

(2002) 09 AHC CK 0037
In the Allahabad High Court
Case No : Special Appeal No. 845 of 2002

Mannu Giri

APPELLANT

Vs

General/Chief of Army Staff and Others

RESPONDENT

Date of Decision : 09-09-2002

Acts Referred:

Army Act, 1950 — Section 125, 164(2), 48
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 428, 5, 50, 54
Penal Code, 1860 (IPC) — Section 302, 376, 404

Citation : (2003) 1 ACR 202

Hon'ble Judges : S.K. Sen, C.J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Rameshwar Singh, S.S. Rathore and A.K. Singh, for the Appellant;
Shashank Shekhar Singh, B.N. Singh and S.C., for the Respondent

Judgement

Ashok Bhushan, J.—Heard Sri Rameshwar Singh and Sri S. S. Rathore advocates appearing for the Appellant and Sri Shashank Shekher Singh, advocate for the Respondents.

2. By this appeal, the Appellant has challenged the judgment of the learned single Judge dated 16th July, 2002 dismissing the Writ Petition No. 27101 of 2002 filed by the Appellant. The facts giving has to this special appeal briefly stated are:

The Appellant had been working as Lance Naik in Head Quarter Company, Bengal Engineer Group and Centre Roorkee. In the night of 9th January, 2001, one recruit Krishna Dolay along with Pramod Kumar Pradhan and S. K. Ray were detailed as Night Sentry in Single Officers Quarter area. Mannu Giri was detailed as Guard Commander. Recruit Krishna Dolay when performing his Sentry duty, was called by Mannu Giri the Guard Commander in his room. Krishna Dolay was given keys and asked to open Guest rooms where in the night of 9th January, 2001, Mannu Giri did unnatural act (sodomy) with recruit Krishna Dolay who

narrated all the aforesaid facts in the same night to several officers. In the same night, Mannu Giri was taken in custody by the Military police, Krishna Dolay, the victim of the offence, was sent to Medical Officer, Roorkee for medical examination but since no doctor was there, he was sent back and thereafter he was sent for medical examination on 10th January, 2001. The victim was admitted in hospital and medical examination was conducted. The Appellant Mannu Giri was charged with an offence punishable u/s 46(a) of the Army Act of disgraceful conduct of unnatural kind and with offence punishable u/s 48 of the Army Act of intoxication. The Appellant was tried by the summary court-martial. In summary court-martial proceedings, the Appellant was convicted and awarded punishment of dismissal from service with effect from 14th May, 2001. Against the summary court-martial proceedings, the Appellant filed petition dated 11.8.2001 to the Chief of Army Staff. The Chief of Army Staff vide his order dated 13.2.2002 rejected the petition of the Appellant filed against the findings and sentence of summary court-martial. The Chief of Army Staff held that the findings of the summary court-martial are supported by cogent and reliable evidence on record. Against the order dated 13.2.2002 passed by the Chief of Army Staff as well as the summary court-martial proceedings the Writ Petition No. 27101 of 2002 was filed by the Appellant which has been dismissed by the learned single Judge vide his judgment dated 16th July, 2002. This special appeal has been filed against the judgment dated 16th July, 2002.

3. The counsel appearing for the Appellant have raised two submissions in support of this appeal:

(i) the summary court-martial proceedings are vitiated on account of Appellant not having medically examined as required by the provisions of Section 54 of the Criminal Procedure Code, 1973.

(ii) The charge against the Appellant was not proved by any cogent evidence. The charge having not proved, the proceedings of summary court-martial convicting and punishing the Appellant are illegal.

4. Learned standing counsel appearing for the Respondents has submitted that summary court-martial proceedings were conducted in accordance with the procedure prescribed under the Army Act, 1950 and the Army Rules, 1954. He submitted that there was no requirement of Appellant being medically examined. He further submitted that provisions of Code of Criminal Procedure are not applicable in the summary court-martial proceedings. Learned Counsel for the Respondents also submitted that this Court will not interfere with summary court-martial proceedings when the summary court-martial has been held in accordance with the procedure prescribed and there was evidence to support the findings. The counsel for the Respondents has relied on a decision of the Apex Court in Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), . Reliance has also been placed by the counsel for the Respondents on Apex Court's judgment in Union of India and Others Vs. Harjeet Singh Sandhu etc., and Union of India and Ors. v. R.K. Sharma, 2001 (4) AWC 3222 (SC) : Union of

India and Others Vs. R.K. Sharma, and the judgment of the Apex Court in Union of India (UOI) and Others Vs. Narain Singh,

5. We have heard counsels for the parties and perused the records.

6. The first submission of counsel for the Appellant is based on Section 54 of the Criminal Procedure Code. The counsel for the Appellant submitted that u/s 54 of the Criminal Procedure Code, it was incumbent on the authorities to get medical examination of the accused made. Submission is that, had the medical examination of the Appellant made on that day, it would have proved that he did not commit any such unnatural act as alleged. The counsel for the Appellant further submitted that the said submission was made before the learned single Judge but the learned single Judge has not examined the said contention and has observed that the complainant was medically examined. The question of non-compliance of Section 54 will arise only when the said provision is applicable in summary court-martial proceedings. Section 5 of the Code of Criminal Procedure which is saving clause, clearly provides that nothing contained in this Code shall in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. Section 5 of the Code of Criminal Procedure is quoted below:

5. Saving. - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect ; any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

