

(2001) 03 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : CWP No. 105 of 2001

Subhash Chander

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-03-2001

Acts Referred:

Army Act, 1950 — Section 124, 125, 164
Army Rules, 1954 — Rule 201
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 279, 337, 374, 388

Citation : (2001) 2 ShimLC 259

Hon'ble Judges : C.K. Thakker, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Jyotsna Rewal Dua, for the Appellant; Baldev Singh, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—This petition is filed by the Petitioner for quashing entire proceedings of Summary Court Martial including an order of conviction and sentence annexed at Annexure PI and for declaration that holding of Summary Court Martial, issuance of charge sheet, finding of guilt against the Petitioner and award of sentence are null and void. A direction is also sought against the Respondents to treat the Petitioner as having retired in due course with effect from February 28, 2001 by issuing an appropriate order by releasing all terminal benefits. Adequate compensation is also demanded for harassment meted out to the Petitioner by the Respondent-authorities.

2. The Petitioner joined Indian Army in 1981. At the relevant time, he was serving as Naik (TS) and was posted at village Holta (Palampur), District Kangra. On August 10, 1998, he was ordered to carry convoy protection party with salvage stores to Pathankot on August 11, 1998. On that day, at about 8 a.m. he started from Palampur and proceeded towards Pathankot. At about 10.30 a.m., he halted his truck to give pass to an incoming bus, which was at a distance of

about 1.5 to 2 Kms. beyond Gaggal and started again. While negotiating a curve, according to the Petitioner, the steering of the truck got locked and the vehicle fell in Banoi Khud. The accident resulted in several deaths and personal injuries. A Court of Inquiry was instituted against him. Meanwhile, a First Information Report was lodged with the police by the Army Court of Inquiry on September 26, 1998. A reply to the questionnaire was sent to Court of Inquiry. As per the averment of the Petitioner, the Court of Inquiry ? gave sketchy opinion and forWarded it. No action was, however, taken on the basis of First Information Report. On March 1, 2000, the Petitioner was promoted to the post of Naik. On January 29, 2001, a charge-sheet was prepared and two charges were levelled against him. On February 2, 2001, ari order was passed for trial by Summary Court Martial and finally by an order impugned in the present petition, the Petitioner was held guilty and was sentenced by the Court Martial, the operative part of which reads as under:

Taking all these matters into consideration, I have sentenced the accused No. 137494711 NK (TS) Subhash Chander of the HQ 87 Mtn Bde Camp.

(a) ?To suffer rigorous imprisonment for three months and I direct that the sentence of rigorous imprisonment shall be carried out by confinement in civil prison. The accused is recommended for Division III while undergoing sentence in civil prison.

(b) To be dismissed from the service.

3. The charges levelled against the Petitioner were that there was rashness and negligence in driving the vehicle. Because of such rashness and negligence on the part of the Petitioner, an accident took place. Seven persons lost their lives and fifteen persons were injured. According to Respondents, the Petitioner at the Summary Court Martial pleaded guilty to the charge and prayed for mercy. His plea of guilt was accepted and punishment was imposed upon him. The said order is challenged by the Petitioner in the present petition.

4. Several contentions were raised on behalf of the Petitioner. It was submitted that once a criminal case was instituted in a competent Court, it was not open to the Respondent-authorities to hold Summary Court Martial. It was urged that there was no admission of guilt or pleading guilty by the Petitioner and the Respondents have committed an error of law as well as of jurisdiction in treating the reply of the Petitioner as admission of guilt, in proceeding with the matter and in convicting the Petitioner. It was further submitted that the procedure laid down in of the Army Act, 1950 (hereinafter referred to as ?the Act?) and the Army Rules, 1954 (hereinafter referred to as ?the Rules?), and required to be followed, had not been followed. Particularly, it was argued that before imposing substantive sentence, it was obligatory on the part of the Respondents to draw the attention of the Petitioner and to warn him about the consequences to be ensued. Since it was not done, entire proceedings got vitiated. On all these grounds, it was submitted that the petition deserves to be allowed and the

orders of Summary Court Martial are liable to be quashed and set aside.

5. After the notice was issued, the Respondents appeared. An affidavit-in-reply was filed on their behalf. Two preliminary objections were raised by the learned Counsel for the Respondents on maintainability of the petition. It was contended that since the Summary Court Martial proceedings were initiated and culminated in the final order of conviction and sentence of the Court Martial in Jammu and Kashmir, this Court has no territorial jurisdiction to entertain the petition. Secondly, an alternative and equally efficacious remedy is available to the Petitioner u/s 164 read with Rule 201. Unless the said alternative remedy is exhausted, the Petitioner cannot invoke extra-ordinary jurisdiction of this Court under Article 226 of the Constitution.

6. On merits, the learned Counsel submitted that the action taken by the authorities could not be said to be contrary to law and after following proper procedure, penalty was imposed, which is legal and valid and does not call for interference.

