DELHI HIGH COURT

Sundarajan

Vs.

Union of India (Delhi)

Criminal Writ Petn. No. 20 of 1968.
(I. D. Dua C.J. S. K. Kapur and Hardayal Hardy - JJ.)

17.3.1969

JUDGEMENT

Hardayal Hardy, J.

1. The petitioner S. Sundarajan who is under going a term of imprisonment in Central Jail Kanpur as a result of his conviction by a General Court-martial on charges of criminal misappropriation of monies belonging to the Air Force Public Fund Accounts moved this petition for a writ of habeas corpus under Article 226 of the Constitution and Section 491 Criminal Procedure Code, 1898 through his wife Shrimati Saraswati on the ground that his detention and conviction are illegal.

2. When Rule nisi was issued by the Motion Bench the petitioner's counsel had cited an unreported decision of the Supreme Court in *Som Datt Datta v. Union of India* [1.] (Since reported in AIR 1969 Supreme Court 414). The case was therefore, ordered to be heard by a Full Bench of three Judges. That is how the case was laid before us.

3. The petitioner's allegations broadly are that he was working as Senior Accounts Officer at No. 4 Base Repair Depot Air Force, Kanpur since June 1966 under the command of Group Captain A. S. Srivastava. During the course of his employment in the said depot some defalcations came to light whereupon the authorities ordered two Courts of Enquiry to be assembled. The reports submitted by the Courts of Enquiry held Group Captain A. S. Srivastava to be responsible for irregularities in accounts. However on 15-6-1968 the petitioner was served with a charge-sheet consisting of 31 charges alleging criminal misappropriation of various sums of money totaling Rs. 29,000/- by him.

4. The petitioner complains that when he was ordered to appear before the Commanding Officer the charges were merely read over to him and no effective opportunity was given to him to meet those charges. He submits that under Sub-Rule (a) of Rule 15 of the Air Force Act Rules, 1950, it is incumbent on the commanding Officer to hear the accused in defense of each charge and also to give him full opportunity to cross-examine any witness against him before any further proceedings are taken. But no such opportunity was given to the petitioner; all that the Commanding Officer did thereafter was to have a summary of evidence prepared and to follow it up in due course by the arraignment of the petitioner for trial before a court-martial.

5. The petitioner alleges that he brought this lapse in procedure to the notice of the authorities as soon as the court-martial was convened and also to the notice of the Court at the commencement of the trial pointing out that the trial could not proceed as the requirement of Rule 15 had not been complied with. The petitioner further alleges that he had also pointed out that in respect of charges 5 and 6 he had not been heard at all. He had also submitted that unless he was tried jointly with Group Captain A. S. Srivastava no justice could be rendered in the case. He however contends that his objections were overruled although the Judge-Advocate had clearly directed the members of the Court that if they came to the conclusion that Rule 15 had not been complied with the Court would have no jurisdiction to try the case.

6. The petition also refers to two other irregularities at the trial; one relates to his alleged confessional statement having been admitted in evidence while the other relates to his defense witness Fit. Lt. S. C. Bhately having been cross-examined by the Prosecutor although he had been summoned only to prove the records of the Courts of Enquiry.

7. In the return to the Rule, besides traversing the petitioner's averments on facts, a preliminary objection has been taken to the maintainability of the petition on the ground that the remedy of habeas corpus is not available to a prisoner who is serving a legal sentence passed by a Court-martial and that the petitioner's conviction having been properly recorded after a valid trial and confirmation, the matter is entirely within the jurisdiction of the confirming authority and cannot be challenged before this Court in exercise of its power under Article 226 of the Constitution.

8. On merits, the petitioner's allegations about non-compliance with the requirements of Rule 15 have been denied and it is contended that the said Rule was complied with

in letter and spirit and its compliance was duly proved at the trial by the petitioner's own witness Flt. Lt S. C. Bhateley.

