

Dhirendra Kumar Singh and Others Vs. State of A.P. and Others

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Court : Andhra Pradesh

Decided On : Jul-15-1999

Reported in : 1999(4)ALD452; 1999(2)ALT(Cri)312; 1999CriLJ4421

Judge : Vaman Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 4, (2), 5, 428, 437 and 439; [Navy Act, 1957](#) - Sections 2, 3(22), 77, 78, (1), (2), 83, 84, 85, 86, 87, 93, (2), (3), 151 and 184; [Indian Penal Code \(IPC\), 1860](#) - Sections 342 and 392; [Arms Act, 1959](#) - Sections 25(1-B)(A) and 27; Air-Force Act, 1950; [Army Act, 1950](#) - Sections 176; Navy (Discipline and Miscellaneous provisions) Regulations, 1965 - Regulations 89 and 92(2)

Appeal No. : Crl. P No. 2600 of 1999

Appellant : Dhirendra Kumar Singh and Others

Respondent : State of A.P. and Others

Advocate for Def. : Mr. B. Adinarayana Rao, SC for Central Government

Advocate for Pet/Ap. : Mr. C. Padmanabha Reddy, Amicus Curie; Mr. S.K. Vasudeva Rao, Adv.

Judgement :

ORDER

1. This petition is filed under Sections 437 and 439 of Cr.PC for grant of bail.
2. The petitioners are accused 1 to 3 respectively in Crime No.34 of 1998 on the file of Malkapuram Police Station, Visakhapatnam registered for the offences under Sections 392 and 342 of 1PC and Section 25(1-B)(A) and Section 27 of the [Arms Act, 1959](#). The petitioners are said to be the permanent employees of Indian Navy at Visakhapatnam. The allegations against the petitioners are that on 4-6-1998 at about 7.20 p.m. the accused entered into Andhra Bank Extension Counter, INS Veerababu, Malkapuram with country made pistols and knife etc., and threatened the Bank Branch Manager and the Cashier at the point of pistol and committed theft of cash of Rs.2,54,371/- from the Bank and escaped with the said amount on an un-numbered Bajaj Chetak 'scooter. According to the prosecution, at the time of commission of offence, the petitioners were wearing masks to conceal their identity. It is stated that the petitioners are innocent and that investigation has been completed and charge-sheet has also been filed and as such they may be released on bail.
3. During the course of investigation, it came to light that as the petitioners are Officers of the Indian Navy, the Naval authorities have decided to proceed against the petitioners in Court Martial proceedings and in accordance with that on the requisition of the commanding officer, the petitioners have been handed over to the naval authorities under the provisions of the Navy Act of 1957.
4. On behalf of the prosecution, Mr. B. Adinarayana the learned Standing Counsel for the Central Government appearing on behalf of the prosecution has raised a preliminary objection that, the Code of Criminal Procedure including Sections 437 and 439 of Cr.PC are not applicable in view of the fact that the petitioners are to be proceeded with Court-Martial proceedings under the Navy Act.
5. The learned Counsel for the petitioners Mr. Ramanaimirthy for Sri Vasudeva Rao contends that under Section 4 of the Criminal Procedure Code, all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code. However, according to him, sub-section (2) of Section 4 of the Cr.PC contemplates that this shall be subject to any enactment for the time being in force regulating the manner or place

of investigating, inquiring into, trying or otherwise dealing with such offences. It is submitted that this does not apply to the case of the petitioners as far as the application for bail is concerned.

6. Mr. B. Adinarayana, the learned Standing Counsel for the Central Government relying on Section 5 of the Criminal Procedure Code contends that the Criminal Procedure Code does not affect any special or local law for the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force.

7. The contention of the learned Standing Counsel for the Central Government is that the Indian Navy Act is a law which provides for the enquiry, investigation and trial of offences in respect of employees and officers of the Indian Navy and as such Sections 437 and 439 of Cr.PC cannot be invoked to seek bail for the accused in this case.

8. On this question, apart from the learned Counsel for the petitioners Sri Ramanaunrthy and the learned Standing Counsel for the Central Government Sri B. Adinarayana, Sri C. Padmanabha Reddy, learned senior advocate at the request of the Court assisted as amicus curie and addressed arguments.

9. The question for consideration is whether in view of the provisions of the Navy Act and provisions under Sections 4 and 5 of the Criminal Procedure Code, a petition for bail under Sections 437 and 439 of the Cr.PC on behalf of the accused-petitioners can be entertained?

