

Murari Lal Vs. K.C. Aneja

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SooperKanoon Citation : sooperkanoon.com/754498

Court : Rajasthan

Decided On : Mar-23-1982

Reported in : 1982CriLJ2082; 1982()WLN254

Judge : N.M. Kasliwal, J.

Appellant : Murari Lal

Respondent : K.C. Aneja

Judgement :

ORDER

N.M. Kasliwal, J.

1. An interesting question of law has been raised in this revision petition,
2. The petitioner Murari Lal filed a private complaint in the court of Judicial Magistrate First; Class, Bharatpur, under Sections 332, 353, 324, and 504 IPC against the non-petitioner Capt. K. C. Aneja. The learned Magistrate after preliminary inquiry found the case under Sections 323, 324 and 504 IPC prima facie established against the accused and took cognizance under those offences. The accused appeared before the learned Magistrate in pursuance to summons issued to him after the cognizance having been taken by the learned Magistrate. The trial in the case was proceeded with as a warrant case instituted otherwise than on police report.

3. The learned Magistrate recorded the statement of the complainant Murari Lal and in the meantime the Chief Ordnance Officer, C. D. O. Amunition Depot, Bharatpur sent a letter No. 2100/1/X/HQ dated 18th April, 1980, making a request for handing over the accused for being tried by court martial. The request made by the Chief Ordnance Officer was opposed by the complainant mainly on the ground that a cross-case lodged by Aneja against the complainant petitioner Murari Lal was pending trial before the court of Chief Judicial Magistrate, Bharatpur and as such the present case which had arisen out of the same occurrence and was a cross-case should have been tried also by the same Court and not by the proceedings under the Army Act. The learned Magistrate took the view that in view of the provisions contained in Section 475, Cr. P.C. read with the provisions of Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1952 and Section 125 of the Army Act, his jurisdiction has come to an end and he was bound to send the accused for being tried by Court Martial when such request is made by the Commanding Authority of the Amunition Depot. In this view of the matter, the learned Magistrate rejected the objection raised by the complainant and directed that the accused may be handed over for trial to the Commanding Authority and statement of the offence and the relevant papers may also be sent along with the accused. Aggrieved against this order the complainant has filed this revision before this Court.

4. It was contended by the learned Counsel for the petitioner that the view taken by the Magistrate that he had no jurisdiction at all to decide whether it was a proper case or not to deliver the accused, is not sound and is against the language used in Sub-section (1) of Section 475, Cr. P.C. It is also contended that the provisions of Section 475, Cr. P.C. were not applicable in the present case as the case was instituted on a private complaint and was not instituted on a police report. It was also contended that no charge-sheet had yet been served on the accused in the present case and before such stage has not been reached in the case, the learned Magistrate was not empowered under Section 475, Cr. P.C. to deal with the question of delivery of the accused for being tried by a court martial,

5. On the other hand, learned Counsel for the non-petitioner placed reliance on Rule 3 and Rule 6 of the Criminal Courts and Court Martial (Adjustment of

Jurisdiction) Rules, 1952 (hereinafter referred to as 'the Court Martial Rules'). It was contended that from a perusal of the aforesaid Rules it would be clear that where a person subject to Military, Naval, or Air Force law is brought before a Magistrate and charged with an offence for which he is liable to be tried by a court martial, such Magistrate shall not proceed to try such person unless he is of the opinion, for reasons to be recorded, that he should so proceed without being moved thereto by competent. Military, Naval or Air Force authority. In case he wanted to proceed, it was necessary for him to give a written notice to the Commanding Officer of the accused and only after the expiry of a period of 7 days, from the date of service of such notice he could have proceeded with the trial of the case. It is further contended that if a Magistrate was moved by a competent Military, Naval or Air Force authority under Clause (b) of R, 3 under the Court Martial Rules, such Magistrate, if he had not done any act or made any order referred to in Rule 4, he shall stay the proceedings and if the accused was in his power or under his control, deliver him, with the statement prescribed in Sub-section (1); of Section 476 Cr. P.C. It is thus contended that the learned Magistrate had taken a correct view in holding that after a request made by the Commanding Officer to try the accused under the Court Martial, the learned Magistrate was bound to stay the proceedings and has no option left except to deliver the accused to the Commanding Officer. Reliance is placed on C. Ramanujan v. State of Mysore AIR 1962 Mys 196 : 1962 (2) Cri LJ 389 and Gopinathan v. State of Madhya Pradesh : AIR 1963 MP249 .

