records the same. The provisions of Army Rule 115(2) are

complied with.

8. As to on which date this was recorded and as to for which proceedings this is to be used is not apparent. It is written on a separate paper and

has been pasted on the proforma. The proceedings on a plea of guilty as found at page 39 are as under:

The summary of evidence is read (translated) explained, marked Exhibit K' signed by the Court to the proceedings. Do you wish to make any statement in reference to the charge or in mitigation of punishment? (question to the accused).

The accused says No. (answer).

Do you wish to call any witnesses as to character No (answer).

9. There is a further proforma which is to the effect summary of evidence is read (translated) explained, marked Exhibit 'K' signed by the Court

attached to the proceedings. This column is left blank. With regard to the column whether the accused wishes to make any statement in reference

to the charge of in mitigation or punishment, the answer is no. Option to call other witnesses as to character was given. The answer is no.

Thereafter the sentence has been passed.

10. The basic factor which led to the conviction of the petitioner, is that he had pleaded guilty.

11. It be seen that plea of guilty has been recorded on a separate paper. It has merely been pasted on a proforma. On this pasted paper, it is not

mentioned as to on which date this came to be recorded. This also does not indicate as to qua which proceedings or offence this plea relates. Even

if plea of guilt is to be taken note of, this has to be examined in the light of version given by the petitioner. This aspect should have been taken note of.

This has not been done. The order passed by the respondent authorities is set aside. Respondents are left free to pass fresh order as may be

deemed proper.

12. Disposed of as such.