

(1987) 10 RAJ CK 0036

In the Rajasthan High Court

Case No : Habeas Corpus Writ Petition No. 2214 of 1987

Sepoy Devidutt

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-10-1987

Acts Referred:

Army Act, 1950 — Section 164, 71, 73

Citation : (1988) 1 RLW 301 : (1988) 1 WLN 299

Hon'ble Judges : S.S. Byas, J;J.R. Chopra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.S. Byas, J.—In this petition under Article 226 of the Constitution, the petitioner challenges the validity and correctness of the order Annexure-1 dated April 3, 1987 passed by a Summary Court Martial. By the impugned order, the petitioner was convicted and sentenced to one year's rigorous imprisonment in civil prison along with the dismissal from service.

2. The material facts, which we have gathered with great difficulty from the return and the impugned order Annexure-1 are that the petitioner joined the Indian Army as Sepoy in 1980 and was working as Sahayak with one Colonel V.S. Budhwar of 16-Kumaon since 1981. At the relevant time, i.e. March and April 1987, he was working as the Sahayak of Colonel Budhwar at Jodhpur at his residence. Col. Budhwar was transferred from Jodhpur in December, 1986, but on account of education of his children, his wife and children stayed at Jodhpur for completing the academic year. At about 1.30 p.m. on February 24, 1987, the Colonel's wife Smt Indu Bala Budhwar was sitting in her bedroom awaiting the arrival of her daughter from the school. The petitioner went to her and inquired about her health. Mrs. Budhwar replied that she was fit and fine and directed him to go away as he was required no more. The petitioner, however, remained there and started to stare at her. He asked her as to why she was having a gloomy face since the departure of her husband and to let him know of her worries. Mrs.

Budhwar found this behaviour of the petitioner highly abnormal and sensing something foul, she got-up to go out in the open court-yard. As soon as she got-up, the petitioner caught hold of her from behind with his hands around her. She resisted and struggled and screamed aloud for help. The petitioner gagged her mouth and told her not to raise cries as that would only bring disgrace and dishonour to her. He felled her down and she continued crying for help. The petitioner, however, continued his efforts to molest her. She heard the sound of the foot-steps of somebody coming and she again shouted for help. The petitioner, sensing the arrival of somebody and realising the gravity of the situation, left her and sped away from the room. She then bolted the doors of the room from inside and again shouted for help. A little while later, one Colonel Pandey and his son came to her. She narrated the incident to them. Mrs. Budhwar sustained bruises and lacerations over her face and lips in the resistance and struggle she put to the petitioner. She was medically examined. A Summary Court Martial was thereafter held and the petitioner was ultimately punished as mentioned at the very outset.

3. The petition has been typed in the nature of habeas corpus and mandamus. Mr. Joshi, the learned Additional Advocate General, who appeared for the Union of India, raised a preliminary objection that the petition for a writ of habeas corpus and mandamus is misconceived and is not maintainable when a person, belonging to the Force, has been tried and convicted under the Army Act, 1950 (here in after to be referred to as "the Act") by a Court Martial. It was argued that this Court cannot sit in appeal against the verdict of a Court Martial. The Court Martial and for that purpose of Summary Court Martial has jurisdiction to try and punish a member of the Force under the Act. As such, the detention of the petitioner in pursuance to the sentence imposed on him by the Summary Court Martial cannot be said unlawful. Mr. Joshi further submitted that statutory remedy u/s 164 of the Act was available to the petitioner and he failed to avail of it. The writ petition should, therefore, be dismissed. We find considerable force in (he contention of Mr. Joshi.

4. Section 164 of the Army Act reads as under:

164. Remedy against order, finding or sentence of court martial - (1) Any person subject to this Act who considers himself aggrieved by any order passed by any court martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court martial which has been confirmed, may present a petition to the Central Government (the Chief of the Army Staff) or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government (the Chief of the Army Staff) or other

officer, as the case may be, may pass such order thereon as it or he thinks fit.