6. I have given my careful consideration to the arguments advanced by learned Counsel for the parties. It would be profitable to reproduce Section 475(1) in order to decide the arguments raised by the learned Counsel for the petitioner:

Section 475. Delivery to commanding officers of persons liable to be tried by Court Martial- (1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950) and any other law relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law or such other law, shall be tried by a Court to which this Code applies or by a court-martial and when any person is brought before a

Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court martial, such magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offences of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest Military, Naval or Air Force station, as the case may be, for the purpose of being tried by a Court-martial.

7. This Section has been enacted for delivery to Commanding Officer all persons liable to be tried by Courtmardal. Under this Section the Central Government is authorised to make rules consistent with this Code and the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and any other law, relating to armed forces of the Union. The Court-martial Rules have been framed in exercise of the powers conferred under this Section. Thus, the provisions of Section 475 Cr. P.C. are to be read along with the provisions of the Court-martial Rules. Rule 3 and Rule 6 of the Court-martial Rules read as under:

Rule 3. Where a person subject to Military. Naval or Air Force law is brought before a Magistraete and charged with an offence for which he is liable to be tried by a court martial, such Magistrate shall not proceed to try such person or to inquire with a view to his commitment for trial by the Court of Session or the High Court for any offence triable by such Court, unless.

(a) he is of opinion, for reasons to be recorded, that he should so proceed without being moved thereto by competent Military, Naval or Air Force authority; or

(b) he is moved thereto by such authority.

Rule 6. Where a Magistrate has been moved by competent Military, Naval or Air Force authority, as the case may be, under Clause (b) of Rule (3) above, and the Commanding officer of the accused or competent Military, Naval or Air Force authority, as the case may be, subsequently, gives notices to such Magistrate that, in the opinion of such authority the accused should be tried by a court-martial, such Magistrate, if he has not before receiving such notice done any act or made any order referred to in Rule (4) above, shall stay proceedings and, if the accused

is in his power or under his control, shall in the like manner deliver him, with the statement prescribed in Sub-section (1) of Section 549 of the said Code to the authority specified in the said subsection.

8. A perusal of the above rules would show that in cases where a person subject to Military, Naval or Air Force Law is brought before a Magistrate and charged with an offence for which he is liable to be tried by Court-martial, such Magistrate should not proceed (sic) proceedings should be instituted. Ordinarily in a case where the accused person is subject to Military. Naval or Air Force law and charged with an offence for which he is liable to be tried by a court-martial, such magistrate is not competent to proceed to try such person and if he holds a different opinion then he has to record reasons for so proceeding and in that case before proceeding he has to give a written notice to the Commanding Officer of the accused. A perusal of the order of the learned Magistrate clearly shows that he did not record any opinion for reasons that he wanted to so proceed himself and take cognizance in the case without being moved by competent authority. Actually he never intended to do so. Thus, as already observed by me above, the provisions of Rule 6 came into operation as soon as he was moved by an officer commanding of the command for delivering the accused for being tried under the court-martial and there was no option left with him except to stay the proceedings and to deliver- 'he accused for trial by the court-martial. I find support in my aforesaid view by the decisions already cited above i.e. C. Ramanujan's case 1962 (2) Cri LJ 389 (Mys) (supra) and Gopinathan's case 1963 (2) Cri LJ 161 (Madh, Pra) (supra).

9. I see no force in the contention of the learned Counsel for the petitioner that the provisions of Section 475 Cr. P.C. are not applicable in a case where the case is instituted on a private complaint. There is no such restriction at all in the language used in Section 475 Cr. P.C. This provision deals with delivery to commanding officer of persons liable to be tried by Court-martial. It applies to every case of a person brought before a Magistrate. It makes no distinction whether it is a complaint case or a case instituted on a police report or otherwise.

10. I also find no force in the contention of the learned Counsel for the petitioner that the stage of delivering the accused under Section 475 Cr. P.C. only arises when a charge-sheet is framed against the accused and not earlier. The word used in Sub-section (1) of Section 475 Cr. P.C. is not 'charge-sheeted' but only 'charged with an offence.' This, in my opinion, when any person is brought before a Magistrate and charged with an offence, for which he is liable to be tried, only means that there are allegations against such a person charging with an offence. Even otherwise I find no reason to take the view that it is only after a charge-sheet is served on a person and thereafter alone he could be delivered to Commanding Officer for being tried by a court-martial. A request in this regard can be made by the Commanding Officer even when cognizance is taken by the Magistrate and a person is brought before him for trial. There appears to be no sense in taking the view that the intention of the legislature under this provision would have been to deliver the accused to the Commanding Officer of the Unit only after a charge is read over to the accused. Any proceedings taken by the Magistrate after such request is made to him by the Commanding Officer would be an exercise in futility in case the Magistrate was bound to stay the proceedings and to deliver the accused for being tried by a court-martial.

11. Thus, I find no force in any of the contentions raised by the learned Counsel for the petitioner and the revision is accordingly dismissed.