

Ajmer Singh and Others

Vs

Union of India and Others

Criminal Appeal Nos. 532 of 1976 and 252, 313 and 488 of 1977

(A. P. Sen, V. B. Eradi JJ)

29.04.1987

JUDGMENT

BALAKRISHNA ERADI, J. -

1. These four appeals have been filed against judgments of the High Court of Punjab and Haryana rejecting the claims of the appellants who have been convicted by the General Court-martial for offences under the Army Act and are undergoing their sentences of varying terms of imprisonment for the grant of benefit to them of the provision for set off contained in Section 428 of the Code of Criminal Procedure. The High Court has granted certificates of fitness under Article 134-A of the Constitution and it is on the strength of those certificates that these appeals have been preferred to this Court.
2. The common question of law that arises in these appeals concerns the applicability of Section 428 of the Code of Criminal Procedure to persons sentenced to undergo imprisonment by General Court-martial under the Army Act. The position under the Army Act will equally govern persons sentenced to undergo imprisonment by Court-martial under the Navy Act and the Air Force Act.
3. In the judgments under appeal, the High Court has followed an earlier ruling of a Division Bench of the same High Court in Ram Labhaya Sharma v. Union of India (Criminal Writ No. 40 of 1975, decided on December 12, 1975) wherein it was held that the benefit under Section 428 of the Code of Criminal Procedure is not available to convicts, who are tried, convicted and sentenced by Court-martial.
4. There is a divergence of views between different High Court on this question. The High Court of Madras in P. P. Chandrasekaran v. Government of India (1977 Cri LJ 677 (Mad)) (a case of Court-martial under the Navy Act) and in T. S. Ramani v. Superintendent of Prisons (1984 Cri LJ 892 (Mad)) (Court-martial under the Army Act) has taken the view that the benefit of Section 428 of the Code of Criminal Procedure cannot be claimed by persons convicted by Court-martial. The same view has been taken by the High Court of Delhi in F. R. Jesuratnam v. Chief of Air Staff (1976 Cri LJ 65 (Del)) dealing with a case of Court-martial under the Air Force Act.
5. A Single Judge of the High Court of Kerala has however, taken a contrary view in Subramonian v. Officer Commanding, Armoured Static Workshop (1979 Cri LJ 617 (Ker)) and the said decision was referred to and followed by a Division Bench of the Calcutta High Court in the case of Anand Singh Bishit v. Union of India (1986 Cri LJ 563 (Cal)).
6. An examination of the relevant provisions of the Code of Criminal Procedure and the Army Act

(as well as the corresponding provisions in the Navy Act and the Air Force Act) makes it abundantly clear that Section 428 of the Criminal Procedure can have no applicability whatever in the respect of persons convicted and sentenced by Court-martial.

7. Section 5 of the Code of Criminal Procedure lays down that nothing contained in the said Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self-contained comprehensive Code specifying the various offences under those Acts and prescribing the procedure for detention and custody of offenders, investigation and trial of the offenders by Court-martial, the punishments to be awarded for the various offences, confirmation and revision of the sentences imposed by Court-martial, the execution of such sentences and the grant of pardons, remissions and suspensions in respect of such sentences. These enactments, therefore, constitute a special law in force conferring special jurisdiction and powers on Court-martial and prescribing a special form of procedure for the trial of the offences under those Acts. The effect of the Section 5 of the Code of Criminal Procedure is to render the provisions of the Code of Criminal Procedure inapplicable in respect of all matters covered by such special law. Since in the four cases before us we are concerned with convictions by General Court-martial under the provisions of the Army Act, we shall refer specifically to the relevant provisions contained in the Army Act (hereinafter called 'the Act').

8. Sections 34 to 68 contained in Chapter VI of the Act specify the different categories of offences under the Act including abatement of offences under the Act. Chapter VII of the Act which comprises Sections 71 to 89 of the Act deals with the punishments awardable by Court-martial in respect of the different offences. Section 101 to 107 contained in Chapter IX of the Act deal with the arrest and custody of offenders and the proceedings prior to the trial. Chapter X of the Act describes in Sections 108 to 118, the different kinds of Court-martial, the authorities competent to convene them, their composition, and respective powers. In Chapter XI consisting of Sections 128 to 152, we find detailed provisions laying down the procedure to be followed by Court-martial, in conducting the trial of offenders. Chapter XII contains provision relating to confirmation and revision of the findings entered and sentences imposed by the different categories of Court-martial. Sections 166 to 176 contained in Chapter XIII deal with the execution of sentences and the establishment and regulation of military prisons etc. The subject of granting pardons, remissions and suspensions of sentences is dealt with in Sections 179 to 190 comprised in Chapter XIV of the Act. Thus we find that the Act contains elaborate and comprehensive provisions dealing with all the stages commencing from the investigation of offences and the apprehension and detention of offenders and terminating with the execution of sentences and the grant of remissions suspensions etc.

