

# SUPREME COURT OF INDIA

Union of India

Vs.

K.S. Raina

Crl.A.No.966 of 2017

(A.K.Sikri and Ashok Bhushan,JJ.,)

13.07.2017

## ORDER

1. This application is filed by the applicant, who was the respondent in the appeal, stating that no fresh court martial could have been ordered in view of the bar contained in Section 121 of the Air Force Act, 1950 (hereinafter referred to as ' Act ' ) which provides for period of limitation for trial. On going through this provision, it becomes apparent that trial by court martial of any person subject to the Act for any offence cannot "commence" after the expiration of a period of three years from the date of such offence. In the instant case, admittedly, the trial had commenced within a period of three years. Since some irregularity and illegality in the conduct of the said trial were found, the trial stood vitiated and punishment inflicted was set aside. Permission was given to hold fresh trial. In such of circumstances, provisions of Section 121 of the Act would not apply in the instant case.

2. While dismissing this application, we may record that the incident is of the year 2009 and it does not pertain to the official duties discharged by the applicant. Further, the applicant has suffered in the meantime, inasmuch as, the persons junior to him have got promotion over him. In a case like this, we expect the General Court Martial as well as the competent authority to keep all these facts in mind while dealing with the case of the applicant herein. In the event the applicant is held guilty, it will also be kept in mind that vide earlier order dated 10.07.2012 passed by the Air Chief Martial, the punishment which was given was forfeiture of three years past service for the purpose of promotion, forfeiture of two years service for the purpose of pay and severe reprimand. Though we cannot issue any mandate to the competent authority but, going by the aforesaid considerations, it is expected that in all fairness, the punishment would not be more severe than what was given earlier and it should, in any case, be lesser than that.

3. We make it also clear that by no means it is observed that the applicant is guilty of the offence. The question of punishment would come only if he is found to be so.