

(2008) 10 DEL CK 0006

In the Delhi High Court

Case No : Writ Petition (C) No. 7181 of 2008

N.K. Sunil

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Army Act, 1950 — Section 63, 69
Army Rules, 1954 — Rule 177, 179, 180, 182, 22
Penal Code, 1860 (IPC) — Section 354

Citation : (2008) 154 DLT 159

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : K. Ramesh and D.S. Kauntae, for the Appellant; Anil Gautam, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.

CM No. 13879/2008

Allowed, subject to all just exceptions.

WP (C) No. 7181/2008

1. The petitioner was enrolled with the Army in the JAT Regiment on 28.7.1977. The petitioner was promoted to the rank of Naik in June 2007 and was appointed as an orderly NCO from October 2007 to December 2007. The petitioner is aggrieved by his arrest on 21.6.2008 which resulted in a Court of Inquiry, thereafter recording of Summary of Evidence, proceedings under Rule 22 of the Army Rules, 1959 (hereinafter the said rule) and the subsequent constitution of the District Court Martial.

2. In order to appreciate the plea of the petitioner, some of the facts are required to be dealt with. The allegation against the petitioner is that on 21.6.2008 he

used criminal force on Smt. Sanju, wife of another sepoy in the same battalion by holding her hand and embracing her with intention to outrage her modesty which constitutes an offence u/s 69 of the Army Act, 1915 (hereinafter referred to said section). The Court of Inquiry was constituted in terms of Rule 177 of the said Rules which is really in the nature of a fact finding inquiry. The procedure to be followed by a Court of Inquiry is prescribed under Rule 179 of the said Rules. The petitioner was the first person called for recording of statement as PW1. The petitioner made a statement which was self-incriminating. The relevant portion of the statement of the petition is as under:

6. I reached the quarter of Sep Ramji Lal at around 0920h, on 21 Jun 08. I knocked on the door of Sep Ramji Lal and was attended to by Smt. Sanju wife of No. 3195348P Sep Ramji Lal. She enquired from me as to who I was? I told her that I had a message from her husband for her. She opened the door and I entered the quarter quickly with wrong intentions in my mind and made an advance towards her. I grabbed her hand and hugged her, expressing my affection for her at the same time. I misbehaved with her despite her repeatedly telling me to leave immediately. She subsequently pushed me out.

7. Thereafter, I went to 324 Field Hospital and report sick. While I was at 324 Field Hospital and after having taken the prescribed medicines by the doctor, I met JC-489083W Sub Satbir Singh, Junior Commissioned Officer "A" Company 5 JAT. He questioned me as to why was I late for reporting sick? I answered that I had gone to Sajni Shopping Complex to withdraw money through UTI ATM machine. Thereafter I reported back to my unit and reached my Company.

3. Further evidence was recorded of six more witnesses during which time period the petitioner was present and Army Rule 180 was invoked since the statements made by other witnesses against the petitioner were impeaching the character and military reputation of the petitioner. In order to appreciate this plea Rule 180 is reproduced as under:

180. Procedure when character of a person subject to the Act is involved - Save in the case of a prisoner of war who is still absent whenever any injury affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights under this rule.

4. It may be noticed that the petitioner despite having been given an opportunity to cross-examine the witnesses chose not to do so. The petitioner was also given the opportunity to produce any witness in defence of his character after

examination of all the six witnesses which the petitioner declined and signed the proceedings in token of acceptance of evidence recorded therein.

5. In view of the evidence recorded during the Court of Inquiry, a tentative charge sheet was issued to the petitioner on 16.07.2008 in the following terms:

TENTATIVE CHARGE SHEET

The accused Number 3190743Y NK Sunil of 5 JAT, is charged with:

AASEC 69 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY, CONTRARY TO SECTION 354 OF INDIAN PENAL CODE

In that he,

at Bikaner (Peace), on 21 Jun 2008 at around 0920 hours at PBOR married accommodation, Quarter Number 36/6 KLP-1 unbecomingly grabbed the hand of Smt. Sanju, wife of Number 3195348P Sep Ramji Lal and attempted to hug her thereby intending to outrage her modesty.

AA SEC 63 AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

In that he,

at Bikaner (Peace), on 21 Jun 2008 at around 0920 hours improperly and without authority visited PBOR married accommodation Quarter Number 36/6 KLP No-1, allotted to Number 3195348P Sep Ramji Lal in violation of local orders.

