

A.W. Mears Vs. Emperor

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Court : Mumbai

Decided On : Nov-20-1944

Reported in : (1945)47BOMLR981

Judge : Patrick Spens, Kt., C.J., ;Varadachariar and ;Zafrulla khan, JJ.

Appellant : A.W. Mears

Respondent : Emperor

Disposition : Appeal dismissed

Judgement :

Patrick Spens, Kt., C.J.

1. The appellant in this case, A.W. Mears, was in April, 1943, a Captain holding the temporary rank of Major in the Royal Engineers, and was attached to No. 1 Works Service (E. & M.) Group I. E. In October, 1943, he was charged with four offences under the Army Act. The charges, without the particulars which are not material to this judgment, were as follows:

1st Charge, A.A. Section 17.- When on active service, when concerned in the care of public property, fraudulently misapplying the same.

2nd Charge, A.A. Section 40.- alternative to 1st charge.- When on active service, neglected to the prejudice of good order and military discipline.

3rd Charge, A.A. Section 17.- When on active service, when concerned in the care of regimental property, fraudulently misapplying the same.

4th Charge, A.A. Section 40.- alternative to 3rd charge.- When on active service neglected to the prejudice of good order and military discipline.

The appellant was ordered to be tried by a Field General Court Martial. He was in due course so tried and was convicted in respect of the two offences charged under Section 17 of the Army Act, and was sentenced to two years' imprisonment and to be cashiered.

2. The appellant thereupon filed a petition in the High Court at Lahore under Section 491 of the Criminal Procedure Code. The important point raised on the hearing of that petition before the High Court was that the act complained of was committed by the appellant in the execution or purported execution of his duty as a servant of the Crown in India and that accordingly under Section 270(1) of the Government of India Act, 1935, the Court Martial proceedings could not legally and properly be instituted against him without the previous consent of the Governor General in his discretion.

3. Section 270(1) runs as follows:

No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

4. The short but very important point so raised before the High Court at Lahore is whether the Court Martial proceedings in question were criminal proceedings within the meaning of Section 270(1).

5. The petition under Section 491 of Criminal Procedure Code was referred to a full bench of the Lahore High Court consisting of Sir Trevor Harries C. J., Abdur

Rahman and Mehr Chand Mahajan JJ. In a very full and careful judgment it was decided on April 12, 1944, that the Court Martial proceedings in question were not criminal proceedings within Section 270(1) and that there was no substance in this contention of the appellant. In his petition under Section 491, the appellant also took other points as to the validity of the manner of constitution and proceedings of the Field General Court Martial. These too were all carefully considered by the full bench of the High Court who could find no legal substance in them. Accordingly on April 24, 1944, the petition of the appellant was dismissed, but a certificate under Section 205(1), of the Constitution Act was granted in respect of the question raised in regard to Section 270(1), and from that order the appellant has appealed to this Court.

6. The appellant appeared and argued his case in person before us. In the Court below it had been argued on behalf of the appellant that all Court Martial proceedings under the Army Act were criminal proceedings within the meaning of Section 270(1). But in view of the amazing consequences which, it was pointed out by the High Court, must result if this contention were right, the appellant before us limited his submissions and argued to the effect that (a) the acts on which the charges before the Court Martial were based were acts on which charges could have been framed under the ordinary criminal law of the land, (b) if the appellant had been charged under the ordinary criminal law of the land, there was no doubt that the proceedings would have been criminal proceedings which could not have been instituted against the appellant without the previous consent of the Governor General in his discretion, and (c) accordingly at least Court Martial proceedings in which a servant of the Crown in India was charged with offences in respect of acts which could equally be made the basis of a prosecution under the ordinary criminal law of the land, must be criminal proceedings for the purposes of Section 270(1). There could be, it was suggested, no reason why if a servant of the Crown was proceeded against under the ordinary criminal law in respect of such acts he should be entitled to the protection afforded by Section 270(1), whereas if he was proceeded against by Court Martial under military law he should not be entitled to such protection.

7. This Court has before now pointed out how difficult it is to make any logical grounds the basis of construing this section. It is a section which is capricious in its operation. For instance, had the appellant been employed in the affairs of a Province instead of having been employed in the affairs of the Government of India, there would have been no question now of Section 270(1) having any operation at all. It is only because no Federation has hitherto been established that the question of the protection afforded by Section 270, Sub-section (1), falls to be considered in respect of those still employed in connection with, the affairs of the Government of India. We cannot therefore accept too readily as a help in construing this section logical considerations such as those stressed by the appellant.

8. Moreover, whilst we agree that military officers are given by Section 270 just the same protection in proceedings instituted under the ordinary civil and criminal law as is given to other servants of the Crown such as police and civil servants, there seems no logical reason to assume that a similar protection should extend to the institution of proceedings under the military code which is applicable to and peculiar to those classes of citizens subject to the provisions of the Army Act, and which necessarily imposes on those subject to it obligations and liabilities to which others are not subject.

9. Further, in order to succeed in his submission the appellant must somehow extract from the phraseology of Section 270 a difference in application or non-application according as Court Martial proceedings are in respect of acts on which charges under the ordinary criminal law could be based, or are in respect of acts on which no charge under the ordinary criminal law could be made.