9. The return admits that charges 5 and 6 were admitted subsequently to the charges that had previously been framed by the Commanding Officer, but it is contended that charges preferred before a Commanding Officer are tentative in nature and may be altered, amended or added to in the final charge-sheet on which the accused person is brought to trial before Court-martial.

10. As regards petitioner's allegations against involvement of A. S. Srivastava, the return affidavit states that the Court of Enquiry had no doubt taken the view that the officer had not properly carried out periodical check of Public Fund Accounts as he should have done and there was lack of supervision on his part; but as a result of due investigation, the Central Bureau of Investigation had come to the conclusion that there was no evidence on which the charge of misappropriation or making of false entries in documents could be substantiated against him. In the circumstances, the entire blame fell on the petitioner and as such there was no question of any joint trial of the petitioner with Group Capt. Srivasta.

11. With regard to the admission of the petitioner's confessional statement in evidence, it is stated that the same was admitted by the Court after taking into account the relevant circumstances and evidence and on holding that it was voluntary. As respects cross-examination of Flt. Lt. S. C. Bhately, it is asserted that the witness having been examined by the petitioner on oath the prosecution was fully justified in cross-examining him.

12. The affidavit in support of the return, also shows that the findings and sentence passed by the Court-marital were duly confirmed by the Chief of the Air Staff and promulgated according to law and it was after such confirmation and promulgation that the petitioner was committed to Central Jail Kanpur to undergo the terms of five years rigorous imprisonment awarded to him by the Court-martial.

13. The petitioner maintains in Ms rejoinder affidavit that this Court has jurisdiction to examine the legality of conviction and detention which were not in accordance with the procedure established by law. He has also amplified his earlier submission regarding non-compliance with Rule 15 by stating that before the Air Officer Commanding only seven prosecution witnesses, including the petitioner were marched in and charges were given to the petitioner in their presence. All the seven witnesses were simultaneously asked what they had to say in the matter and since the evidence

of each witness was not recorded separately there was obviously no opportunity to cross-examine them. On the other hand elaborate statements were made by as many as twenty witnesses at the stage of summary of evidence and subsequent trial.

14. As regards charges 5 and 6, the petitioner contends that there is no provision for amending or adding to the charges that had already been framed and that the very act of addition to the charges at a subsequent stage showed the mala fides of the respondents.

15. I have already stated that in the return the petitioner's allegations about non-compliance with the provisions of Rule 15 have been controverted and it is stated that the requirements of that Rule were fully satisfied. As this is challenged before us by the petitioner's counsel we should have ordinarily declined to go further into this matter. But considering the importance of the question raised in the preliminary objection taken by the respondents, we allowed the counsel for the parties to address arguments on the point as to how far it was open to this Court, while dealing with a petition for a writ of habeas corpus to go into the legality of a conviction and sentence recorded by a duly convened and constituted court-martial and also on the scope of Rule 15 of the Air Force Act Rules 1950.

16. The petitioner's counsel conceded that normally a writ of habeas corpus cannot issue to question the correctness of a decision of a court of competent jurisdiction for it is not a writ of error nor does a High Court in habeas corpus proceedings, strictly speaking, sit as a court of appeal or of general superintendence to review the order of conviction. She however submitted that, that was the position in law before the advent of the Constitution when it was recognized all round that a writ of habeas corpus could not be granted to a person committed to prison after he had been convicted by a duly constituted Court-martial and the proceedings and sentence were confirmed by a competent authority. The inclusion of Article 21 in the Constitution however brought about a radical change in the situation inasmuch as the said Article in terms provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. If it was therefore held that the procedure prescribed by Rule 15 of the Air Force Act Rules 1950, had not been complied with in the instant case, the order of conviction passed by the Court-martial would not stand in the way of the petitioner's right to regain his liberty as in that case his conviction and detention could not be held to be in accordance with the procedure established by law.