5. A plain reading of this Section makes it abundantly clear that any person, if aggrieved by any order passed by the court martial, may approach the higher Authority to redress his grievance and the higher Authority is to satisfy itself about the correctness, legality or propriety of the order passed or to see whether the procedure has been correctly followed. Section 164 provides a statutory remedy to the aggrieved person. The provisions of Section 164 are analogous to the provisions of an appeal. In Subhash Chandra Sarkar Vs. Union of India (UOI) and Others, a similar situation arose. The aggrieved person did not avail of the statutory remedy available to him u/s 164 of the Army Act. He filed a writ of certiorari challenging the proceedings of a court-martial. The writ was dismissed on the ground that he straightaway came to the Court without having recourse to the statutory remedy available to him u/s 164 of the Act. We are in agreement with the view expressed in the aforesaid case. Whether the writ is in the nature of habeas corpus or certiorari makes no distinction as regards the applicability of Section 164 of the Act. The petition must, therefore, be dismissed on this count alone.

6. We also find merit in the contention of Mr. Joshi that the petition for a writ of habeas corpus is also misconceived when one, belonging to the Force, has been tried and convicted by a Court Martial. It is altogether a different matter that the Court-Martial had no jurisdiction to try and convict the petitioner. Had it been so, the impugned order, being without jurisdiction, could have been interfered with. Under the Army Act, a person belonging to the Force may be convicted and sentenced by a Court-martial. The petitioner was amenable to the jurisdiction of the Court-Martial. As such, the conviction and sentence recorded by the Court-Martial cannot be said lacking of any jurisdiction. A remedy of habeas Corpus is not available to one who has been convicted and sentenced by a Court Martial except on the ground that the Court Martial had no jurisdiction to try and convict him.

7. Mr. Gehlot appearing for the petitioner could not canvass any reasoning before us that the petitioner was not available to the jurisdiction of the Court Martial or that the Court Martial lacked any jurisdiction to try and convict the petitioner. The petition should, therefore, be dismissed on this count also.

8. Facing with these legal hurdles, Mr. Gehlot prayed that the petition be treated to be a petition for a writ of certiorari. We accepted his prayer and permitted him to bring out any fundamental lapses in the trial conducted by the Court Martial. Of course, still Section 164 of the Army Act will stand in the petitioner's way.

9. The first contention raised by Mr. Gehlot is that the petitioner was awarded two punishments, namely, (1) rigorous imprisonment for one year and (2) dismissal from service. It was contended by him that two punishments cannot be simultaneously awarded u/s 73 of the Act. We find the contention completely bizarre and bereft of merit. Chapter VII of the Act deals with punishments.

Section 71 occurring in this Chapter enumerates the punishments awardable by the Court Martial. These punishments include that of imprisonment not exceeding fourteen years and dismissal from the service. Section 73 of the Act permits the combination of punishments. It reads as under:

73. Combination of punishments- A sentence of a Court-Martial may award in addition to, or without any one other punishment the punishment specified in clause (d) or clause (e) of Section 71 and any one or more of the punishments specified in clauses (f) to (i) of that Section.

10. Section 73 is plain and has no ambiguity. It permits the combination of punishments. A sentence of imprisonment occurring in clause (c) of Section 71 can be awarded along with the punishment of dismissal from the service occurring in clause (e) of the aforesaid Section. It is on account of Section 73 that combination of punishments is possible. Had Section 73 been not there, probably there would have been some force in the contention of Mr. Gehlot. But so long Section 73 is there in the Act, combination of punishments is perfectly permissible and legal. We, therefore, find no force in the contention of Mr. Gehlot that the Court-Martial had no jurisdiction to award combined punishments of imprisonment and dismissal from the service.

11. The next contention raised by Mr. Gehlot is that the statements of the witnesses were recorded in English language and the petitioner is not conversant with that language. That had resulted in failure of justice. In the return filed by the respondents, this allegation has been refuted. It was stated in the return that the statements of the witnesses were read over in Hindi to the petitioner. The petitioner, having fully understood what the witnesses testified against him, cross-examined them. We have no reasons to distrust the reply filed by the respondents accompanied with an affidavit.

12. No other contention was raised. The writ petition must, therefore, fail.

13. En Passant, we may observe that the petitioner was found guilty of outraging the modesty of the wife of a Colonel. He was appointed as a Sahayak to help the Colonel. He committed everything with the Colonel's wife short of rape. No indulgence can be granted to such a man who tries to take advantage of a woman finding her alone.

14. The petition is consequently dismissed.