

SUPREME COURT OF INDIA

S.K.Jha Commadore

Vs.

State of Kerala

CrI.A.No.1017 of 2010

(Harjit Singh Bedi and Chandramauli Kr.Prasad,JJ.,)

11.01.2011

ORDER

1. Heard the learned counsel for the parties in extenso.

2. It is clear to us that the judgment of the High Court is in conformity with the judgment of the Constitution Bench of this Court in *Som Dutt Datta vs. Union of India and Others reported in¹*. The Constitution Bench while construing Rule 3 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules 1978 read with Sec. 549 of the Cr.P.C. (now Section 475 of the Cr.P.C.) held that the option as to whether the accused be tried before the Criminal Court or by a Court Martial could be exercised only after the Police had completed the investigation and submitted the charge- sheet and that the provisions of the Rule could not be invoked in a case where the police had merely started an investigation against a personnel subject to Military, Naval or Air Force law. The facts of the present case indicate that three Naval Officers were arrested on 10th January, 2008 for offences punishable under Sections 143, 147, 148, 452, 307, 326, 427 read with Section 149 of the I.P.C. and some other penal laws. They were produced before the Magistrate on the 11th January, 2008 who remanded them to judicial custody. An application was filed on the 14th January, 2008 by the Commanding Officer of the Naval Unit to which they belonged for handing over the accused for trial under the Navy Act, 1957. This application was rejected by the Magistrate holding that the stage of consideration of the application would arise only on the completion of the police investigation which was still at a preliminary stage and that the request of the Commanding Officer was premature. The order of the Magistrate was challenged before the High Court of Kerala in revision. This too has been dismissed on similar grounds. We see from the facts that the observations of the Constitution Bench apply fully to the facts herein. The stage at which the option can be exercised by the Commanding Officer (as to whether the accused should be tried before a Court Martial or a Criminal Court) cannot be examined at this stage as the investigation has not been completed and a charge-sheet has yet to be submitted.

3. The appeal is accordingly dismissed.