17. Learned counsel further submitted that in exercise of its powers under Article 226

of the Constitution It is always open to this Court to order that the records of a particular case be removed to it on a writ of *certiorari* with a view to enable it to examine the legality of the proceedings and to quash the order if it is satisfied that a case had been made out for the exercise of its powers in that behalf.

18. She submitted that although the petition in the present case purported to be for a writ of habeas corpus, it was in reality a petition for a writ in the nature of *certiorari,* as its object was to call up and to quash the proceedings before the General Court-martial. In this connection the learned counsel invited our attention to the above cited judgment of the Supreme Court. The petitioner in that case was found guilty of charges under Sections 304 and 149 Indian Penal Code and sentenced to six years R.I. and cashiered. His conviction and sentence were confirmed by the confirming authority under Section 164 of the Army Act, 1950. The petitioner then moved the Supreme Court under Article 32 of the Constitution and obtained a rule asking the respondents to show cause why a writ in the nature of *certiorari* should not be issued.

19. An examination of the judgment however does not make it clear if the petitioner's prayer in that case was also for a writ of habeas corpus. Even so the petition in terms asked for a writ in the nature of *certiorari* under Article 32 of the Constitution and Section 491 Criminal Procedure Code was not invoked at all. The question raised in the petition and considered by their Lordships was also a pure question of jurisdiction inasmuch as it was contended that the offence with which the petitioner was charged was a civil offence as defined in Section 3(ii) of the Army Act 1950, which subject to the provisions of Sections 125 and 126 of the said Act could be tried either by a Court-martial or by a criminal Court. The contention urged on behalf of the petitioner was that the Court-martial had no jurisdiction to try and convict the petitioner having regard to the mandatory provisions of Section 125 of the Act and having regard to the fact that the Officer Commanding of the unit had in the first instance, decided to hand over the matter for investigation to the civil police. Certain other questions relating to the legality of the procedure followed at the trial of the case and the necessity of a speaking order by the confirming authority were also raised. The learned Judges went into those questions and ultimately dismissed the petition holding that there was neither any error of jurisdiction nor any error of law on the face of the record which entitled the petitioner to a writ of *certiorari* for quashing the order.

20. The question of maintainability of the petition was neither raised before their Lordships nor discussed by them. In any event, the prayer in the petition was in terms for grant of a writ of *certiorari* and there is no indication in the judgment at all that

there was any prayer for a writ of habeas corpus. The petition was also filed by the petitioner himself who was personally aggrieved and affected by the order.

21. It is true that under Article 141 of the Constitution the law declared by the Supreme Court is binding on all the courts and therefore, even the principles enunciated by the Supreme Court including its obiter dicta, when they are stated in clear terms, have a binding force. But when a question is neither raised nor discussed in a judgment rendered by the Supreme Court it is difficult to deduce any principle of a binding nature from it by implication. I cannot therefore agree with the learned counsel that the case is an authority for the proposition that while dealing with a petition for a writ of habeas corpus the court should call for the record and proceedings of every case in which a court of competent jurisdiction or a duly convened and constituted Court-martial has recorded a finding of guilt and passed a sentence of imprisonment and examine the legality of conviction and sentence.

This is not to say that the proceedings of a Court-martial are entirely immune from scrutiny by this Court. In fact, that was not the position even before the advent of the Constitution and there are several reported cases where a writ of habeas corpus was issued under Section 491 Criminal Procedure Code when the jurisdiction of the Court-martial concerned was under challenge. The inquiry in all those cases was however directed to ascertain whether the person held in custody was subject to military law or the court itself was properly convened and constituted. That jurisdiction the High Court always had and has it even today. The question for decision however is whether the ambit of that jurisdiction has in any way been enlarged by Article 226 of the Constitution.

