

(2017) 06 MEG CK 0016
In the Meghalaya High Court
Case No : 129 of 2017

Shri Dipak Chakrabarty

APPELLANT

Vs

The Union of India & Ors

RESPONDENT

Date of Decision : 15-06-2017

Acts Referred:

[Prevention of Corruption Act, 1988](#), [Section 3](#), [Section 4](#), [Section 25](#), [Section 28](#), [Section 7](#) - Power to appoint special Judges - Cases tri

Citation : 2017 0 LabIC 2984

Hon'ble Judges : Sr Sen

Bench : Single Bench

Advocate : H.S. Thangkhiew, Philemon Nongbri, K. Paul

Judgement

1. Heard Mr. H.S. Thangkhiew, learned Sr. counsel assisted by Mr. Philemon Nongbri, learned counsel for the petitioner as well as Mr. K. Paul, learned CGC for the respondents.

2. The brief fact of the petitioner's case in a nutshell is that:

Petitioner is serving in Assam Rifles, as Subedar (B & R) presently posted with ARC & MC, Laitkor, Shillong. He is aggrieved with the findings

of the Court of Inquiry and Summary of evidence, impugned letter dated 18.01.2017 to proceed the petitioner in General Assam Rifles Court and

the charge sheet dated 07/21.04.2017. The court of Inquiry has been conducted in gross violation of Assam Rifles Rules, 2010 and on the basis of

serious procedural violations, non-examination of complainant, denial of opportunity to the petitioner to cross-examine the complainant, the

respondents vide impugned letter dated 18.01.2017 informed the petitioner to proceed in General Assam Rifles Court and issued the impugned

charge sheet dated 07/21.04.2017.

The petitioner has been charged under Assam Rifles Act 55 for committing offence punishable under Section 7 of P.C. Act, 1988 is contradictory

to the provisions of Rules 44/45 of A.R. Rules/Act. Section 2 (e) & (h) of the Assam Rifles Act, 2006 provides that Assam Rifles Court is a Court

of Ordinary Criminal Justice, however, while the petitioner has been issued charge sheet for alleged commission of Civil offence punishable u/s 7 of

P.C. Act, which is wholly triable by a Special Court, hence the General Assam Rifles Court, being a Ordinary Criminal Court is barred from taking

trial for commission of offence punishable u/s 7 of P.C. Act. In that context section 25 of P.C. Act, has barred Ordinary Criminal Court to try the

offence under P.C. Act.

A purported broadcast was aired in Malayalam Channel Mathrubhumi News and Tehelka.com on 24/25 September, 2014 alleging corruption in

Assam Rifles. On the basis of alleged sting operation carried out by a black listed Assam Rifles contractor, Shri C.C. Mathew in connivance with

Shri. Shyju Marathumpilly of Tehelka at Imphal, Shillong and Guwahati from 4th August 2014 to 12th August, 2014, a Court of Inquiry was

convened by the HQ DGAR vide order dated 29.09.2014 followed by an amendment dated 01.10.2014 and corrigendum dated 07.10.2014 to

the convening Order in respect of composition of COI. In the court of inquiry, the prime witness/Complainant, Shri C.C. Mathew did not appear,

the convening authority without giving opportunity to cross examine, in utter violation of the mandatory provision of Rule 183 (8) and Rule 49 (2),

47 of Rules, 2010, completed the Court of Enquiry and also recorded the summary of evidences.

An incomplete Court of Inquiry has no merit to recommend the investigation to next level for conducting of Summary of evidence. The respondents

in deliberate violation of Rules 44, 45 (ii), Rule 183 (8) during COI and Rule 49 during SOE proceedings have proceeded to convene General

Assam Rifles Court and issued the impugned charge sheet dated 21.04.2017 which is not permissible in law.

The petitioner after receipt of the charge sheet dated 07/21.04.2017 has submitted representation dated 29.04.2017 to hand over correct CD and

five documents. He submitted another representation dated 11.05.2017 giving

previous correspondence reference with the request to cancel the charge sheet and to acquit from the charges.

As a result of the serious lapses and violation of rules, principles of natural justice in the court of inquiry, the respondents are not legally permitted to proceed against the petitioner in General Assam Rifles Court vide impugned letter dated 18.01.2017 and has issued the impugned charge sheet dated 07/21.04.2017.

Hence this Writ Petition.

3. The learned Sr. counsel appearing on behalf of the petitioner had submitted that the petitioner is serving in the Assam Rifles and charges under the Prevention of Corruption Act, 1988 have been framed against him. He further contended that the Assam Rifles has no jurisdiction or power to try the case under the Prevention of Corruption Act, 1988. So, the charge framed against the petitioner may be set aside.

