
(1993) 03 GAU CK 0002

In the Gauhati High Court

Case No : Criminal Revision No. 309 of 1988

Sashidhara Kurup

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-03-1993

Acts Referred:

Assam Rifles Act, 1941 — Section 7

Criminal Procedure Code, 1973 (CrPC) — Section 211, 251, 252, 354

Citation : (1994) CriLJ 375

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : R.S. Bedi, for the Appellant; S.N. Chetia, Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—This revision is directed against the Judgment and Order dated 14-7-1988 passed by the 2nd respondent (Commandant) convicting the revisionist to undergo a sentence of one year rigorous imprisonment in Civil Jail u/s 7(f) of the Assam Rifles Act, 1941.

2. I have heard Mr. R.S. Bedi, learned Counsel for the revisionist as well as Mr. S.N. Chetia, learned Central Govt. Standing Counsel for the respondents.

3. The revisionist at the relevant time was Havildar in the establishment of Assam Rifles and was posted at Khonuma out post. On 9th July, 1988 the revisionist was called to the Battalion Headquarters at Kohima, on the arrival he was taken into custody. On 11th July, 1988 while the revisionist was in custody, he was served with the summon asking him to appear before the 2nd respondent on 12th July, 1988 to answer charges u/s 7(f) of the Assam Rifles Act, 1941 (hereinafter the Act) for committing acts prejudicial to good order "and discipline. In the said summon 3(three) charges were specified which is extracted hereunder:--

(a) On 8th July, '88 from 1300 hrs. onwards making unauthorised use of Radio set LHP 219 of the post when not authorised to do so.

(b) Using the Radio set LHP 219 for clandestine purposes harmful to the interest of the Assam Rifles and the State.

(c) Engaging in similar activities on days prior to 8th July, '88.

4. The revisionist, as directed, appeared before the second respondent on 12th July, 1988 and his statement was recorded. The revisionist while giving statement as would appear from the record have admitted the offences at charge No. (a). But denied the charges at (b) and (c). I shall be dealing with this admission of guilt said to have been admitted by the revisionist later at appropriate time. The second respondent, as would appear from the Judgment and Order dated 14-7-88, after examining the witness and on plea of guilt, sentenced the revisionist in terms of the following order :--

I find you guilty u/s 7(f) of the Assam Rifles Act, 1941 beyond all reasonable doubt on your own admission to charge firstly and as per the evidence brought before me by the other witnesses on charges secondly and thirdly. Therefore, I hereby convict you u/s 7(f) of Assam Rifles Act, 1941 and sentence you to undergo a sentence of rigorous imprisonment of the year in Civil Jail.

5. It is submitted by Mr. R.S. Bedi, learned Counsel for the revisionist that the impugned Judgment and order is not maintainable in law in as much as no procedure established under the Code of Criminal Procedure has been followed in the instant case, that--

(a) No charge sheet was issued to the petitioner.

(b) the summons containing allegations against the petitioner were vague and wholly lacking in material particulars;

(c) the petitioner was not given any opportunity to be defended by a person of his choice.

(d) inspection of documents and the records of the case including materials sought to be used by the prosecution was totally denied to the petitioner, thus depriving him of any charges rebutting the prosecution story.

(e) the petitioner was wholly intimidated put under duress during the course of the alleged trial and evidence which was coming in his favour was also excluded and was not recorded, and

(f) in any case, the finding of guilt was wholly vague and untenable having regard to the nature of charges contained in the summons.

6. Admittedly, the second respondent while sitting as a Court and conducting the trial was exercising the power of the Magistrate First Class under the Code of Criminal Procedure. Therefore, his function as a court is regulated and governed under the Code. Section 211 of the Code of Criminal Procedure speaks the

contents of charge and says that every charge under this Code shall state the offence with which the accused is charged. Further, Section 251 of the Code of Criminal Procedure speaks of trial of summon cases by Magistrates. It states that in a summon cases (which is the present case) when the accused appears or is brought before the Magistrate, the particulars of the offences of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge. In the instant case, no particulars of the offence against to have been stated to the revisionist. The particulars of the offence is made to be stated to the accused under the code, so that the accused may make effective defence. This procedure has not been followed in the instant case. This apart, no opportunity was afforded to the revisionist to defend his case. Consequently, the principle of natural justice has been violated.

7. It is submitted by Mr. S.N. Chetia that in the instant case the particulars of the offence was stated in the summon itself and was explained to the accused as well. It is, therefore, argued by Mr. S.N. Chetia that the revisionist was rightly convicted on his own plea of guilt to the charge No. (a). At the time of hearing of this revision petition Mr. S.N. Chetia, learned Central Government Standing Counsel produce the relevant records before this Court. I have gone through the record. On perusal of the record, it appears that the revisionist was examined on 12th. July, 1988. In his examination, he has stated as under "I am guilty of charge "a" as giving in the chargesheet as read out to me": Mr. S.N. Chetia strenuously urged that this is a clear admission of guilty and the second respondent has rightly convicted the revisionist on his own admission of guilty. I am unable to accept this submission because of 2 (two) reasons. Firstly, the alleged admission read as a whole does not constitute an admission in the eyes of law. Admission would mean an admission of all the facts constituting the offence. Simply saying that I am guilty of the charge does not constitute an admission of guilt. Secondly, Section 252 of the Code of Criminal Procedure, mandated that if the accused plead guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon. In the instant case, no plea of guilt has been recorded by the 2nd respondent. Recording of the plea of the accused as nearly as possible in the words which is used by the accused has an important significance because unless the plea of the accused is recorded as nearly as possible in the words which is used by the accused the appellate court is deprived of the privilege to examine as to whether the plea made by the accused amounts to admission of guilt or not.

8. Next it is contended by Mr. Bedi that in any view of the matter the Judgment and Order passed by the 2nd respondent is not maintainable in law, in as much as, the said Judgment is cryptic and devoid of reasons. I have already quoted the operative portion of the Judgment. No reason whatsoever has been assigned by the 2nd respondent as to why he has arrived at a finding. Section 354 of the Code of Criminal Procedure casts a bounden duty on the trial Magistrate that a

judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision. This provision has been totally violated in the instant case.

9. In view of what has been stated above, the Judgment and Order dated 14-7-1988 passed by the second respondent is not sustainable in law and the same is hereby set aside. The revisionist is on bail. His bail bond and surety stands discharges. He is set at liberty.

10. With the above direction and observation the revision petition is allowed.