10. In our view there is nothing to be found in the wording of the section to make a difference between Court Martial proceedings based on acts which constitute purely military offences under the Army Act and in respect of which no charge under the ordinary criminal law could be based, and Court Martial proceedings based on acts in respect of which either military offences under the Army Act could be charged or ordinary criminal proceedings could be taken. In our judgment there is no halfway house. Either all Court Martial proceedings under the Army Act are

criminal proceedings within Section 270(1), or no Court Martial proceedings are. If all Court Martial proceedings under the Army Act are criminal proceedings, there is no way to escape from the fantastic results which would follow from such a decision, and which have been indicated at some length in the judgment of the Lahore High Court. On the other hand, this Court has no right to base its decision on construction solely on results. If words are plain and can bear only one meaning in law, results are not a matter for this Court, and there is no doubt that in some contexts the phrase criminal proceedings would be held to include Court Martial proceedings. See the speeches of their Lordships in the two cases, Clifford and O'Sullivan [1912] 2 A.C. 570 and Amand v. Home Secretary and Minister of Defence of Royal Netherlands Government [1943] A.C. 147.

11. The question for us is whether the phrase 'No proceedings civil or criminal' in the context in which it is used in Section 270(1) of the Constitution Act should also be held to include Court Martial proceedings generally.

12. It was suggested on behalf of the Crown that if we were to hold that Court Martial proceedings were included in Section 270(1), the result would be that Section 270(1) would be an important modification or amendment of the Army Act, and the Advocate General of India relied upon the terms of Section 2 of the Army Act, viz. 'This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force or continuing the same', as indicating an intention or policy of Parliament that the Army Act should not be modified or amended except by provisions specified in the annual Acts of Parliament extending the life of the Army Act. He accordingly submitted that Parliament could not have intended to make such an important modification or amendment in respect of procedure by Courts martial by anything contained in the Government of India Act. Alternatively, if such modification or amendment had been made, he argued that a similar provision should have been inserted in the next Army Annual Act following the coming into force of the Constitution Act, and that the absence of any such provision indicated that no amendment or modification had been made. Whilst we are not prepared to differ as regards the possible intention or policy of Parliament as to the recognised convenient method of confining amendments to the Army Act to the annual Acts

extending the same, there is no doubt of the competency of Parliament to effect amendments of the Army Act by any other Act of Parliament. The argument only goes to the unlikelihood of an important amendment or modification of this nature having been made by the Government of India Act rather than by some provision in an annual Army Act. The argument is not therefore conclusive and we are left to construe the material words as we find them in their context in the Government of India Act without any really decisive help or authority from outside.

13. Whilst as indicated above it may be proper in certain contexts to include Court Martial proceedings in the phrase criminal proceedings, in our opinion the ordinary person who uses the phrase 'civil or criminal proceedings' usually intends only to indicate the ordinary civil and criminal proceedings which can be taken in accordance with the ordinary law of the land, and does not have in mind the special and peculiar code of military law applicable only to the limited classes subject to it and the military offences created by that code. In other words in our judgment the ordinary primary meaning of the phrase 'civil and criminal proceedings' indicates only the civil or criminal proceedings capable of being instituted under the ordinary law of the land, and should not be held to include proceedings under military law unless there be a context which so indicates. We can find no such context in Section 270 or else where in the Constitution Act. Indeed there are indications in the context against giving the phrase any meaning other than its ordinary primary meaning. Sub-section (2) with references to 'the court' and the recovery of costs and so forth is apposite enough to proceedings before the ordinary civil and criminal Courts, but is hardly apposite to proceedings by Courts Martial. Further, in support of our view of the meaning which we think would ordinarily be given to the material words, it is noteworthy that although Section 270(1) has been in operation since April 1, 1937, during which time many Courts Martial must have taken place in this country, no one has hitherto suggested that the phraseology as used in Section 270(1) includes proceedings under military law.

14. It may be true that the appellant might have been proceeded against in the regular Courts on some charge under the ordinary criminal law based on the acts in respect of which he has been charged under military law, but he has at no time

been proceeded against under the ordinary criminal law, and all the charges with which he was charged before the Court Martial were 'military offences' under sections of the Army Act. The whole proceedings against him have therefore been entirely under the Army Act and not in any way under the ordinary criminal law. In our judgment unless we are compelled by some authority or by something in the context to hold that such proceedings under the Army Act must be deemed to be included in the phraseology of Section 270(1), it would be unreasonable for us so to do. We think that the words 'proceedings civil or criminal' have been used in their ordinary common meaning without any thought or reference to the Army Act, the Military Code, military offences or proceedings by Courts Martial, and we are satisfied that even though possibly such phraseology in other contexts may be held capable of including military offences under the Army Act or proceedings by Courts Martial, we are not bound to hold that they do so in the case of Section 270(1), and we are not prepared so to hold. Accordingly, in our judgment the submissions of the appellant have no force and so far as this point is concerned the appeal must be dismissed.

15. We gave an opportunity to the appellant to raise any other matter on account of which he considered that the proceedings against him were invalid or his conviction unjustified. He raised no new points. The points which he argued before us were all raised on his behalf in the High Court and were dealt with most fully in the judgment of the full bench. He was unable to indicate any respect in which the judgment of the full bench could be considered wrong. We agree with the judgment of the full bench on these other points raised by the appellant and we consider it unnecessary in the circumstances that we should deal with them further ourselves. This appeal must accordingly be dismissed.