6. The charges were read out to the petitioner and calling of witnesses in terms of Rule 22 of the said Rule was dispensed with since the provisions of Rule 180 had been complied with at the stage of Court of Inquiry. The summary of evidence was thereafter recorded in terms of Rule 23 of the said Rules. In the recording of Summary of Evidence Smt. Sanju, the complainant, appeared as a prosecuting witness No. 2 and deposed inter alia in the following terms:

4. I opened the door and asked him to sit and turned back towards the kitchen to get him a glass of water, when he suddenly held me from behind. I was completely startled and got scared. I pushed him away and then he started saying things like "I love you" and that I cannot live without you etc. On hearing this, I insulted him and told him that my husband will give answers to that. On this his offensive attitude suddenly subsided and he started apologizing for his shameless act and requested me not to inform anybody about this especially to my husband. He started approaching towards me on the pretext of apologizing for his misconduct and attempted to hold my feet, when I got scared and moved back. To avoid giving him any chance to come any close to me, on any pretext, I agreed for not telling my husband about the incident, for that moment only but asked him to leave my house immediately, as I was too scared in his presence.

5. He agreed to leave my house but again requested for a glass of water as he felt very thirsty and was not ready to leave without it. Since, I was quite scared

by his presence and wanted him to go out of my house earliest, I quickly went inside and got water for him in a Jug. He then asked me for a glass to which I told him that I don't have a glass and that if he does not wish to drink water, then he can leave.

6. After drinking water Number 3190743Y Naik Sunil went towards the door to leave, however, this shameless person (Number 3190743Y Naik Sunil) again extended his hand towards me and wanted to shake hands with me as if nothing has happened, on which I got very infuriated and literally pushed him out and quickly latched my door from inside. On this, he again started apologizing to me from out side, to which I told him that he can apologise to my husband now and told him to leave.

7. Some questions were put to the said complainant by the officer and thereafter the petitioner was given an opportunity to cross-examine the said complainant. She was thereafter cross-examined by the petitioner and that deposition was also recorded.

8. In pursuance to the recording of the Summary of Evidence, a charge sheet was given to the petitioner on 8.9.2008 in the following terms:

CHARGE

ARMY ACT SECTION 69: COMMITTING A CIVIL OFFENCE, THAT IS TO SAY USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY CONTRARY TO SECTION 354 OF INDIAN PENAL CODE.

In that he,

at Bikaner, on 21 June 2008, used criminal force to Smt. Sanju, wife of Number 3195348P Sepoy Ramji Lal of the same battalion, by holding her hand and embracing her, intending thereby to outrage her modesty.

9. A decision was taken to try the petitioner by a District Court Martial and the Court Martial has thereafter been constituted. We are informed that the trial is coming on 8.10.2008.

10. It will be relevant to note at this stage that the petitioner approached the Rajasthan High Court by filing a writ petition seeking inter alia following reliefs:

(i) To issue writ, order or direction to against the respondent No. 3,4 & 5 to quash/set aside the impugned court of inquiry proceedings dated 21.06.08/15.07.2008 (Annexure-2) and also quash the impugned tentative charge sheet and record of proceeding initiated under Rule 22 of the said rules each dated 16.07.2008 in the light of Rule 182 of the said rules being wholly unconstitutional and inadmissible in evidence as per the said rules.

(ii) To issue writ, order or direction to against the respondent No. 3 to set free the petitioner from the close arrest by allowing the petitioner to perform and discharge his public functions and duties in a normal routine manner as was in

force prior taking the petitioner in the close arrest by the said respondent No. 3.

11. The stage at which the petitioner approached the Rajasthan High Court was after recording of Summary of Evidence but before the District Court Martial was constituted. This writ petition is stated to have been dismissed on 11.8.2008 as per the averments made by the petitioner in the writ petition though a copy of the order has not been produced before us. We note that the counsel on record in the present case as well as before the Rajasthan High Court is the same. It has been stated that the dismissal was on the ground that the writ petition was premature.

12. The present writ petition has been filed after District Court Martial has been constituted seeking the following reliefs:

(a) Issue a writ in the nature of certiorari and mandamus to quash/set aside the impugned court of inquiry dt. 21.06.2008, tentative charge sheet dt. 16.07.2008, proceedings of summary of evidence dt. 17 July/04 August 2008 and impugned order dt. 10.09.2008 passed by the respondent No. 6 ordering the petitioner to be tried by a District Court Martial and convening order dt. 22.09.2008 passed by the respondent No. 6 being wholly illegal due to non compliance of Rule 180 of the Army Rules, 1954 by applying the ratio of the aforesaid judicial precedents being relied by the petitioner in support of the present case;

