

(1998) 06 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 94 of 1997

Shri Onkar Nath

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 10-06-1998

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 16(2), 18, 9
Central Reserve Police Force Rules, 1955 — Rule 36
Criminal Procedure Code, 1973 (CrPC) — Section 2, 251, 252, 253, 254

Citation : (1999) 3 ShimLC 181

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Ravi Bakshi, for the Appellant; Ashok Sharma, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

R.L. Khurana, J.—The Petitioner is a member of the Indo-Tibetan Border Police Force and posted as Naik Radio Operator in 6th Battalion at Sarahan in District Shimla.

2. On the Petitioner having deserted the camp at Bonda on 15.3.1992 till 30.4.1992, he was prosecuted by the Assistant Commandant exercising the power of Judicial Magistrate Ist Class, for the offence u/s 10(p) of the Central Reserve Police Force Act, 1949, (hereinafter referred to as the Act). The Petitioner was convicted on 15.6.1992 for such offence and was sentenced to imprisonment till the rising of the Court.

3. The Petitioner assailed the conviction and sentence imposed upon him, by way of an appeal, being Criminal Appeal No. 16-R/10 of 1995/92, before the learned Sessions Judge, Kinnaur Sessions Division at Rampur. Vide the impugned judgment dated 9.12.1996, the learned Sessions Judge dismissed the appeal. The conviction and sentence imposed upon the Petitioner by the trial Court was maintained.

4. Feeling aggrieved, the Petitioner has come up before this Court by way of the present petition. It has been contended that the trial stood vitiated inasmuch as the learned trial Court has not followed the procedure prescribed under the Act.

Section 16(2) of the Act provides:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Central Government may invest the Commandant or an Assistant Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a member of the Force and punishable under this Act, or any offence committed by a member of the Force against the person or property of another member:

Provided that:

- (i) when the offender is on leave or absent from duty; or
- (ii) when the offence is not connected with the offender's duties as a member of the Force; or
- (iii) when it is a petty offence, even if connected with the offender's duties as a member of the Force;

the offence may, if the prescribed authority within the limits of whose jurisdiction the offence has been committed, so directs, be inquired into or tried by an ordinary Criminal Court having jurisdiction in the matter.

5. u/s 18 of the Act, powers have been vested in, the Central Government to make rules for carrying out the purpose of the Act. The rules to be framed may also provide for the disposal of the criminal cases arising under the Act and for specifying the prison in which a person convicted in any such case may be confined.

6. In exercise of the powers conferred u/s 18 of the Act, the Central Government has framed the rules known as "Central Reserve Police Force Rules, 1955", hereinafter referred to as the Rules.

7. Rule 36 (a) of the Rules, which is material for the purpose of the present case reads:

All trials in relation to any one of the offences specified in Sections 9 or 10 shall be held in accordance with the procedure laid down in the Code of Criminal Procedure, 1973.

8. The offence u/s 10(p) is punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months" pay or with both. Such offence, therefore, is a "summons case" within the meaning of Clause (w) of Section 2, Code of Criminal Procedure, 1973 (for short, the Code).

9. The procedure for trial of summons case is laid down in Chapter XX of the Code which consists of Sections 251 - 259. According to the procedure laid down

in Chapter XX of the Code, whenever an accused appears or is brought before the Court, the particulars of the offence of which he is accused of are to be stated to him and he is to be asked whether he pleads guilty or has any defence to make. If the accused does not plead guilty, the Magistrate is to proceed to hear the prosecution and hear such evidence as may be produced in support of the prosecution and also to hear the accused and take all such evidence as he may produce in his defence. Before proceeding to hear and take the evidence in defence, the Magistrate is obliged to examine the accused u/s 313 of the Code. All circumstances appearing in evidence of the prosecution against the accused are to be put to him. The examination of the accused may be dispensed with only where the Magistrate has dispensed with the personal attendance of the accused.

10. A perusal of the record of the learned trial Court shows that the procedure laid down under Chapter XX of the Code was not complied with. No notice of accusation as required u/s 251 of the Code was ever given to the Petitioner. The learned trial Court on the Petitioner having appeared before it on 29.5.1992 proceeded to record the statement of the Petitioner by putting the various circumstances of the case to him. Such statement was recorded in question-answer form in the manner provided u/s 313 of the Code. After recording of such statement of the Petitioner, the learned trial Court then proceeded to record the evidence of the prosecution. Such evidence was recorded on 5.6.1992. After the conclusion of the prosecution evidence, the Petitioner was not examined u/s 313 of the Code. Therefore, the circumstances appearing against him were never put to him and he was denied the opportunity to explain such circumstances. Resultantly a great prejudice has been caused to the Petitioner and a failure of justice has in fact been occasioned thereby.

11. Resultantly, the present petition is allowed. The conviction and sentence imposed upon the Petitioner by the learned trial Court on 15.6.1992 and as affirmed in appeal by the learned Sessions Judge vide impugned judgment dated 9.12.1996 are set aside and the case is remanded to the learned trial Court for disposal afresh in accordance with law and the observations made above.

12. The Petitioner through his Counsel is directed to appear before the learned trial Court on 1.7.1998. Records of the trial Court be returned forthwith so as to reach well before the date fixed.