9. Section 167 of the Act specifically lays down that whenever a person is sentenced by a Court-martial under the Act to imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the Presiding Officer or, in the case of a summary Court-martial, by the Court. In the face of this categorical provision laying down that the sentence of imprisonment shall be deemed to have commenced only on the day when the Court-martial proceeding was signed by the Presiding Officer or by the Court as the case may be, it is in our opinion futile to contend that the Army Act is silent with respect to the topic as to the date with effect from which the period of imprisonment covered by the sentence is to be reckoned. We state this only for the reason that an ingenious argument was advanced before us by counsel for the appellants that Section 5 of the Code of Criminal Procedure only lays down that nothing in the Code shall affect any special or local law and hence in the

absence of any specific provision in the special or local law covering the particular subject matter, the provisions of the Code would get attracted. Even if this argument is to be assumed to be correct (which assumption we shall presently show is wholly unwarranted), inasmuch as Section 167 of the Act specifically deals with the topic of the date of commencement of the sentence of imprisonment there is absolutely no scope for invoking the aid of Section 428 of the Code of Criminal Procedure in respect of prisoners convicted by Court-martial under the Act.

10. As we have already indicated, we are unable to accept as correct the narrow and restricted interpretation sought to be placed on Section 5 of the Code by the counsel appearing on behalf of the appellants. In our opinion the effect of Section 5 of the Code is clearly to exclude the applicability of the Code in respect of proceedings under any special or local law or any special jurisdiction or form of procedure prescribed by any other law. Whatever doubt might otherwise have existed on this point is totally set at rest by section 475 of the Code of Criminal Procedure which furnishes a conclusive indication that the provisions of the Code are not intended to apply in respect of proceeding before the Court-martial. That section is in the following terms :

475. Delivery to commanding officers of persons liable to be tried by Court-martial. -  
(1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950) and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a court to which this code applies or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by Court-martial.

Explanation - In this section -

(a) "unit" includes a regiment, corps, ship, detachment, group, battalion or company,

(b) "Court-martial" includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavors to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situated within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial.

The distinction made in the section between "trial by a court to which this code applies" and by a Court-martial conclusively indicates that Parliament intended to treat the Court-martial as a forum

to the proceedings before (sic which) the provisions of the Code will have no application.

11. Further there is also intrinsic indication contained in the very wording of Section 428 of the Code of Criminal Procedure that the section cannot have any application in respect of persons tried and sentenced by Court-martial. Section 428 of the Code reads :

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment. - Where as accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

12. The section provides for set off of the period of detention undergone by an accused person during "the investigation, inquiry of trial" of the same case before the date of conviction. The expression "investigation" has been defined in the Section 2(h) of the Code as follows :

2(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a magistrate in this behalf.

In the case of persons tried by Court-martial there is no investigation conducted by any police officer under the Code or by any person authorised by Magistrate in that behalf.

13. Similarly, the expression : inquiry" has been defined in Section 2(g) of the Code as meaning "every inquiry, other than a trial, conducted under this Code by a Magistrate or Court". No inquiry is conducted under the Code by any Magistrate or court in respect of the offences committed by persons which are tried by the Court-martial. The trial is also not conducted by the Court-martial under the Code but only in accordance with the special procedure prescribed by the Act. Such being the position, the provision for set off contained in Section 428 of the Code of Criminal Procedure can never be attracted in the case of persons convicted and sentenced by Court-martial to undergo imprisonment.

14. In the light of the foregoing discussion we uphold as correct the view taken by the High Court of Punjab and Haryana in the Judgment under appeal. We also approve of the decisions of the High Courts of Madras and Delhi cited above wherein the view has been taken that the benefit of Section 428 of the Code of Criminal Procedure cannot be claimed by persons tried and sentenced by the Court-martial.

15. The decision in *Subramanian v. Officer Commanding, Armoured Static Workshop* (1979 Cri LJ 617 (Ker)) rendered by a learned Single Judge of the High Court of Kerala does not contain any discussion of the relevant provisions of the two concerned statutes and what little reasoning is found in the judgment does not appeal to us as correct or sound. The Division Bench of the Calcutta High Court in its decision in *Anand Singh Bishit v. Union of India* (1986 Cri LJ 563 (Cal)) has merely followed the aforesaid ruling of the Single Judge of the High Court of Kerala. We hold that these two decisions do not lay down the correct law.

16. It follows from the foregoing discussion that these appeals are devoid of merits and they will

accordingly stand dismissed.

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