

Union of India

Vs

Himmat Singh Chahar

Criminal Appeal No. 201 of 1994

(G. B. Pattanaik, K. T. Thomas JJ)

12.05.1999

JUDGMENT

G.B. Pattanaik, J.

1. The Union of India in this appeal has challenged the judgment dated 12.11.1993, of the Division Bench of Bombay High Court in Criminal Writ Petition No. 1511 of 92. The respondent Himmat Singh Chahar, who was serving as a petty officer on Naval submarine 'Sankush' approached the Bombay High Court assailing the order passed against him in the Court Martial Proceedings and the High Court by the impugned judgment quashed the said order in the Court Martial Proceeding. In the Court-martial the respondent was found guilty of offence under Section 354 and was sentenced to imprisonment for 9 months, and his services were terminated. Facts culminating in the aforesaid order of the High Court be briefly stated as under.

2. The respondent had joined the Indian Navy on 24.6.78 and in November 1990 he was a petty officer (Telegraphist) in the submarine and was thus away from his quarters on the shore. On 28.11.1990 one R.K. Sharma, another officer belonging to Navy came with his wife Mrs. Nirmala Sharma and having failed in his attempt to get any vacant quarters moved into Quarter No. 3B and shared the same with the family members of the respondent. On 3.12.90 said respondent took permission from his authorities to leave submarine and come to the shore for taking his family members to the hospital for medical check up and early morning came to his quarters and left for the hospital with his wife and two sons. It is alleged that he returned back home at about 9.00 a.m. while Mrs. Nirmala Sharma was alone and tried to outrage her modesty when said Mrs. Nirmala Sharma opened the door. Mrs. Sharma then somehow extricated from the clutches of the respondent and rushed to the house of one Mrs. Mandal whom she knew earlier and persuaded her to intimate her husband who was also away from the quarters so that he can come back. Mrs. Sharma did not intimate about the aforesaid criminal assault on her by the respondent to said Mrs. Mandal though she insisted that she will not leave her house until and unless her husband comes. Her husband came on the next day i.e. 4.12.90 to whom Mrs. Sharma narrated all that happened on the previous day whereafter a complaint was made to the superior authority against the respondent alleging that modesty of Mrs. Nirmala Sharma had been outraged by the respondent. On the basis of the complaint a Court Martial Proceeding was initiated and in the said proceeding the respondent was found guilty of the charge under Section 354 of Indian Penal Code and Section 77(2) of the Navy Act, 1957 (hereinafter referred to as 'an Act') and was directed to be kept under imprisonment for the term of 24 calendar months and be dismissed from the Naval services. This order was of 16th May, 1991. Against the aforesaid order the respondent moved the Chief of the Naval Staff under Section 163(1) of the Act and the Chief of the Naval Staff though sustained the conviction but reduced the punishment of imprisonment for a term of 9 calendar months. The punishment of

removal from service, however, was maintained. The respondent then moved the Central Government for re-consideration of the matter. But the Central Government having confirmed the decision of the Chief of Naval Staff the respondent moved the High Court by way of a Criminal Writ Petition. By the impugned judgment the High Court of Bombay considered the evidence of Mrs. Nirmala Sharma and by way of sifting her evidence came to hold :

"After a meticulous examination of the record and particularly the evidence of Nirmala that the credibility of the evidence is such that the charge cannot be said to have been brought home on the basis of this material."

The High Court, therefore, ultimately came to hold that the authorities were wrong in having recorded the guilt against the respondent on the strength of material that was adduced before the Court Martial Proceedings. The Court ultimately quashed the conviction and sentence passed against the respondent in the Court Martial Proceedings, and hence the present appeal.