10. Answer to this question depends on the interpretation of Section 5 of the Criminal Procedure Code and the relevant provisions of the Navy Act. Section 5 of the Cr.PC is extracted below:

5. Saving .--Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.'

11. It is apparent that Section 5 of the Criminal Procedure Code contemplates that the provisions of the Code will not be applicable where a case is governed by any special or local law prescribing special form of procedure in respect of investigation, enquiry and trial of offences in respect of persons subject to the naval law. Admittedly, the petitioners herein are the naval officers in service of the Indian Navy. Under Section 2 of the Navy Act, a person belonging to the Indian Navy during the time he is liable for service under the Navy Act shall be subject to Naval Law. Thus, the petitioners are subject to Naval Law.

Under Section 3(22) of the Navy Act, 'Subject to naval law' has been explained as being liable to be arrested and tried under the Navy Act for any offence. The petitioners are accused of offences under Sections 392 and 342 of 1PC and Section 25(I-B)(A) and Section 27 of the [Arms Act, 1959](#) which is a civil offence within the definition of Section 3(3) of the Navy Act inasmuch as these offences are triable by a Court of ordinary criminal jurisdiction. Section 77 of the Navy Act contemplates that every person subject to Naval Law who commits a civil offence punishable with death or with imprisonment for life shall be punished with the punishment assigned for that offence. Section 78 of the Act provides that every person subject to Naval Law who is charged with a civil offence may be tried and punishable under the Navy Act regardless of where the alleged offence was committed. However, sub-section (2) of Section 78 provides an explanation that if the offence alleged is murder then sub-section (1) of Section 78 will not be applicable if the conditions mentioned in sub-section (2) are satisfied. As the offence alleged against the petitioner is not that of murder, sub-section (2) of Section 78 does not apply. These provisions show that the persons who are subject to naval law shall be triable and punishable under the Navy Act.

12. The question, whether the provisions under the Code of Criminal Procedure would be applicable in respect of persons proceeded under Court-Martial under the Army Act, Navy Act or Air-Force Act came up for consideration before the Supreme Court in the case of *Ajmer Singh v. Union of India*, : 1987 CriLJ1877 . It has been held in that case that the relevant chapters of the Army Act, Navy Act and Air-Force Act embodied a complete self-contained comprehensive Code specifying the various offences under those Acts and prescribing the procedure for

detention and custody of the offenders, investigation and trial of the offenders by Courts-Martial, the punishments to be awarded for the various offences, confirmation and revision of the sentences imposed by Courts-Martial, the execution of such sentences and the grant of pardons, remissions and suspensions in respect of such sentences. It was thus held that these enactments including the Navy Act, which is relevant for this case, constitute a Special Law conferring Special Jurisdiction and Powers of Courts-Martial and prescribing a special form of procedure for the trial of the offences under those Acts.

13. It has further been held that the effect of Section 5 of the Criminal Procedure Code is to render the provisions of the Code inapplicable in respect of all matters covered by such special law.

14. On this basis, the Supreme Court held that the provisions of Sections 428 of Cr.PC relating to set off of sentence cannot be applied to a person convicted under Courts-Martial. The Supreme Court observed that inasmuch as Section 176 of the Army Act (sic. 167 of the Army Act) deals with the topic as to the date of commencement of sentence of imprisonment, there is absolutely no scope for invoking the aid of Section 428 of Cr.PC in respect of the prisoners convicted by Courts-Martial under the Act. A similar view has been taken as to the applicability of Section 428 of Cr.PC to the persons convicted and sentenced by Courts-Martial under the Army Act, in another judgment of the Supreme Court in *Ajit Kumar v. Union of India*, : 1988 CriLJ417 . It has been held that the Army Act is a complete Code in itself in regard to trial enquiry, investigation, arrest of the accused and trial of the offenders in regard to offences including civil offences.

15. As observed by the Supreme Court in *Ajmer Singh* 's case (supra), the provisions of Navy Act and Air-Force Act are in pari materia with the provisions of the Army Act and as such what applies to the cases under Army Act would apply to the cases under the Navy Act which is relevant to this case.

16. The learned Counsel for the petitioners relies on the observations of the Supreme Court in *Ajmer Singh*'s case (supra), that the provisions of the Criminal Procedure Code were inapplicable in respect of matters covered by Special Law (Army Act). The contention is that as in the Navy Act, which is applicable to this

case, there are no provisions regarding the release of under trial prisoners on bail, the above judgments of the Supreme Court holding that Section 428 of Cr.PC cannot be invoked in respect of persons convicted under Court-Martial do not govern the applicability of Sections 437 and 439 of the Cr.PC.

