

The State Vs. Major Singh and Kishan Singh and ors.

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Court : Punjab and Haryana

Decided On : Jul-21-1971

Reported in : 1972CriLJ1118

Judge : Gopal Singh, J.

Appellant : The State

Respondent : Major Singh and Kishan Singh and ors.

Judgement :

ORDER

Gopal Singh, J.

1. Shri Prithipal Singh Grewal, Judicial Magistrate 1st Class, Moga committed for trial on November 2, 1968 to the Court of Session. Major Singh, Gurnam Singh, Kikkar Singh. Nachittar Singh and Puran Singh, Puran Singh is a soldier in the army. All the five accused were committed for trial under Section 307 read with Section 149, Indian Penal Code, and under Section 148, Indian Penal Code. Major Singh, Kikkar Singh and Puran Singh were also committed for trial for offence under Section 27 of the Arms Act. The case was committed for trial to the Court of Shri Shanti Swarupa, Additional Sessions Judge, Ferozepore. Validity of the order of commitment dated November 2, 1968 was impugned on the ground that Puran Singh being a soldier in the army, all the accused could not be proceeded against without the permission of the Officer Commanding of the 17th Battalion of the

Punjab Regiment, in which Puran Singh was employed as enjoined by Rule 3 of the Criminal Courts and Court Martial Adjustment of Jurisdiction Rules, 1952, and that permission having not been obtained under that Rule prior to the commencement of the commitment proceedings, those proceedings were without jurisdiction and null and void. The learned Additional Sessions Judge on the above plea raised has reported the matter under Section 438 of the Code of Criminal Procedure for the commitment order being quashed.

2. The question that arises for consideration is whether commitment proceedings conducted against all the accused including Puran Singh, accused, who is serving in the army, without getting permission from the officer Commanding in respect of Puran Singh under Rule 3 of the Rules are not valid proceedings and the commitment order passed therein is vitiated and unsustainable. The question whether trial of such a person employed in the army with other persons not employed therein vitiates the trial came up before a Full Bench of this Court in *Ajit Singh v. State of Punjab* AIR 1970 Punj & Har 351. It was held that trial of several accused persons including an accused employed in the army will not be illegal because of non-compliance with the provisions of Rule 3 of the said Rules and that conducting of trial without the permission of the army authorities concerned will not vitiate the trial and render the conviction illegal.

3. A fortiori, commitment proceedings resulting in the commitment order for trial of the accused including Puran Singh, Soldier-accused, could not be held to vitiate the commitment order. It was held by the Full Bench that non-compliance with Rule 3 of the Rules was an irregularity and not an illegality and consequently the final judgment or order made in the proceedings conducted in the absence of permission of the army authorities concerned under the said Rule, could not render the conviction bad in law.

4. The very fact that the army authorities handed over Puran Singh, accused to Criminal Courts for his prosecution for the offences said to have been committed by him inclines me to hold that they waived their right exercisable in their discretion to grant or withhold permission for his prosecution by those courts. This waiver on their part virtually amounts to grant of permission for such prosecution

and thus non-compliance with Rule 3 of the Rules is inconsequential in its effect upon the validity of commitment proceedings.

5. For the reasons recorded above, the commitment order recommended to be quashed could not be held to be vitiated because of want of permission under Rule 3 of the Rules. The recommendation of the Additional Sessions Judge is declined and the case is sent back to him for trial.

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