22. On behalf of the respondents, Mr. O. P. Malhotra, has referred to us to a Bench decision of this Court in *S. P. N. Sharma v. Union of India,*[2] . In that case the petitioner's trial by General Court-martial and the finding and sentence by the said Court as also the confirmation of the sentence by the confirming authority were challenged on the ground of infringement of Articles 14, 21, 22 (1) and (2) of the Constitution and violation of some of the provisions of the Air Force Act and the Rules framed there under. Founded on these main challenges the petitioner's prayer was that he be set at liberty. The Bench approvingly referred to an earlier judgment of my Lord the Chief Justice sitting singly as a Judge of the Punjab High Court in *Mrs. Saroj Prasad v. Union of India,* [3] and also referred to a short extract from a concurring note added by Bachawat J. in the Supreme Court's judgment in *Ghulam Sarwar v. Union of India,*[4] where it was said:-

> "It is to be noticed that the present petition does not challenge the validity of an order of imprisonment passed in a criminal trial. I must not be understood to say that the remedy of a writ of habeas corpus is available to test the propriety or legality of the verdict of a competent Criminal Court."

And finally summed up the position in the following words:-

> "The principle that a writ of habeas corpus is not grantable in general when the party is convicted in due course of law is attracted with greater strictness to a person convicted by a duly constituted Court-martial, the finding and sentence of which have, in due course, been confirmed by a competent authority. Nothing "has been shown which would induce us to hold that the finding and the sentence as confirmed are tainted with such a serious jurisdictional infirmity that they should be described as no nest and ignored. We may repeat that we are not entitled to go into the regularity of steps taken by the Court-martial in the course of trial or by the Confirming authority in the finding and the sentence which do not go to their jurisdiction and confirming. If we may say so with respect we have not been persuaded to hold that there was any such irregularity or illegality which would go to the jurisdiction of the Court-martial or the confirming authority".

23. Learned counsel's only criticism of this judgment was that there is no discussion in it of the High Court's power to examine the legality of conviction and sentence on a writ of *certiorari* in the light of Article 21 of the Constitution. According to the learned counsel, the expression "procedure established by law" means "procedure prescribed by the law of the State" as observed by Kania C. J. in *A. K. Gopalan v. State of Madras,* [5] and since the rules made under the Air Force Act 1950 form part of the procedure established under the Act a conviction resulting from a trial held in contravention of those rules necessarily amounts to depriving the convicted person of his liberty contrary to the procedure established by law. She further argued that a material irregularity in procedure affects the jurisdiction of the Court and therefore, renders its decision illegal for want of jurisdiction.

24. Learned counsel also relied on the following statement of law in Halsbury's Laws of England (Simonds Edition) Vol. 11, Para 268, page 142:-

> "Where the inferior tribunal has acted without jurisdiction *certiorari* to quash the proceedings may be granted. Want of jurisdiction may arise from the nature of the subject matter; so that the inferior tribunal had no authority to enter on the inquiry, or upon some part of it. It may also arise from the absence of some

essential preliminary proceedings. Thus, although the inferior tribunal may have jurisdiction over the subject matter of the inquiry, it may be a condition precedent to the exercise of its jurisdiction that the proceedings should be begun within a specified time, or that some step should have been previously taken by the person who institutes proceedings before the tribunal".

25. Our attention was also invited to a judgment of Viscount Reading C. J. (Darling and Avory, JJ. with him) in *Rex v. Governor of Lewes Prison ex parte Doyle,* [6] where the point raised on behalf of the prisoner was that the warrant of commitment and the conviction were/or alternatively one or the other was bad, and that the proceedings were invalid on the ground that the Field

General Court-Martial had heard the case in camera.