3. Mr. Ashok Bhan, learned counsel appearing for the Union of India contended with vehemence that the Court Martial Proceeding having been continued in accordance with the procedure laid down under the Navy Act and the Competent Authority on the basis of the evidence of Mrs. Nirmala Sharma having found the respondent guilty of charge under Section 354 and punishing him thereunder, the High Court mis-directed itself in exercise of its jurisdiction under Article 226 of the Constitution to re-appreciate the evidence and in coming to the conclusion that the Authorities committed error in recording the finding of guilt against the respondent on the basis of the evidence of Mrs. Nirmala Sharma. According to Mr. Bhan, the learned counsel, though a judicial review against the order of the Competent Authority in the Court Martial Proceeding is available but the said judicial review could not clothe the High Court with the jurisdiction to re-appreciate the evidence and substitute the findings of the Court Martial Proceedings by its own. According to Mr. Bhan unless the Court Martial Proceeding is found to have contravened any mandatory provisions of the Act or Rules or can be said to be in violation of the principles of natural justice or can be said to be without jurisdiction, it would be, impermissible for the High Court to interfere with the conclusion on the ground of sufficiency of evidence. In support of this contention reliance has been placed on the recent decision of this Court in the case of *Union of India & ors. v. Major A. Hussain, 1998(1) RCR (Crl.) 300 : Judgment Today 1997(9) S.C. 676*. Mr. Uday U. Lalit, learned counsel appearing for the respondent on the other hand contended that it is no doubt true that the High Court would not be justified in interfering with the findings of the Authority in Court Martial Proceeding by appreciation of evidence ordinarily but if the evidence is of such nature that no reasonable man can come to the conclusion that an offence under Section 354 of the Indian Penal Code has been committed then certainly the Court would be justified in interfering with the findings arrived at by the Authorities in the Court Martial Proceedings and judged from that stand point there has been no infirmity with the impugned judgment of the High Court.

4. In view of the rival submissions at the Bar the short question that arises for consideration is what would be the extent of the jurisdiction in exercising power under Article 226 of the Constitution over the findings of the Authority in Court Martial Proceedings ? The Defence personnel serving in Army, Navy or Air Force when commit any offence are dealt with by the special provisions contained in the Army Act or the Navy Act or the Air Force Act and not by the normal Procedure Code. The said Navy Act is a complete code by itself and prescribes the procedure to be followed in case it is decided that an officer should be tried by Court Martial. The Act also provides sufficient safeguard by way of further appeal to the Chief of the Staff and then ultimately to the Union Government.

5. Since the entire procedure is provided in the Act itself and the Act also provides for a further consideration by the Chief of the Naval Staff and then by the Union Government then ordinarily there should be a finality to the findings arrived at by the Competent Authority in the Court Martial Proceeding. It is of course true that notwithstanding the finality attached to the orders of the Competent Authority in the Court Martial Proceeding the High Court is entitled to exercise its power of judicial review by invoking jurisdiction under Article 226 but that would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of the principles of natural justice which vitiates the entire proceeding or that the authority exercising the jurisdiction had not been vested with jurisdiction under the Act. The said power of judicial review cannot be a power of an Appellate Authority permitting the High Court to re-appreciate the evidence and in coming to a conclusion that the evidence is insufficient for the conclusion arrived at by the Competent Authorities in Court Martial Proceedings. At any rate it cannot be higher than the jurisdiction of the High Court exercised under Article 227 against an order of an inferior Tribunal. This being the parameter for exercise of power of judicial review against the findings of a Competent Authority in a Court Martial Proceeding, and applying the same to the impugned judgment of the High Court we have no hesitation to come to the conclusion that the High Court over-stepped its jurisdiction in trying to re-appreciate the evidence of Mrs. Nirmala Sharma and in coming to the conclusion that her evidence is not credible enough to give a finding of guilt of the respondent of a charge under Section 354. We have also perused the statement of Mrs. Nirmala Sharma and the conclusion becomes inescapable on the basis of the said statement of Mrs. Nirmala Sharma that the respondent has been rightly found to have committed offence under Section 354 by the Authorities in the Court Martial Proceedings.

6. In the aforesaid premises, we set aside the impugned judgment of the Bombay High Court and dismiss the Criminal Writ Petition filed by the respondent and affirm the ultimate order passed by the Competent Authority in the Court Martial Proceeding and this appeal is allowed.

Appeal allowed.