7. Having heard the learned Counsel for the parties, we are of the opinion that the first preliminary objection regarding absence of territorial jurisdiction of this Court raised on behalf of the Respondents is well founded and, hence, we deal with only that point without entering into other contentions or the merits of the matter.

8. Now, it is, no doubt, true that the accident took place between Palampur and Pathankot, the place within the territorial jurisdiction of this Court. It is also not in dispute that a First Information Report was lodged in the State of Himachal Pradesh and criminal case was filed in a competent Criminal Court, namely, in the Court of Chief Judicial Magistrate, Kangra. But it is equally true that the Competent Authority, i.e. Major General, General Officer Commanding, passed an order on June 13, 1999 (Annexure-R3 to the affidavit-in-reply) wherein it was stated that the Petitioner was serving under his command. He was brought before the Major General on charge under Sections 279, 337, 388 and 374 of the Indian Penal Code. As competent military authority, by virtue of powers vested in him u/s 125 of the Act, the Major General decided that the proceedings would be instituted against the Petitioner before a Court Martial. Accordingly, the case pending in a Criminal Court was treated as- closed and forwarded to Major General at 39 Mountain Division C/o 56 APO for the purpose of conducting Summary Court Martial. In our opinion, in the light of the relevant provisions of the Act, the order Annexure R/3 passed by the Major General cannot be said to be contrary to law or without jurisdiction.

9. Then the question before us is whether this Court has territorial jurisdiction in the light of the order passed by Summary Court Martial at Jammu and Kashmir. The learned Counsel for the Petitioner drew our attention to Article 226 of the Constitution. Clause (1) of that Article enables every High Court to issue certain directions, orders or writs for the purposes mentioned therein. Clause (2) states

that the power to issue directions, orders or writs may be exercised by any Court in relation to the territories within which the cause of action wholly or in part arises within the jurisdiction of that Court. The counsel submitted that even if it is assumed that Summary Court Martial had been conducted in Jammu and Kashmir and the final order of conviction and sentence was passed in that State, it cannot be disputed that atleast part of cause of action arose within the territorial jurisdiction of this Court inasmuch as the accident took place in Himachal Pradesh; a First Information Report was lodged in this State and even a criminal case was instituted in the Court of Chief Judicial Magistrate, Kangra, This Court has, therefore, jurisdiction in the matter.

10. Our attention, in this connection, was invited by the learned Counsel to a decision of the Apex Court in *Union of India and others Vs. Major General Madan Lal Yadav (Retd.)*, Considering the relevant provisions of the Army Act as also the provisions of the Code of Civil Procedure, the Supreme Court held the trial can be said to commence the moment General Court Martial Assembles to consider the charge and proceed with the trial. Reliance was also placed on a decision of the Supreme Court in *Union of India and Another Vs. Charanjit S. Gill and Others*, Considering earlier decisions and in particular *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, the Supreme Court emphasised that there must be atleast one right of appeal against Court Martial. Reference was also made to *Navinchandra N. Majithia Vs. State of Maharashtra and Others*,

11. In our opinion, none of the cases cited by the counsel would help the Petitioner so far as territorial jurisdiction is concerned. Even if a part of cause of action can be said to have arisen within the territorial jurisdiction of this Court, the Petitioner can institute a petition in this Court. The question, however, is whether in the facts and circumstance of the present case, a part of cause of action had arisen within the territorial jurisdiction of this Court? As stated above, the accident took place in the Himachal Pradesh and First Information Report was also lodged in this State, a criminal case was registered. But the subsequent development cannot be overlooked that in exercise of power under Sections 124 and 125 of the Act, the competent Authority had exercised his option and instead of proceeding further with the criminal trial, proceedings were ordered to be treated as closed and an order was passed to hold Summary Court Martial and the place of trial was fixed in the State of Jammu and Kashmir. In view of the said order, the proceedings, which were pending before the Chief Judicial Magistrate were treated as closed. As soon as the said order was passed, in our opinion, those proceedings came to an end and hence, on the basis of such proceedings the Petitioner cannot invoke the jurisdiction of this Court by contending that a part of cause of action can be said to have arisen within the State of Himachal Pradesh. Since in the instant case, the cause of action neither wholly nor partly can be said to have arisen within the territorial jurisdiction of this Court and the Summary Court Martial proceedings from beginning to end were held and culminated in the final order of conviction and sentence exclusively in the State of Jammu and Kashmir, we have to hold that this Court

has no jurisdiction in the matter and the preliminary objection raised by the learned Counsel for the Respondents deserves to be upheld. Accordingly, the contention is upheld.

12. In view of upholding the first preliminary objection, it would not be necessary to express any opinion on the so called alternative and efficacious remedy available to the Petitioner as also merits of the matter. Hence, we may not be understood to have expressed any opinion on those contentions.

13. For the foregoing reason, the petition deserves to be dismissed and is, accordingly, dismissed for lack of territorial jurisdiction of this Court. Notice discharged. No costs.

CMPs No. 180/2001 and 294/2001

14. In view of the disposal of the writ petition, both the applications also stand disposed of.