7. The aforesaid provision clearly contemplates that the provisions of Code of Criminal Procedure are not applicable with regard to exercise of any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law. Army Act and Army Rules are self-contained Code. Army Act, defines various kind of offences, the special procedure of trial of the aforesaid offences by court-martial proceedings, arrest and proceedings before trial, procedure of court-martial, execution of sentence etc. The procedure for conducting the summary court-martial has also been provided in the Army Rules, 1954. The Army Act has been enacted to consolidate and amend the law relating to governing of regular Army. Army being disciplined force, Army Act provides the special procedure for trial by summary court-martial. Section 125 of the Army Act further provides that when a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding to decide before which Court the proceedings shall be instituted. This issue needs no further consideration since the same is covered by the Apex Court's judgment in Ajmer Singh and Others Vs. Union of India (UOI) and Others, . In the aforesaid case, the Apex Court examined the question as to whether the provisions of Section 428 Code of Criminal Procedure can be held to apply to persons sentenced to undergo imprisonment by summary court-martial under the Army Act. In paragraph 7 of the judgment the Apex Court held:

7. Section 5 of the Code of Criminal Procedure lays down that nothing contained in the said Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred or any special form of procedure prescribed, by any other law for the time being in force. The relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self-contained comprehensive Code specifying the various offences under those Acts and prescribing the procedure for detention and custody of offenders, investigation and trial of the offenders by courts-martial, the punishments to be awarded for the various offences, confirmation and revision of the sentences imposed by courts-martial, the execution of such sentences and the grant of pardons, remissions and suspensions in respect of such sentences. These enactments, therefore, constitute a special law in force conferring special jurisdiction and powers on courts-martial and prescribing a special form of procedure for the trial of the offences under those Acts. The effect of Section 50 of the Code of Criminal Procedure is to render the provisions of the Code of Criminal Procedure inapplicable in respect of all matters covered by such special law.

8. In view of the aforesaid, it is abundantly clear that Section 54 of the Code of Criminal Procedure is not applicable with regard to trial of summary court-martial under the Army Act, 1950. The submission of counsel for the Appellant based on Section 54 of the Code of Criminal Procedure thus has no substance.

9. The second submission of the counsel for the Appellant that there was no evidence to hold the Appellant guilty of the charge needs to be considered. The learned single Judge in his judgment has stated that the complainant Krishna Dolay has narrated the incident in great detail which deposition has been supported by the Capt. Paramjeet (P.W. 1), Pramod Kumar Pradhan (P.W. 2), Recruit S. K. Ray (P.W. 3), Naib Subedar Surjeet Singh (P.W. 5) and Subedar Bachan Singh Rathaur (P.W. 6). The Appellant has annexed along with the appeal the statements of the prosecution witnesses, recruit Krishna Dolay victim in his deposition annexed as Annexure-3 to the affidavit, has narrated the whole incident in detail. The charge of unnatural act by Appellant is fully proved by the deposition of victim and there is no good reason for not believing the statement of victim. Further, other witnesses were all present in the same night and have narrated the events relating to aforesaid unnatural act. The summary court-martial has found the charges proved on the basis of evidence which was brought before the summary court-martial. It is not a case of no evidence. The scope of judicial review with regard to summary court-martial proceedings is very limited. This Court under Article 226 of the Constitution of India will not act as a court of appeal nor will reappraise the evidence brought before the summary court-martial. In the Army Act against the summary court-martial proceedings, a remedy is already provided u/s 164 which remedy has already been availed by the Appellant. The Apex Court in the case of *Union of India v. Major A. Hussain* (supra) has laid down in paragraph 23 which is reproduced below:

23. 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 a significant degree, a specialised 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 provided 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 the 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.

10. Summary court-martial having found the Appellant guilty of the charge, this Court cannot sit in appeal against the said proceedings, The submission of counsel for the Appellant that there was no evidence to support the charge cannot be accepted. The evidence which was relied in summary court-martial proceedings has been referred to and considered by the learned single Judge while dismissing the writ petition.

11. The Apex Court in *Union of India v. Narain Singh*'s case (supra) has again held that where there are relevant material which support the findings that the officer is guilty, it is not the function of the High Court to arrive at independent finding. In view of the foregoing discussions, it is clear that the scope of interference by this Court under Article 226 of the Constitution of India in summary court-martial proceedings is very limited. The Chief of Army Staff while considering the petition of the Appellant u/s 164(2) of the Army Act has also considered the evidence relied on by the summary court-martial. The Chief of

Army Staff has also found that the findings of the summary court-martial are supported by cogent and reliable evidence which inspire confidence.

12. Counsel for the Appellant has also placed reliance on a judgment of the Apex Court in *Rahim Beg and Another Vs. State of U.P.*, . The aforesaid case was a case in which the accused were tried by the criminal court and were convicted under Sections 302, 376 and 404, Indian Penal Code by the sessions court which were affirmed by the High Court. The special appeal was filed against the aforesaid judgment in the Apex Court in which the Apex Court acquitted the accused. The aforesaid case was not case under Army Act and the acquittal was granted by the Apex Court on the findings that there are number of circumstances which create considerable doubt regarding the complicity of the accused. The aforesaid case does not help the Appellant in any manner.

13. In view of the foregoing discussions none of the submissions raised by the counsel for the Appellant has any merit. No error has been committed by the learned single Judge in refusing to interfere with the summary court-martial proceedings and with the punishment awarded to the Appellant in the aforesaid proceedings. There is no merit in this special appeal. The special appeal is dismissed.