
(1977) 01 KL CK 0007
In the High Court Of Kerala

Subramonian

APPELLANT

Vs

Officer Commanding, Armoured Static Workshop

RESPONDENT

Date of Decision : 17-01-1977

Acts Referred:

Army Act, 1950 — Section 125
Criminal Procedure Code, 1973 (CrPC) — Section 428, 5

Citation : (1979) CriLJ 617

Hon'ble Judges : P. Narayana Pillai, J

Bench : Single Bench

Judgement

This Judgment has been overruled by : Ajmer Singh and Others Vs. Union of India (UOI) and Others, AIR 1987 SC 1646 : (1987) CriLJ 1877 : (1987) 2 Crimes 433 : (1987) 2 JT 290 : (1987) 1 SCALE 953 : (1987) 3 SCC 340 : (1987) 3 SCR 84 : (1987) 2 UJ 219

P. Narayana Pillai, J.—This is a petition relating to set-off u/s 428 of the Cr.P.C. of preconviction detention against sentence of imprisonment. The sentence was by the General Court Martial under the Army Act. That was of rigorous imprisonment for two years. The petitioner is now undergoing sentence in the Vayyur Central Jail. The pre-conviction detention was in the Quarter Guard, military lock-up.

2. A Division Bench of this Court said in Kanthalot Karunan v. State of Kerala 1975 Ker LT 147 that conviction and sentence are not in any way affected by granting set-off and that they remain the same even after the set-off is allowed. The subsequent decision of the Supreme Court in Boucher Pierre Andre Vs. Superintendent, Central Jail, Tihar, New Delhi and Another, confirms that position. The Supreme Court further holds in that decision that the section is absolute in its terms and that set-off cannot be refused even if pre-conviction detention had been taken into account while imposing the term of imprisonment on conviction. So there can be no valid objection to set-off on the ground that on set-off being granted the conviction and sentence would be altered or affected.

3. In F.R. Jesuratnam Vs. Chief of Air Staff and Others, a Division Bench of the Delhi High Court refused relief u/s 428 of the Code to a convict under the Air Force Act. Refusal was on the ground that Section 5 of the Code stood in the way. That section reads:

Nothing contained in this Code shall, in (he absence of a specific provision to the contrary, affect any special or local law for the time being in force, of any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

In respect of trial of offences under the Penal Code committed by persons governed by the Army and Air Force Acts both Court Martial and Criminal Court have concurrent jurisdiction as is clear from Section 125 of the Army Act and Section 124I of the Air Force Act. The object of the enactment of Section 428 of the Code was to relieve the anguish of prolonged detention of tinder-trials and to avoid overcrowding in jails. Sentence is the pith and substance of the whole criminal process. When that and the conviction remain intact and untouched in spite of the grant of set-off, the grant of set-off, cannot be considered as in any manner affecting the provisions of the Army Act. With great respect, I do not agree with the decision in F.R. Jesuratnam Vs. Chief of Air Staff and Others, . I accept the arguments of Mr. T. Ravikumar, Counsel for the petitioner, and hold that the provisions of Section 428 of the Code can be applied to sentences for offences under the Penal Code passed by Court Martial under the provisions of the Army Act as well.

4. The facts mentioned in the petition show that the period of pre-conviction detention and the period of the petitioner being in prison after the sentence imposed on him amount to more than two years, I allow this petition and direct the petitioner to be released.