25-A. Learned counsel argued that although the question of holding the trial in camera was merely a question of procedure yet the validity of conviction and commitment was allowed to be canvassed in that case on that ground. As would appear from the following passage in the judgment of the learned Chief Justice, the actual decision, far from supporting the argument of the learned counsel goes against it. The contention regarding invalidity of the trial on the ground of its having been held in camera was repelled and after citing two earlier decisions the Learned Chief Justice observed:-

> "Those two authorities clearly support the principle that we are entitled, and I think bound to look at the conviction in the present case, and it is stated on the face of it that Doyle is a person subject to military law. That being so, it establishes that he could be tried by a field general Court martial, and that therefore there is no ground for saying that the conviction is wrong. It would cure any defect (if there was any) in the warrant of commitment, and I come to the conclusion both as regards the warrant of commitment and also as to the form of conviction that the contentions fail".

26. Counsel for the petitioner next referred us to some cases dealing with the grounds on which the decisions of Tribunals exercising judicial and quasi- judicial functions have been quashed on *certiorari,* No decided case was, however, brought to our notice in which a writ of *certiorari* was issued for quashing a decision on the ground of error in procedure of the kind with which we are concerned in the present case. Subject to the *locus stand* of the person moving the petition, a writ of *certiorari* or a direction or order under Article 226 of the Constitution may perhaps be issued for the purpose of examining the record and proceedings of a duly constituted Court martial having jurisdiction over the person and also over the subject matter of the charge provided

other conditions, such as error of law apparent on the face of the record or violation of principles of natural justice, are satisfied. No final opinion need however, be expressed on that point in the present case. But I am not at all prepared to hold that such a writ or order can ever be issued for examining mere errors of procedure.

27. This brings me to the question relating to the scope of Rule 15 of the Air Force Act Rules. In order to appreciate the content and scope of this Rule it is necessary to discuss its salient features.

28. The Rule forms part of Section 1 of Chapter IV which deals with investigation of charges and remand of the accused for trial. Rule 14 enjoins upon every Commanding Officer to take care that a person under his command, charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him impracticable having regard to the exigencies of public service. The rule further provides that every case of a person who is detained in custody for a period beyond forty-eight hours must be reported by the Commanding Officer to the officer to whom application is required by law to be made to convene a general or District Court-martial for the trial of the person charged. Such report has to be accompanied by a statement of reasons for detention.

29. Rule 15 deals with investigation of charges within the period mentioned in Rule 14. The requirement of sub-rule (a) is that the charge must be heard in the presence of the accused and the accused must have full opportunity to cross-examine any witness against him and to call any witness and make any statement in his defense.

30. Sub-rule (b) makes it obligatory on the Commanding Officer to dismiss a charge brought before him if in his opinion, the evidence does not show that some offence under the Act has been committed. He may also do so if in his discretion he thinks that the charge ought not to be proceeded with. Sub-rule (c) lays down that at the conclusion of the hearing of a charge if the Commanding Officer is of the opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either dispose of the case summarily or refer the case to the superior Air Force authority or adjourn the case for the purpose of having the evidence reduced to writing.

31. Sub-rule (d) deals with the preparation of the Summary of Evidence and requires that the evidence of the witnesses who were present and gave evidence before the Commanding Officer, whether against or for the accused shall be taken down in writing in the presence and hearing of the accused. The recording of the Summary of

Evidence may be before the Commanding Officer himself or before such other officer as he may direct.

31-A. Sub-rules (e) to (g) deal with the manner of recording evidence at that stage.

32. It will thus be seen that by its very nature the hearing of evidence by the Commanding Officer at the initial stage when the person charged with an offence is brought before him is for the purpose of ascertaining whether the charge should be dismissed or should be proceeded with. If the Commanding Officer is of the opinion that the charge ought not to be proceeded with, the person charged with the offence has to be released forthwith. On the other hand if the Commanding Officer is of the opinion that the charge ought to be proceeded with he may then follow one of the three courses open to him under sub-rule (c).

33. The object of the rule is therefore, to hold a sort of preliminary investigation by the Commanding Officer with a view to ascertain whether a *prima facie* case exists to justify further detention of the accused in custody beyond the period of forty-eight hours prescribed by Rule 14. The Investigation contemplated by Rule 15 does not require that the evidence of witnesses examined by the Commanding Officer should necessarily be reduced to writing. Its only requirement is that the charge should be heard in the presence of the accused and he should be given an opportunity not only to cross-examine any witness against him but also to call any witnesses and make any statement in his defence.

