

Akhilesh Prasad

Vs

Union Territory of Mizoram

Criminal Appeal No. 439 of 1980

(A.D. Koshal, A.N. Sen JJ)

11.02.1981

JUDGMENT

KOSHAL, J. –

1. This is an appeal by special leave against a judgment dated February 20, 1980, of a learned Single Judge of the Gauhati High Court dismissing an application made by the appellant under Section 482 and 407 of the Code of Criminal Procedure praying that the proceedings pending in the Court of the Assistant District Magistrate, Aizawl which have been initiated through a police report against the appellant with a prayer that he be punished for offence reported against the appellant with a prayer that he be punished for offences under Section 307, 326 and 324 of the Indian Penal Code alleged to have been committed by him on May 30, 1978, be quashed or, in the alternative, that the proceedings be transferred to a competent court beyond the territory of Mizoram.

2. The relevant facts are not in dispute and may be stated briefly. On May 30, 1978, a case was registered at the Vairengte Police Station at the instance of one Thanugura alleging that men of the Central Reserve Police Force [hereinafter referred to as 'CRPF'], of which the appellant is a member had fired shots at handyman Thara and a driver the two of whom received injuries in the arm and thigh respectively. After investigation the police submitted a report under Section 173 of the Code of Criminal Procedure against the appellant to the Assistant District Magistrate, Aizawl.

3. Aggrieved by the commencement of proceedings against him in the Court of the Assistant District Magistrate, the appellant sought redress from the High Court through the application which has been dismissed by the impugned order. The prayer for quashing the proceeding contained in the application was based on various grounds only one of which has now been canvassed before us and that is that the offences attributed to the appellant are alleged to have been committed by him while he was acting or purporting to act in the discharge of his official duty as a member of the Armed Force of the Union and that in view of the provisions of subsection 2 of Section 197 of the Code of Criminal Procedure [hereinafter referred to as the 'Cr P C'] no court had the jurisdiction to take cognizance of those offenses. The prayer made in the alternative was supported by various assertions indicative of a surcharged atmosphere in Mizoram which had resulted in the entire population becoming hostile to the appellant so that it would not at all be safe for him to attend the Court at Aizawl.

4. The learned Single Judge noted the provisions of sub-section [2] of Section 197 CrPC which runs thus :

No court shall take cognizance of any offence alleged to have been committed by any

member of the Armed Force of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

5. He correctly analysed the section while holding that it would operate only if -

[1] the concerned accused was a member of the "Armed Forces of the Union" and

[2] the offence attributed to him was alleged to have been committed while he was acting or purporting to act in the discharge of his official duty.

6. The learned Judge then proceeded to find out the meaning of the expression "Armed Forces of the Union" as occurring in the sub-section, with reference to various provisions of the Army Act, of the Cr P C the Central Reserve Police Force Act, 1949 [hereinafter referred to as the 'CRPF Act'] and of Entry 2 in List I of the Seventh Schedule to the Constitution of India, and thereafter concluded :

If the expression 'Armed Forces' of the Union is understood as including any other armed forces of the Union, then the C. R. P. F. may be including therein, and not otherwise. Considering the fact that the C. R. P. F. is a Reserve police Force, the conventional interpretation to mean only the regular armed forces of the Union may be acceptable. Members of the Police Force the holders of civil posts. In *Saraswati Devi v. D. M. Deoria*, it was held that the Armed Forces of the Union mean the regular Army, Navy and Air Force or any part; of any one or more of them as defined in the Army Act, and it could never have meant the members of the National Cadet corps who are not part of the regular forces of the Union.

The learned Judge then went on to decide the question as to whether the appellant was alleged to have committed the offences covered by the proceedings against him while acting or purporting to act in the discharge of his official duty and decided it in the negative with the observations :

The alleged occurrence is not such as may be said to have been directly and reasonably connected with performance of his official duty. It was neither in his official capacity nor under colour of his official duty. It was neither in his official capacity nor under colour of his office. It does not, therefore, appear to have been while acting or purporting to act in the discharge of his official duty. Active duty, as defined in the Act, means the duty to restore and preserve order in any local area in the event of any disturbance therein.

7. However, the learned Judge left the question open with the remarks :

The question of necessity of sanction has to be determined from stage to stage as the case progresses. It may be considered at any stage of the proceeding and while considering, it is not necessary for the court to confine itself to the allegations in the complaint, and the court can take into consideration all the materials on the record at the time the question is raised. More materials may come up for consideration by the trial Court and it will be inopportune to decide the question at this stage.