17. The argument appears to be plausible but on a closer scrutiny is based on a fallacy. The question of releasing a person on bail is a sub-topic under the main 'subject relating to confinement of prisoners pending trial. Chapter X of the Navy Act under the head of 'Arrest' makes provisions on various aspects of arrest, detention and custody of the offenders covered by the Act. Section 83 of the Navy Act provides for Power of Chief of Naval Staff, every officer in command of a fleet or squadron of ships of the Indian Navy or of any ship of the Indian Navy or the senior officer present at a port or an officer having by virtue of sub-sections (2) and (3V of Section 93 to arrest any offender subject to naval law under warrant. Section 84 of the Navy Act makes provision for arrest without warrant under the stipulated circumstances. Sub-section (1) of Section 85 of the Navy Act provides that no person subject to naval law who is arrested under the Act shall be detained in naval custody without being informed, as soon as may be, of the grounds for such arrest. Sub-section (2) of Section 85 of the Navy Act contemplates that every person subject to naval law who is arrested and detained in naval custody shall be produced before his commanding officer or other officer prescribed in this behalf within a period of 48 hours of such arrest excluding the time necessary for the journey from the place of arrest to such commanding or other officer and further provides that no such person shall be detained beyond the said period without authority of such commanding or other officer. Section 86 mandates that the charge made against any person subject to naval law taken into custody shall without any unnecessary delay be investigated by the proper authority and as soon as may be either proceedings shall be taken for the trial or such person shall be discharged from custody. Section 87 of the Act mandates that the commanding officer shall be responsible for the safe custody of every person who is in naval custody on board in his ship or in his establishment.

18. Further, Chapter IV of the Navy (Discipline and Miscellaneous provisions) Regulations 1965 contains elaborate provisions as to arrest of a person against

whom Charges are brought and also makes provisions for release of such persons. Sub-clause (2) Regulation 89 of Regulations, 1965 reads as follows:

'2. If the Commanding Officer considers the cause for placing an officer under arrest to be of such a nature as to necessitate its being brought before a Court-Martial, but if circumstances of the service should render it necessary that the officer under arrest should be released without the withdrawal of the charge against him, he may so release him, and the officer or sailor shall return to his duty accordingly without prejudice to his future trial or the enquiry into the charge on which he was placed under arrest.

19. Clause (3) of Regulation 89 prescribes that the Commanding Officer shall take care that no more restraint is put upon his personal liberty than the discipline of the Service requires and the nature of his offence may render expedient.

20. Explanation to this provision makes it clear that arrest is not a punishment but only a means adopted to ensure the safe custody of an offender until he can be dealt with adequately.

21. Regulation 92 of the Regulations, 1965 is significant which reads as follows:

'92. Naval Custody--(1)'The Commanding Officer shall be responsible for the safe custody, of every person, offender, or prisoner who is placed in naval custody in the ship or establishment.

(2) Such custody may be open or close, according to the circumstances of each case and at the discretion of the Commanding Officer.'

22. Explanation to Regulation 92(2) of the Regulations, 1965 explains that Open custody involves only such restraint as may be necessary for safe custody, whereas close custody involves deprivation of liberty and continuous supervision and is equivalent to confinement in the sense in which it is used in subsection (2) of Section 151 of the Act.

23. Thus, it cannot be said that under the provisions of the Navy Act including the regulations made under Section 184 of the Act, there is no provision regarding

confinement of a person or release of person pending trial. The absence of specific provision for bail is immaterial inasmuch as there are elaborate provisions on the broad topic regarding arrest and detention of a person subject to Naval law during investigation and pending trial of the offender. The question of bail is one of the sub-topics of the broader subject of detention. At any rate, a look at the Navy Regulations referred to above would show that there is even a provision for releasing a person pending trial under certain circumstances with certain restrictions which is described as 'open arrest' as against 'close arrest' which is equivalent to complete confinement.

24. In fact, the Madras High Court in the case of Lt.Col.Sp. Shartna v. Union of India, 1990 MLJ Reports (Criminal) 387, has held that the system of granting bail as known to civil law cannot be introduced in military law.

25. At any rate, a reading of Section 5 of the Criminal Procedure Code would disclose that unless there is a special provision to the contrary in the special law concerned and if the special law is a complete code in itself providing for investigation, enquiry and trial of offences as is the case in the Navy Act, the provisions of the Criminal Procedure Code stand completely excluded. In view of such exclusion of the code in its entirety subject to any exception made in the special law, a particular provision regarding bail under Sections 437 and 439 of Cr.PC cannot be invoked and applied on the ground of absence of provisions in the Navy Act exactly corresponding to the said sections in the Code of Criminal Procedure.

26. These provisions in the Navy Act and the Regulations promulgated under Section 184 of the Act can be considered as parallel to the provisions in the Criminal Procedure Code pertaining to arrest, detention and bail though not identical with them. Thus, there is no substance in the contention that the provisions under Sections 437 and 439 of Cr.PC can be invoked in respect of bail relating to persons subject to Naval law notwithstanding the provisions in Section 5 of the Criminal Procedure Code.

27. In the result, the petition is dismissed as not maintainable.

28. Before I close the case, I record my appreciation for the valuable assistance rendered by the learned senior Counsel Sri C. Padmanabha Reddy as amiciis curie.

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