

(2009) 07 RAJ CK 0047
In the Rajasthan High Court

Surender Singh	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Border Security Force Act, 1968 — Section 46
Penal Code, 1860 (IPC) — Section 14, 17, 307, 46

Citation : (2009) 3 WLN 209

Hon'ble Judges : N.P. Gupta, J; Govind Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Govind Mathur, J.—By this special appeal a challenge is given to the judgment dated 28.10.1998 passed by learned Single Judge dismissing the writ petition preferred by the appellant, impugning validity of sentence recorded by the Summary Security Force Court vide order dated 03.05.1989.

2. In brief, facts of the case are that the appellant was served with a charge sheet alleging that "he, while posted at internal security post Khubhan on 01.11.1988 at about 1750 hrs. fired two rounds from his rifle 7.62 SLR (Body No. 1934) at Nos. 85102613 Const. V. Purushottam of the same Coy. with an intent to kill." The act of the appellant was termed as an offence u/s 46 of the Border Security Force Act, 1968 and also a civil offence punishable u/s 307 IPC. The Deputy Inspector General (Headquarters) after reaching at the conclusion that the case in question was not falling within the exception provided u/s 46 of the Act of 1968 directed to try the appellant by Summary Security Force Court (SSFC). The Summary Security Force Court by its order dated 11.01.1989 sentenced the appellant to suffer rigorous imprisonment for six months and he was also dismissed from service. A statutory petition submitted by the appellant to the Director General, Border Security Force also came to be rejected vide order dated 13.02.1990. After undergoing civil imprisonment in pursuant to the orders of Summary Security Force Court the appellant assailed validity of the

orders sentencing him by way of filing a petition for writ. Learned Single Judge by judgment impugned dismissed the petition for writ by holding that necessary sanction for constituting Summary Security Force Court was given by the competent authority i.e. the Deputy Inspector General.

3. It is contended by Counsel for the appellant that the learned Single Judge relied upon a note sheet regarding grant of sanction but as a matter of fact no sanction was actually given by the Deputy Inspector General.

4. Relevant to note here that as per Section 74 (2) of the Act of 1968 "when there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer, holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the Sections 14, 17 and 46 of this Act, or any offence against the officer holding the Court".

5. From reading of the provision aforesaid it is quite clear that there is no need of getting any sanction from the competent authority to convene a Petty Security Force Court. The only requirement is of making a reference by the competent authority.

6. Counsel for the respondents has shown original record to the Court where from it is apparent that the Deputy Inspector General made a reference as per Sub-section (2) of Section 74 of the Act of 1968 to convene a Summary Security Force Court for adjudicating the charge levelled against the appellant.

7. Counsel for the appellant has also made an effort to canvass that the Deputy Inspector General never applied his mind for opting the trial by a criminal court as per provisions of Section 80 of the Act of 1968. Suffice to mention that this contention was neither raised before learned Single Judge nor that is a ground taken either in the writ petition or even in memo of appeal and as such we do not consider it appropriate to permit the appellant to raise this issue first time at this stage.

8. For the reasons mentioned above, the special appeal is bereft of merit, thus, the same is dismissed.