34. Once the Officer Commanding comes to the conclusion that the charge ought to be proceeded with then there must be a formal recording of statements of witnesses as provided by sub-rules (d) to (g). Rule 16 provides *inter alia* for the remand of the accused for trial by Court martial.

35. It is thus implicit in the procedure prescribed by Rule 15 that any error or irregularity at a stage before the case is adjourned for the purpose of having the evidence reduced to writing will not vitiate the subsequent trial as the guilt of the accused has to be established not on the basis of what the Commanding Officer might have done or might not have done at the initial stage. Any irregularity in procedure at that initial stage might have a bearing on the veracity of witnesses examined at the trial or on the *bonafides* of the Commanding Officer or on the defense that may be set up by the accused at the trial; but the irregularity can by no means be regarded as affecting the jurisdiction of the Court to proceed with the trial.

36. I am therefore, of the opinion that in the instant case even if it is assumed that there has been non-compliance with the requirements of Rule 15 in the manner alleged by the petitioner, the non-observance of the Rule is not such as to vitiate the trial and ultimate conviction of the petitioner.

37. The petitioner's grievance about the addition of charges 5 and 6 at a subsequent stage has also no substance as the charges framed at the stage of proceedings under Rule 15 are not final. Subject to the right of amendment envisaged in Rule 48 it is only the charge-sheet on which the accused is arraigned before the Court which is material as it is that charge-sheet alone which forms the basis of the trial and not any other charge-sheet which may have been prepared at the initial stage. Even the charge-sheet on which the accused is arraigned before the Court can be amended under sub-rule (b) of Rule 48 which runs as under:-

> "If on the trial of any charge it appears to the Court at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused."

38. In the course of arguments one other point was mooted; but since we have not had the advantage of a full argument which the point deserves, I should not like to express a definite opinion on it and would only state the point and refer to a few cases which appear to me to have a bearing on the controversy. The point is one of *locus stand* to maintain the present petition and was thus put in argument. It was urged that if the petition in this case was to be treated as one for grant of a writ of *certiorari,* then such a petition could only be filed by the petitioner himself and not by his wife on his behalf as in the eye of law no personal right of hers had been affected by the impugned order and as such she had no *locus stands* to maintain the petition.

39. The question for consideration therefore, is whether the petition as presented in this Court, can be treated as one for a writ of habeas corpus only or also for a writ of *certiorari* .It will be noticed that the petition has been moved by the prisoner through his wife Shrimati Sarswati. It is also described as a petition for a writ of habeas corpus under Article 226 of the Constitution and Section 491, Criminal Procedure Code It is well settled that a person illegally imprisoned or detained in confinement without legal justification is entitled to apply for a writ of habeas corpus, but it is not essential that

the application should proceed directly from him. Proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment may also be instituted by a person other than the prisoner who may have some interest in him. In *Cobbett v. Hudson,* [7] a wife was held entitled to apply for such a writ on behalf of her husband. In re: Thompson, (1860) 30 LJ MC 19 father was held entitled to apply on behalf of his son. Both these cases are mentioned in foot-note to Para 65 at page 37 of Halsbury's Laws of England, 3rd Edition Vol. 11. Even the right of a stranger has been recognized to make such an application provided he has authority to appear on behalf of the prisoner or has a right to represent him. In the foot-note referred to above there is reference to an un-reported case In re: Klimowicz (1954). The foot-note shows that in that case, a writ was granted, on the application of the Home Secretary, directed to the master of a Polish ship lying in the Thames upon which a person seeking political asylum in the United Kingdom was being detained.