8. On the question of transfer the views of the learned Single Judge were :

The petition has not alleged anything directly against the court itself. His

apprehension is a derivative one from the activities of the Drivers' Union and the meeting and publicity given to the incident. The Mizoram Government in its affidavit have stated that the officer in seisin of the cease is a judicial officer without any administrative functions, and is not likely to be influence by these events. The contemporary events of publicity, meetings and processions are all past, and may not have benumbing effects in future. At this stage, nothing having been alleged against the particular court, it is not reasonable on the part of the petition rot apprehend that he will not receive a fair trial. The judicial administration in Mizoram has to run according to law despite such events. If a case is transferred on the alleged grounds, there may be no end to such transfers. That may cast reflection on the judiciary. The other difficulty, namely, that the Lushai Hills Autonomous District [Administration of Justice] Rules, 1953, which applies in Mizoram is not applicable elsewhere is also to be considered. There will also be difficulties of examining witnesses in Mizo language at other places. considering the above facts, it will not be desirable to transfer the case at this stage. The government of Mizoram will take appropriate measures for safety of the petitioner and his witnesses, and for conduct of the case in a befitting atmosphere.

9. It was in the above premises that the learned Single Judge dismissed the appellant's application both counts.

10. The first question which falls for determination by us is as to whether the appellant was a member of the "Armed Forces of the Union" within the meaning of that expression as occurring in sub-section [2] of Section 197 of the CrPC. the expression "Armed Forces" has been defined in clause [a] of sub-section [3] of Section 132, CrPC as meaning the military, naval and air forces, operating as land forces and as including any other armed forces of the Union so operating. That definition however, is limited in its application, by the express language of that clause itself, to the interpretation of Section 129 to 132 of the CrPC and the argument, therefore, advanced in support of the impugned judgment that the definition will not govern the interpretation of Section 197 cannot be said to lack plausibility. Nor has it been shown to us that the expression "Armed Forces of the Union" as occurring in sub-section [2] of Section 197, Cr P C or in any other statute. In this situation it must be given its ordinary meaning which, it appears to us, would certainly not be limited to the inclusion of only the military, naval an air forces of the Union. In this connection a reference to the contents of Entry 2 in List I of the Seventh Schedule to the Constitution of India may be made with advantage. They are : "Naval, military and air forces; any other armed forces other than the three well known force of the State, namely the naval, military and air forces. All that remains to be done, therefore, is to find out answers to the following tow questions :

[a] Is the CRPF a force?

[b] If question [a] is answered in the affirmative, whether CRPF is an armed force ?

In our opinion the answer to both the questions must be given in the affirmative in view of the provisions of sub-section [1] of Section 3 of the CRPF Act which unfortunately do not appear to have been brought to the notice of the learned Single Judge. That sub-section Reads thus : "There shall continue to be an armed force maintained by the Central Government and called the Central Reserve Police Force."

11. The sub-section itself declares in no uncertain terms that the CRPF is an armed force of the

Central Government which is the same thing as saying that it is a part of the "Armed Forces of the Union ". We may make it clear, however, that even if the provisions just above extracted were not available our answer to the two questions would still be in the affirmative. The reason given by the learned Single Judge for holding a contrary opinion, namely, that the force was "only a reserve force and not a regular force" by which expression he appears to mean that it was not a continually operating force does not command our concurrence. Just because the CRPF is a reserve force it does not a regularly operating force and no provision of the CRPF Act has been pointed out to us such as may lend support to a contrary view.

12. We hold that the CRPF squarely falls within the expression "Armed Forces of the Union" as used in sub-section [2] of Section 197 of the Cr P C.

13. We leave open the question whether the offences alleged to have been committed by the appellant are or are not such as may be said to have been committed while he was acting or purporting to act in the discharge of his official duty. This course we follow in view of the exposition of law contained in that paragraph quoted by us from the impugned judgment which makes a reference to *Pancham Lal v. Dadan Singh* and *S. B. Saha v. M. S. Kochar*, which exposition is not only correct according to learned counsel for all parties before us but also has our full approval.

14. Learned counsel for the parties are also agreed that the case against the appellant be transferred to the Court of Magistrate functioning at Gauhati. We further direct that the State of Assam and the CRPF shall afford full protection to the life and liberty of the appellant.

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