
(2006) 02 RAJ CK 0059
In the Rajasthan High Court
Case No : Civil Writ Petition No. 86 of 1993

Nathu Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-02-2006

Acts Referred:

Army Act, 1950 — Section 118, 154, 164, 69
Army Rules, 1954 — Rule 13, 13(2A)
Constitution of India, 1950 — Article 14, 21, 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 42, 43, 57

Citation : (2006) 3 RLW 1734 : (2006) 2 WLC 452

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : D.K. Parihar, for the Appellant; Rajesh Panwar, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—In the instant writ petition, the petitioner has prayed for quashing the finding and sentence of the G.C.M. Ex.-8 and letter dated 7.8.1992 Ex.-11, whereby appeal filed by wife of petitioner. Smt. Anchi Kanwar u/s 164, Army Act was returned.

2. According to the facts of the petition, the petitioner was working as Sowar in Indian Army, 1 Horse (Skinner's Horse). On 7.6.1991, he was arrested in connection with offence u/s 18 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (in short, "the Act of 1985" hereinafter) for having been found in possession of 20.020 kg of opium near village Thamansinghwala. Under the relevant Defence Personnel law, he was tried by the General Court Martial (in short, "GCM" hereinafter) and punished with a sentence to suffer rigorous imprisonment for 10 years as well as dismissal from service.

3. At a much belated stage, vide application dated 20.9.2005, the respondents have taken an objection to the entertainment of the writ petition on the ground

of territorial jurisdiction. It is contended that the incident happened at Sangroor in Punjab State and the court martial was conducted at Merrut Cantt. The respondents have argued that no cause of action accrued to the petitioner in the State of Rajasthan. Learned Counsel for the respondents relied upon the decisions of this Court in S.B. Civil Writ Petition No. 3904/2005, decided on 7.9.2005, decided on 7.9.2005. In the reply affidavit, it is submitted on behalf of the petitioner that the respondents have taken objection to the maintainability of the petition after more than 12 years of filing of the writ petition and such objection itself is not maintainable at this belated stage.

4. During the course of arguments, this Court directed the respondents place on record the confirmation order dated 10.6.1992. Vide application dated 20.9.2005, the respondents have filed order dated 10.6.1992 whereby the finding of the GCM has been confirmed by the General Officer Commanding, 22 Infantry Division, Major General K.S. Maan on 10.6.1992. The application is allowed. Order dated 10.5.1992 is taken on record.

5. Adverting to the objection of the respondents on the ground of territorial jurisdiction, though, of course, raised at a much belated stage, it may be observed that Indian Army is headed by the Chief of Army Staff at the Army Headquarters in New Delhi: The position, in law, is that he can be sued by a citizen before any High Court in India. This, in itself, certainly does not carve out the legal formulation that without regard to the accrual of the cause of action the Chief of Army Staff at the Army Headquarters in New Delhi may be sued by a citizen before any High Court in India. It depends upon facts and circumstances of the case whereupon the accrual of cause of action may be gathered. Not only that the petitioner is permanent resident of Jodhpur district, the writ petition was filed before this High Court while the petitioner was undergoing imprisonment at Central Jail, Jodhpur as a sequel to the GCM duly confirmed by the competent authority by its order dated 10.6.1992. It must not be forgotten that the writ petition has been preferred by the petitioner against Union of India and its authorities under Article 226 of the Constitution of India alleging violation of Articles 14 and 21 of the Constitution while impugning the GCM proceedings and consequent punishment as well as sentence of imprisonment. The respondents had put in appearance in the matter way back on 25.1.1993 in the presence of the counsel for the respondents. The respondents filed their reply to the writ petition on 6.9.1994 without raising any objection to the maintainability of the writ petition before this High Court.

6. So far as accrual of cause of action is concerned, it must be remembered that commission of alleged offence took place in Punjab, GCM. proceeding took place at Merrut and finding and sentence passed by the GCM was confirmed by Major General K.S. Maan, General Officer Commanding, 22 Infantry Division at field on 10.6.1992 ordering that the sentence of 10 years" RI shall be carried out by confinement in civil prison, in pursuance whereof, the petitioner has undergone sentence of imprisonment in Central Jail, Jodhpur. Thus, each fact/event

contributing to the cause of action indicates that had it been a case of civilian trial for the offence committed in the State of Punjab by the criminal Court the question of territorial jurisdiction would have been certainly open to be raised in the manner sought by the respondents herein. But, in the instant case, in the totality of facts and circumstances, such an objection to the jurisdiction of this Court is not attracted. In the present writ petition, the petitioner has prayed for quashing finding of the GCM Ex.-8 and letter dated 7.8.1992 Ex.-I 1 besides praying for reinstatement in service and the relief is sought against respondent Union of India and others, being its authorities. In the present set of facts and circumstances, the judgment of this Court rendered in S.B. Civil Writ Petition No. 3904/2005 on 7.9.2005, relied upon by the counsel for the respondents, is not applicable. Facts and circumstances of the case on hand are different and in the peculiarity of the circumstances the decision of the Supreme Court rendered in the case of Dinesh Chandra Gahtori v. Chief of Army Staff , is more aptly applicable.

7. Turning to the merit of the case, learned Counsel for the petitioner contended that GCM gravely erred in law in ignoring the provisions of Sections 43, 57 and 42 of the Act of 1985 which are mandatory. It is contended that search was conducted by an officer below the rank of Inspector of police nor there is any evidence that the substance seized was sent for chemical examination in sealed cover. He has argued. that non-compliance of the mandatory provisions of the Act of 1985 left the entire trial vitiated and, therefore, the finding of the GCM and consequent order of punishment is arbitrary and illegal.