40. These cases are a clear authority for the maintainability of the present petition for a writ of habeas corpus moved by the petitioner's wife. The question however, is whether a petition for grant of a writ of *certiorari* can also be moved by a person who is not directly affected or aggrieved by the order. The question is not free from difficulty and its solution is made more complex by the variety of views expressed by Judges in different cases. The primary rule as to who may be granted *certiorari,* as formulated by Blackburn, J. in *R. v. Surrey Justices,* [8] was stated by Parker, J. (as he then was), in the following words in *R. v. Thames Magistrates' Court, ex parte Greendaum,* [8]

> "Anybody can apply for it-a member of the public, who has been inconvenienced, or a particular party or person who has a particular grievance of his own. If the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Where, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies *ex debito* justitiae."

41. S. A. de Smith in his latest book on "Judicial Review of Administrative Action" (1968 Edition) after noticing a number of cases has summed up the position as follows:-

> "It is thought that the present law may properly be stated as follows. Certiorari is a discretionary remedy, and the discretion of the Court extends to permitting an application to be made by any member of the public. A person aggrieved, i.e., one whose legal rights have been infringed or who has any other substantial

interest in impugning an order, may be awarded a *certiorari ex debito* justitiae if he can establish any of the recognized grounds for quashing; but the Court retains a discretion to refuse his application if his conduct has been such as to disentitle him to relief. Only in highly exceptional circumstances would the Court exercise its discretion in favor of an applicant who was not a person aggrieved."

42. The Supreme Court's view is reflected in its decision in *Calcutta Gas Co. Ltd. v. State of West Bengal,* [10] where it was held :-

> "Article 226 in terms does not describe the classes of persons entitled to apply there under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226. The legal right that can be enforced under Article 226 like Article 32, must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified".

43. In *Dr. P. S. Venkataswamy Setty v. University of Mysore,* [11] while dealing with the position under Article 226 of the Constitution the learned Judges (N. Sreenivasa Rau, C. J. and A. Narayana Pai J.) observed:-

> "In India, unlike England, there is nothing like a writ of right because, the issue of any type of writ, order or direction under Article 226 is clearly a matter of discretion with the Court. The question therefore, whether the petitioner has or has no *locus stands* to make the petition to seek the issue of a writ appropriate to the facts of his case is necessarily related to the nature of the relief he seeks. The only general proposition which can be stated on the question of *locus standi* of petitioners in writ petitions or petitions under Article 226 of the Constitution is that ordinarily a petitioner will have to make out some personal interest which the law recognizes as sufficient, unless having regard to the nature of the relief and particular facts and circumstances of the case the petitioner is merely in the position of an informer or a relater and the situation is such that it becomes the duty of the Court to act in public interest or to uphold the Constitution".

44. Similar dicta are to be found in the decisions of almost all the High Courts. An

examination of those cases however, shows that most of them have failed to provide a full exposition of the relevant principles and many of the dicta are ambiguous. It may be that one day the question is directly raised in an appropriate case and is exhaustively dealt with by the Supreme Court. Till then no useful purpose will be served by dealing with this matter at length, especially when we have not had the benefit of full argument from the counsel and we have also decided to dismiss the petition.

45. The result of the foregoing discussion is that the petition fails and is accordingly dismissed.

Inder Dev Dua, C. J. :- I agree.

S.K. Kapur, J. :- I agree.

Petition dismissed.

Cases Referred.

1. (Writ Petn. No. 118 of 1968, D/-20-9-1968) :

2. 1968 DLT 256 : (AIR 1968 Delhi 156)

3. (Criminal Writ No. 1-D of 1963) decided on 13-5-1963 (Punj)

4. AIR 1967 Supreme Court 1335

5. AIR 1950 Supreme Court 27 at p. 39,

6. (1917) 2 KB 254

7. (1850) 15 QB 988

8.(1870) 5 QB 466

9. (1957) 55 LGR 129:

10. AIR 1962 Supreme Court 1044

11. AIR 1964 Mysore 159