(b) After quashing of the aforesaid impugned inquiry proceedings and all the aforesaid impugned order, passed by various authorities at various levels further issue a writ, order of direction in the nature of mandamus against the respondent No. 6 not to proceed with the trial against the petitioner during the pendency of the statutory complaint dt. 26.09.2008 before the Chief of Army Staff and let the petitioner be released from the illegal detention of respondent No. 7 since 21.06.2008 till date to participate in the fresh inquiry if so desired by the respondents by affording full opportunity to the petitioner to exercise his constitutional rights as enjoyed under Rule 180 of the said rules;

13. Learned Counsel for the petitioner contends that the constitution of the DCM itself is illegal and invalid in view of the fact that there have been violations of the procedure at the stage of court of inquiry itself and Rule 180 was not followed. In sum and substance the plea is that all the proceedings which have been taken out after the completion of court of inquiry are invalid and illegal on account of there being violation of Rule 180 at the stage of Court of Inquiry. Learned Counsel for the petitioner seeks to refer to some judgments in this behalf but there is no dispute over the legal proposition that if there is a violation of Rule 180 at the stage of Court of Inquiry, the proceedings, thereafter had to be set aside and the matter remanded back to the stage of Court of Inquiry. The question, however, is whether there has in fact been any infraction of Rule 180 of the said Rules at the stage of Court of Inquiry.

14. Learned Counsel for the petitioner submits that the complainant was not examined in the Court of Inquiry proceedings and the petitioner was examined

first before other witnesses were so examined. We find no infraction of Rule 180 in the proceedings. There is nothing which requires the other witnesses to be examined first before the petitioner is examined. The petitioner was examined and made a self-incriminating statement. Since the other witnesses deposed against the petitioner, the petitioner was asked to remain present throughout, given an opportunity to examine those witnesses and further given an opportunity to produce his defence witness at the stage of recording of each witness. This is clearly recorded in the proceedings. The petitioner failed to avail of that opportunity.

15. The petitioner also fully participated in the Court of Inquiry and the Summary of Evidence. We find there is no mandatory requirement of recording statement of complainant during the Court of Inquiry specially taking into consideration the sensitivity of nature of allegation against the petitioner. If a lady has been treated in the manner as alleged against the petitioner, the lady may herself take some time to compose herself. An important fact is that during the recording of Summary of Evidence, the statement of the complainant was recorded and she stood her ground despite the cross-examination of the petitioner. The petitioner can have, thus, no grievance. The procedure envisaged under Rule 179 of the said Rules clearly makes the object of such inquiry apparent and in that behalf we consider it appropriate to reproduce Sub-Rule 4 of the said Rule which reads as under:

179. Procedure.-

(1) ...

(2) ...

(3) ...

(4) The court may put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth.

16. We may also take note of the fact that what is recorded during the Court of Inquiry is not admissible in evidence and the object is only to get to know the truth behind the allegation. Rule 182 reads as under:

182. Proceedings of court of inquiry not admissible in evidence.- The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person willfully giving false evidence before that court:

Provided that nothing in this rule shall prevent the proceedings from being used by the prosecution or the defence for the purpose of cross-examining any witness.

17. The plea of the petitioner that he was being called upon to make statements against himself thus falls flat on its face in view of the aforesaid provisions and the object of examination of the petition was to find out his side of the story. The aforesaid are the only pleas urged by learned Counsel for the petitioner.

18. We must also take note of the fact that the petitioner had earlier approached the Rajasthan High Court making almost similar claims. No doubt that the stage at which the petitioner had approached the Rajasthan High Court was prior to the constitution of the DCM but that would make no difference for the reason that the allegation is of violation of Rule 180 of the said Rules which is at the stage of Court of Inquiry and that stage had already been completed. Not only that the statement of the complainant and her cross-examination took place on 19.7.2008, prior to the dismissal of the writ petition by the Rajasthan High Court on 11.8.2008. The complete summary of evidence had already been concluded on 04.08.2008.

19. It appears to us that the petitioner is filing petitions before different courts to somehow prevent the DCM from proceeding further by raising one objection or the other on the ground that there are procedural infractions while in fact there are none.

20. We must deprecate such conduct of the petitioner and the present proceeding, to our mind, is not only misconceived but an abuse of the process of law. The counsel for the petitioner ought to have placed before us a complete order of the Rajasthan High Court which he has failed to do though it was passed more than a month and a half back.

21. The writ petition being devoid of merits and misconceived is dismissed with costs of Rs. 10000/- to be deposited with Chief Minister's Relief Fund, Bihar within a period of 15 days from today.

CM No. 13878/2008

In view of the aforesaid, the application does not survive.

The application is dismissed as infructuous.