8. Learned Counsel for the petitioner next argued that wife of the petitioner, Smt. Anchi Kanwar made petition u/s 164 of the Army Act, 1950 and the competent authority seriously erred in returning the petition without considering it. He contended that Smt. Anchi Kanwar, being constituted attorney for and on behalf of her husband, petitioner Nathu Singh was lawfully entitled to make petition u/s 164 of the Army Act. It is contended by learned Counsel for the petitioner that no reasons have been assigned for returning the petition.

9. Opposing the writ petition, counsel for the respondents contended that GCM proceedings was carried through in accordance with law and the findings has been recorded by the GCM on the basis of the evidence coming up in the case. It is submitted that the Court Martial proceedings are governed by separate set of rules and regulations unlike civilian Trial Court and, therefore, the proceedings of the GCM cannot be appreciated in the same manner as proceedings of a cilian Trial Court. The GCM has taken into account all the aspects of the relevant law and has found the search conducted by the civil Police Official in accordance with Sections 42 and 43 of the Act of 1985. It is further contended that the GCM is quite competent to award punishment for a term more than seven years u/s 118 read with Section 69 of the Army Act for offence u/s 18 of the Act of 1985. Learned Counsel for the respondents pointed out that the petition filed u/s 164 of the Army Act by Smt. Anchi Kanwar wife of the petitioner was not filed in

accordance with law and, therefore, the same was returned.

10. Under the writ jurisdiction, the only question that may be entertained in the present case is with regard to petitioner's allegation that mandatory provisions were not complied with before the GCM. The petitioner has also assailed the validity of order of the GCM with regard to quantum of punishment imposed. Before the GCM, ASI Devendra Singh, P.W.-I was examined who deposed that he asked the petitioner whether he wanted to be searched by a gazetted officer and the petitioner replied in negative and said that search could be effected by him (Devendra Singh). There is no rejoinder to the reply given by the respondents. In the absence of any rejoinder to the reply filed by the respondents, the averments of the respondents to the extent the same have gone uncontroverted before this Court must be taken to be true and, therefore, in the circumstance, no fault can be found with the GCM proceedings. It may also not be lost sight of that unlike civilian Trial Court the GCM proceedings is carried through under different legal obligations and the same is not assailable for a reasons untrace-able to the GCM proceedings. Moreover, it is not the case of the petitioner that the GCM proceedings is vitiated on the ground of violation of the principles of natural justice. The pith of the argument of the learned Counsel for the petitioner is alleged trespass of the mandatory provisions of the Act of 1985 while the search was conducted on the petitioner. Having gone through the evidence on record, I do not find substance in the allegation of the petitioner. Rather, there is categorical statement of ASI Devendra Singh, P.W.-I that petitioner was offered to be searched by a gazetted officer but the petitioner consented to be searched on the spot by Devendra Singh, P.W.-I and that being the case, now it is not open to impugn the search conducted by P.W.-I Devendra Singh.

11. So far as the petitioner's contention that the sentence of the GCM was not confirmed by the convicting authority is concerned, the respondents have come up before the Court with categorical case that the finding of the GCM stood confirmed by Major General K.S. Maan, 22/Inf. Division. The respondents were directed to place on record the said confirmation order which, as noted above, has been placed on record. Counsel for the petitioner contended that the said authority is not competent to confirm the sentence awarded by the GCM. Section 154 of the Army Act, 1950 runs as under:

154. Power to confirm finding and sentence of general court-martial. The findings and sentences of general courts martial maybe confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.

12. It is obvious from the aforequoted provisions that the finding and sentence awarded by the GCM is required to be confirmed by any officer empowered in this behalf by a warrant of the Central Government. Now, Rule 13 of the Army Rules, 1954 also requires to be taken into consideration and relevant provisions thereof being Sub-rule (2A), the same is quoted hereunder:

(2A) Where the Central Government or the Chief of the Army Staff decides that any person or class or persons subject to the Act should be discharged from service, either unconditionally or on the fulfilment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.

13. In Union of India and others Vs. J.S. Brar, their Lordships of the Supreme Court while appreciating that reasonable opportunity was afforded to the defence for cross- examination, set aside the order of the Allahabad High Court, being of the view that when the finding of the court-martial is fully supported by the evidence on record and there is no failure of natural justice in any respect, such finding rendered by the GCM and confirmed by the competent authority is not liable to be interfered with. In the present case, it has been argued that non-compliance of the mandatory provisions of the Act of 1985 left the entire trial vitiated and, therefore, the finding of the GCM and consequent order of punishment is arbitrary and illegal. From perusal of the record, I find that there is categorical statement of ASI Devendra Singh, P.W.-I that petitioner was offered to be searched by a gazetted officer but the petitioner consented to be searched on the spot by Devendra Singh, P.W.-I. Thus, no fault can be found with the finding of the GCM which is obviously supported by evidence on record. Further, the finding recorded and punishment suggested stood confirmed by GOC Major General K.S. Mann on 10.6.1992.

14. From the above, it is clear that as per Section 154 of the Army Act, read with Rule 13 (2A), Army Rules, 1954 the order of the GCM was confirmed by the competent authority in this behalf being GOC Major General K.S. Mann on 10.6.1992. In this view of the matter, there is no illegality in the order passed either by the GCM or the confirming authority. In this view of the matter, on the merit also, I do not find any force in the writ petition.

15. In the result, the writ petition is dismissed.