4. On the other hand, the learned CGC for the respondents argued that Section 55 of the Assam Rifles Act, 2006 has to be read in conjunction with section 28 of the Prevention of Corruption Act, 1988. Further, the learned CGC also submitted that the language used in Section 69 of the Army Act, 1950 is similar to Section 55 of the Assam Rifles Act, 2006 and that the present petition may be dismissed.

In support to his submission, the learned CGC relied on the judgment passed by the Hon"ble Supreme Court in the case of Joginder Singh versus State of Himachal Pradesh: (1971) 3 SCC, Page 86 at Para 17 and 18 which are reproduced herein below:

17. As the appellant was alleged to have committed rape in relation to a person who was not subject to military, naval or air law, under Section 70, normally he could be tried by the ordinary criminal court, but inasmuch as he was on active service at the time of the alleged offence, the court-

martial also gets jurisdiction to try the appellant. Therefore, this is a case where both the court-martial and the ordinary criminal court had

concurrent jurisdiction to try the appellant. To meet such a situation suitable provisions have been made in Sections 125, 126 of the Act and the

Rules framed under Section 549 Cr.P.C. In Major E.G. Barsay v. The State of Bombay (1962) 2 SCR 195, the jurisdiction of the Special Judge

to try an officer who was subject to the Army Act was questioned. No doubt the

ultimate decision of the Court rested on a construction of the provisions of the Prevention of Corruption Act, 1947 and the jurisdiction of the Special Judge to try the military officer in that case was upheld. But in dealing with the contention raised on behalf of the appellant therein that the Special Judge had no jurisdiction to take cognizance of the offences with which the accused was charged and that he should have been tried only by a court-martial under the Act, this Court had to consider the scheme of the Act.

18. After holding that the Act does not expressly bar the jurisdiction of the criminal court in respect of the acts or omission punishable under the Act if they are also punishable under any other law in force in India, this Court held that Sections 125, 126 and 127 excluded any inference about prohibition regarding jurisdiction of the criminal courts and those sections in express terms provide not only for resolving conflict of jurisdiction between a criminal court and a court-martial in respect of the same offence, but also provide for successive trials of an accused in respect of the same offence. This Court has further laid down that Sections 125 and 126 provide a satisfactory machinery to resolve the conflict of jurisdiction having regard to the exigencies of the situation. This decision in our opinion, lays down that there is no exclusion of jurisdiction of the ordinary criminal courts in respect of offences which are punishable also by the court-martial.

5. Further, the learned CGC for the respondents also relied on the judgment passed by the Hon'ble Himachal Pradesh High Court, in the case of Piar Singh versus Union of India and Ors: 1985 CRI.L.J. 860 at Para 3, which is herein reproduced below:

3. Section 3(ii) of the Act defines the term "civil offence" to mean "an offence which is triable by a criminal Court". Section 69, in so far as it is relevant, provides that "any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a Court-martial and, on conviction be punishable as follows.....".

On a true interpretation of Section 69 of the Act, it is clear that a person, who is governed by the provisions of the Act and who commits any civil offence, that is, an offence which is triable by a criminal Court, will be regarded

by a fiction as having committed an offence against the Act and, if charged with such offence under the said section, such person is liable to be tried by a Court-Martial. Section 69 is in the nature of a legislation by reference or incorporation and its provisions are of a substantive as well as of a procedural nature. The Section, in so far as it does not itself prescribe the ingredients of the offence but enacts that any person, who commits any "civil offence", which expression, as defined, brings in any offence created under any statute provided it is triable by a criminal Court, shall be treated as guilty of an offence against the Act, is a piece of legislation by reference or incorporation and it is also a substantive provision. In so far as it provides for the trial of a person charged thereunder by a Court- Martial, the Section is procedural in nature. Be it stated that Section 11 of the Criminal Law (Amendment) Act, 1952 not only saves the jurisdiction exercisable by or the procedure applicable to, any Court or other authority under any military, naval or air force law, but also declares that for the purposes of any such law, the Court of the Special Judge set up to try, inter alia, an offence punishable Under Section 5 of the Prevention of Corruption Act, 1947, shall be deemed to be a Court of ordinary criminal Justice.

6. The learned CGC further relied on the Judgment passed by the Hon''ble Supreme Court in the case of Union of India and Ors versus Ex- GNR

Ajeet Singh: (2013) 4 SCC, Page 186 at Para 16 which is reproduced herein below:

16. Though the case is labeled as a civil appeal, in fact it is purely a criminal case. GCM is a substitute of a criminal trial. Thus, the case ought to have been examined by the High Court keeping in mind, the principles/ law applicable in a criminal trial. The Respondent is governed by the Army Act and Army Rules, and not by the provisions of Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code of Criminal Procedure"). However, Code of Criminal Procedure basically deals with procedural matters to ensure compliance with the principles of natural justice, etc. Thus, the principles enshrined therein may provide guidelines with respect to the misjoinder of charges and a joint trial for various distinct charges/offences as there are similar provisions in the Army Rules. Section 464 Code of Criminal Procedure, provides that a finding or

sentence would not be invalid merely because there has been an omission or error in framing the charges or misjoinder of charges, unless a "failure of justice" has in fact been occasioned.

