
(1995) 03 BOM CK 0064

In the Bombay High Court

Case No : Criminal Writ Petition No. 101 of 1988

Santosh Kumar Pyarelal Mishra

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Army Act, 1950 — Section 120(2), 3, 69

Citation : (1995) 1 ACC 522 : (1995) 3 BomCR 483 : (1995) 97 BOMLR 312

Hon'ble Judges : P.S. Patankar, J;A.D. Mane, J

Bench : Division Bench

Advocate : R.N. Dhorde, for the Appellant; P.G. Godhamgaonkar, S.C. for respondents Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

A.D. Mane, J.—The petitioner is a driver serving in Army and at the relevant time was posted at 84 Armed Regiment of Electronics Regiment attached with Technical Wing Armoured Corps Centre and School, Ahmednagar. The petitioner was enrolled in army in December, 1981. On October 28, 1984, while he was on duty as a driver driving military vehicle of 1 ton Nissan BA No. 83-C-35460-A of Technical Wing from headquarters towards D.R. Lines on Rajendra Singhji Road, an accident took place. It was alleged that at the traffic island near Camp Post Office, a civil jeep having registration No. MHA 2926 coming from right on J.N. Chaudhary Road dashed against the military vehicle. As a result of said collusion, the civilian jeep took 1800 turn fell on its left side. The left front mud-guard and superstructure of the jeep were damaged. The right side bumper of the 1 ton truck was bent inwards after an impact around the centre of the bumper. There were 7 passengers in the civilian jeep including the driver. Due to the impact, the person sitting to the left side, namely, one Mohan Ashok Sahasrabudde and the driver at the right end were trapped under the jeep. Though they were removed to Booth Hospital at Ahmednagar for treatment, Mohan Sahasrabudde succumbed to his injury on the same day.

2. The petitioner was, therefore, tried before the Summary Court Martial and decision arrived at by Summary Court Martial is that the petitioner was held guilty and he was imposed a sentence of dismissal from his service coupled with rigorous imprisonment for six months by confinement in civil prison with the remission of 3 months. The appeal preferred by the petitioner, however, came to be dismissed on 16-3-1988. This petition is, therefore, filed challenging the aforesaid order of dismissal as well as against imposing sentence of imprisonment for 3 months in civil prison.

3. Shri Dhorde, learned Counsel appearing for the petitioner raised the main contention that the Summary Court Martial was not competent authority under the provisions of section 120(2) of the Army Act, 1950. Therefore, the impugned orders are without jurisdiction and, therefore, liable to be quashed and set aside. In support of this submission, Shri Dhorde, counsel for the petitioner, invited our attention to section 119 of the Act which deals with the powers of District Court Martial and according to him the only authority empowered to impose sentence is one u/s 119 in case of civil offence falling u/s 69 of the Act.

4. There appears to be some substance in the contention of Shri Dhorde, learned Counsel for the petitioner. Section 120(2) deals with the powers of Summary Court Martial, which reads as under :---

"120. (1)

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a District Court Martial or on active service a summary general Court-martial for the trial of the alleged offender, an officer holding a summary Court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the Court.

(3)

(4)

(5)

Sub-section (2) of section 120 clearly says that the powers of summary Court martial can not be invoked unless there is a grave reason for immediate action and reference to a District Court Martial, without detriment to discipline, is in existence. In this context, section 69 requires to be mentioned. It deals with punishment in case of civil offences. The civil offence is defined in section 3(ii) which means an offence which is triable by a Criminal Court. There is no dispute that offence with which the petitioner was charged for is an offence for rash and negligent act of driving the military vehicle. It, therefore, falls within the category of civil offence as contemplated u/s 69 of the Act. Therefore, by no stretch of imagination, it can be said that there existed a grave reason for immediate action and reference to District Court Martial could be dispensed with keeping in view the urgency in regard to the discipline. Non-existence of

circumstances to invoke provisions of section 120 sub-section (2) of the Act, in our opinion, would result in the exercise of power of a Summary Court Martial as illegal. The impugned order, is, therefore, without jurisdiction.

5. Shri Godhamgaonkar, learned Standing Counsel for the respondents, however, invites our attention to the additional affidavit-in-reply dated 24-3-1994 filed by the respondents. According to him, in the facts and circumstances as set out in paragraph No. 1 of the said affidavit-in-reply, provision of sub-section (2) of section 120 of the Act is attracted. It may be stated that the accusation levelled against the petitioner in the form of charge was specific that due to his rash and negligent driving, accident took place in which one of the passengers travelling in the jeep died. In the reply affidavit, altogether different stand appears to have taken wherein it has been stated that on the day of incident, the vehicle was stopped near Duty Clerks Room, School of Armoured Warfare where the commander of vehicle Lance Dafadar Bhajan Singh moved the vehicle for some official work. He issued oral instructions to the petitioner to keep the vehicle in a parked condition till he returns from his work. It is stated that before the commander could return, the petitioner without his command or order from the commander of vehicle and without any reason, has moved the vehicle from the place of parking. In that course, he met with the accident. It is submitted that at that point of time, the petitioner as a driver of the vehicle was not supposed to move without the order of officer according to the regulations of army. The conduct of the petitioner was contrary to the discipline of army and as such it is suggested that there was a grave reason for immediate action inasmuch as the petitioner drove the vehicle which was loaded with ammunition.

6. In our opinion, the statement of facts as set out for the first time in additional reply on behalf of the respondents, can not be taken into account as these facts do not form part of the initial charge nor such a plea was raised before the authority who passed the impugned orders. We, therefore, finds no merit in the contention of Shri Godhamgaonker, counsel for the respondents that this is a case to attract provisions of section 120(2) of the Act. In our opinion, it is a clear case which falls within the purview of section 119 of the Act.

7. In the view that we take, the impugned orders require to be quashed and set aside as also the conviction and sentence passed against the petitioner by the Summary Court Martial and direct the concerned authority to proceed to hold fresh trial of the petitioner in accordance with law. We hope the concerned authority shall dispose of the trial as expeditiously as possible since the petitioner is out of service. The petition is accordingly allowed. Rule is made absolute in above terms. There shall be no order as to costs.