

(2013) 03 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1340 of 2013 (Habeas Corpus)

Smt. Ruchi Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 15
Army Act, 1950 — Section 40(a)
Constitution of India, 1950 — Article 226

Citation : (2013) 03 MP CK 0074

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : S.B. Mishra, with Mr. A.K. Nirankari, for the Appellant; Saurabh Jain, Advocate for the respondents No. 1 to 4/Union of India, for the Respondent

Judgement

1. Heard. This Habeas Corpus petition has been filed by the petitioner against the detention of her husband.

2. The husband of the petitioner Govind Bihari Sharma (Army Personal No. 15412902F) is an army person. He was posted at Military Hospital Gwalior. It is alleged that on 25th August 2012 he had abused and used force against his superior officer i.e. Captain Dilip Kumar. The Officer made a complaint in this regard. Thereafter, a summary court martial proceeding was held against the husband of the petitioner. During the court martial proceeding, the husband of the petitioner admitted his guilt and pleaded guilty. He further pleaded that he be given an opportunity to improve himself and he be pardoned of. On the basis of the aforesaid confession and the act of the husband of the petitioner, he was awarded punishment of two months" R.I. in military custody u/s 40(a) of Army Act 1950.

3. Learned senior counsel for the petitioner has contended that the punishment awarded to the husband of the petitioner and the proceedings of court martial are arbitrary and illegal and against the provisions of Army Rules 1954 and Army

Act 1950. He further contended that in accordance with the Army Rules 1954, the maximum punishment against the offence said to be committed by the husband of the petitioner could be 48 days. However, two months sentence has been awarded which is illegal. In support of his contention, the learned senior counsel relied on the following judgments of the Hon''ble supreme Court:

(i) Subhash Popatlal Dave Vs. Union of India (UOI) and Another,

(ii) Sheel Kr. Roy Vs. Secretary M/o Defence and Others,

(iii) Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827),

4. Contrary to this, learned counsel for the Union of India has raised a preliminary objection in regard to maintainability of the petition. He submitted that in accordance with the provisions of Section 15 of the Armed Forces Tribunal Act, 2007, the husband of the petitioner has an alternative remedy of appeal against the court martial proceeding and the sentence. Hence, this petition is not maintainable.

5. It is an admitted fact that the provisions of Armed Forces Tribunal, Act 2007 are applicable in the case and Lucknow Bench of the Tribunal has power and jurisdiction to hear cases of army persons who are posted at Gwalior. Section 15 of the Act gives jurisdiction, power and authority to the Tribunal in the matter of appeal against the court martial. The aforesaid provision is as under:-

15. Jurisdiction, powers and authority in matters of appeal against Court-Martial.- (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a Court-Marital or any matter connected therewith or incidental thereto.

(2) Any person aggrieved by an order, decision finding or sentence passed by a Court-Martial may prefer an appeal in such form, manner and within such time as may be prescribed.

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(4) The Tribunal shall allow an appeal against conviction by a Court-Martial where-

(a) the finding of the Court-Martial is legally not sustainable due to any reason whatsoever; or

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

6. From the aforesaid provisions, it is clear that the Tribunal has wide power to allow the appeal against the conviction by a court martial on certain grounds.

7. Hon''ble Supreme Court in the case of Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and Others, has held as under in regard to maintainability of writ of habeas corpus:

It is well accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in the cases of B.R. Rao (supra) and Kanu Sanyal (supra), the court is required to scrutinize the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted.

8. In the present case, the court martial duly constituted under the Army Act 1950 has tried the husband of the petitioner and awarded sentence and the husband of the petitioner has been detained in pursuance to the jail sentence awarded by the court martial.

9. We have perused the proceedings and the proceedings are not absolutely illegal as observed by the Hon''ble Supreme Court neither without or lack of jurisdiction. In such circumstances, as per the principle of law laid down by the Hon''ble Supreme Court writ of habeas corpus is not maintainable. Apart from this, the writ under Article 226 of the Constitution is also not maintainable because a statutory remedy is available to the petitioner to challenge the punishment order.

10. Hon''ble Supreme Court in the case of Union of India Vs. Guwahati Carbon Ltd. reported in (2012) 11 SCC 651 has held as under in regard to exercise of power under Article 226 of the Constitution of India by the High Court if there is remedy of appeal provided in the statute:

15 In our opinion, the assessee ought not to have filed a writ petition before the High Court questioning the correctness or otherwise of the orders passed by the Tribunal. The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution. Thereafter, the learned Single Judge was justified in observing that since the assessee has a remedy in the

form of a right of appeal under the statute, that remedy must be exhausted first. The order passed by the learned Single Judge, in our opinion, ought not to have been interfered with by the Division Bench of the High Court in the appeal filed by the respondent assessee.

11. Hon"ble Supreme Court further in the case of Cicily Kallarackal Vs. Vehicle Factory, has held as under:-

Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.

12. The argument advanced by the learned senior counsel for the petitioner that maximum sentence could be awarded to the petitioner is 48 days is also not correct because learned counsel for the Union of India has contended that maximum sentence upto 12 years could be awarded against the alleged conduct of the husband of the petitioner. Hence, in our opinion, since alternative remedy is available, hence, this point could be agitated before the Armed Forces Tribunal.

13. Consequently, in our opinion, there is no merit in this petition. It is hereby dismissed. However, the husband of the petitioner is at liberty to challenge the order before the Armed Forces Tribunal in accordance with the law. With the aforesaid observations, this writ petition is disposed of.