7. After having perused the cases submitted by the learned CGC for the respondents, it is in my considered view that they are not applicable in the instant case.

8. After hearing the submissions advanced by the learned counsel for the parties and after perusal of the charge sheet annexed at Annexure-9 of

the writ petition, I would like to look back to Section 55 of the Assam Rifles Act, 2006. Section 55 of the Assam Rifles Act, 2006 is reproduced

herein below for ready reference:

55. Civil offences. - Subject to the provisions of section 56, any person subject to this Act who at any place in, or beyond, India commits any civil

offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by an

Assam Rifles Court and, on conviction, be punishable as follows, that is to say, - (a) if the offence is one which would be punishable under any law

in force in India with death, he shall be liable to suffer any punishment assigned for the offence, by the aforesaid law and such less punishment as is

in this Act mentioned; and (b) in any other case, he shall be liable to suffer any punishment assigned for the offence by the law in force in India, or

imprisonment for a term which may extend to seven years, or such less punishment as in this Act mentioned.

On perusal of Section 55 of the Assam Rifles Act, 2006; it is understood that Section 55 has empowered the Assam Rifles to try the civil offences

against any person subject to this Act, but nowhere is it found mentioned that the Assam Rifles have the power to try the cases under the

Prevention of Corruption Act, 1988. We must not forget that the Prevention of Corruption Act, 1988 is a special Act. Further, I have also perused

Sections 25 and 28 of the Prevention of Corruption Act, 1988 which are herein reproduced below:

25. Military, Naval and Air Force or other law not to be affected. - (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the

procedure applicable to, any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy

Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special

Judge shall be deemed to be a court of ordinary criminal justice.

28. Act to be in addition to any other law. - The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time

being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

On perusal of Section 25 of the Prevention of Corruption Act, 1988, nowhere is it found mentioned that the Assam Rifles Authority has the power

to try the case under the Prevention of Corruption Act, 1988. Further, it is an undisputed fact that any case under the Prevention of Corruption

Act, 1988 can only be tried by a Special Court constituted by the Central Government or the State Government, therefore the question of General

Assam Rifles Court trying the instant case under Section 55 of the Assam Rifles Act, 2006 in conjunction with Section 28 of the Prevention of

Corruption Act, 1988 is rejected.

9. Section 3 of the Prevention of Corruption Act, 1988 states that a Special Judge is to be appointed by a Gazette notification to try the cases

under the Prevention of Corruption Act, 1988. Section 3 of the Prevention of Corruption Act, 1988 is reproduced herein below:

3. Power to appoint special Judges. - (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint

as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try

the following offences, namely:-

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional

Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

From the language of Section 3 of the Prevention of Corruption Act, 1988 and other provisions available in the Prevention of Corruption Act,

1988, it is amply clear that an officer cannot try the case under the Prevention of Corruption Act, 1988 unless and until he is notified and

designated in the Official Gazette as Special Judge.

10. Therefore, after scanning the provisions as discussed above, I am of the considered view that any case under the Prevention of Corruption

Act, 1988 can be tried only by those officers who are specially appointed and notified in the Official Gazette specifying their territorial jurisdiction.

11. Now, the question that arises is even if it is assumed for the time being that Section 55 of the Assam Rifles Act, 2006 empowers the General

Assam Rifles Court to try the present case, but the procedure will definitely apply under the Prevention of Corruption Act, 1988, Criminal

Procedural Court and Evidence Act, etc. It is also apparent before this Court that the learned CGC for the respondents has not able to place on

record whether the Assam Rifles Court or any officer therein has been empowered by notification in the Official Gazette as a Special Judge under

the Prevention of Corruption Act, 1988. Therefore, the question to try the case under Section 7 of the Prevention of Corruption Act, 1988 by the

General Assam Rifles Court does not arise which will be contrary to the provisions and purpose of the said "Prevention of Corruption Act, 1988

and that cannot be accepted, otherwise the letter and spirit of Prevention of Corruption Act, 1988 (Special Act) will collapse. In fact it is in my

opinion that if any case of corruption would occur in the armed forces, the said matter should be handed over to the CBI and not to be investigated

by the armed forces themselves.

12. Therefore, in my considered view corruption cases should be dealt in pursuance to section 3 and 4 of the Prevention of Corruption Act, 1988.

The Assam Rifles cannot invoke their power from Section 55 of the Assam Rifles Act, 2006 and interfere in the case which falls within the

Prevention of Corruption Act, 1988.

13. Accordingly, the charge sheet annexed at Annexure-9 of the Writ Petition is hereby set aside and the Petition is allowed and stands disposed

of.