

Rachpal Singh Vs. Summary General Court Martial and ors.

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Court : Jammu and Kashmir

Decided On : Dec-20-1971

Reported in : 1973CriLJ1036

Judge : S. Murtaza Fazl Ali, C.J. and; Jaswant Singh, J.

Appellant : Rachpal Singh

Respondent : Summary General Court Martial and ors.

Judgement :

Jaswant Singh, J.

1. This petition which challenges the trial and conviction of the petitioner under Section 302 of the Indian Penal Code by a Summary General Court Martial has been referred to this bench by one of us for it raises an important question relating to the interpretation of Section 70 of the Army Act, 1950 (Act XLVI of 1950), hereinafter called 'the Act', on which there is no authoritative pronouncement either of the Supreme Court or of this Court.

2. It appears that the petitioner who was a Rifle Man belonging to 9 J. and K. Rifles, a part of the Defence Services of the Union of India, and as such subject to the Act, was charged with the offence of murder under Section 302 of the Indian Penal Code for causing the death while on active service, at field, of one Mohamad Hussain, a civilian, on the night intervening 12th and 13th of June,

1968. He was tried by a Summary General Court Martial (consisting of three officers viz., respondents Nos. 1 to 3) convened by the General Officer Commanding 25, Infantry Division, respondent No. 5, vide his order dated 12th March, 1969. The Court Martial vide its order dated 3rd April, 1969, found the petitioner guilty of the said offence and sentenced him to imprisonment for life. The finding and sentence of the Court Martial were confirmed by respondent No. 5 by his order dated 1st May, 1969,

3. Aggrieved by this conviction and sentence the petitioner filed the aforesaid petition before this Court on 22nd July, 1970, challenging the jurisdiction of the Summary General Court Martial to try him and praying that a writ of certiorari quashing the aforesaid orders dated 3rd April, 1969, and 1st May, 1969, of the Summary General Court Martial and of the confirming authority respectively, and a writ in the nature of Habeas Corpus directing his release from the Central Jail, Jammu, where he is detained, be issued.

4. Appearing in support of the petition Mr. S.P. Gupta, has reiterated the contention raised in the petition that the offence of murder with which the petitioner was charged having been committed in the State of Jammu and Kashmir and not being a civil offence, as defined in Section 3(ii) read with Section 3(viii) of the Act, was not triable by the Summary General Court Martial but was exclusively triable by an ordinary court of criminal justice in the State.

5. A close scrutiny of the contention, which is based on the heading of Section 70 of the Act, would show that it has no force. Sections 3, 69 and 70 of the Act in so far as they are relevant for the purpose of this petition read as follows:

3. Definitions In this Act, unless the context otherwise requires.

XX XX XX(ii) 'Civil offence' means an offence which is triable by a criminal court.

XX XX XX(viii) 'Criminal Court means a court of ordinary criminal justice in any part of India, other than the State of Jammu and Kashmir.

XX XX XX(xvii) "Offence' means any act or omission punishable under this Act and includes a civil offence as hereinbefore defined.

69. Civil Offences Subject to the provisions of Section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this Section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say:

(a) If the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment other than whipping, assigned for the offence, by the aforesaid law and such less punishment as in this- Act mentioned.

XX XX XX70. Civil Offences not triable by court-martialA person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial unless he commits any of the said offences

(a) while on active service, or

(b) at any place outside India, or

(c) at a frontier post specified by the Central Government by notification in this behalf.

Explanation In this Section and in Section 69, 'India' does not include the State of Jammu and Kashmir.

If the offence of murder is not a civil offence as is contended by Mr. S.P. Gupta, I fail to understand how the jurisdiction of the court-martial is excluded because the heading of Section 70 speaks of Civil offences not triable by a court-martial. Again though Section 70 of the Act is headed as 'civil offences not triable by court-martial', ' the body of the Section makes no mention of a civil offence but makes mention of the commission of an offence of murder by a person subject to the Act against a person not subject to military, naval or air force law or culpable homicide not amounting to murder against such a person or of rape in relation to such a

person.

6. It is also now well settled that headings or marginal notes are not a part of a statute and cannot control the interpretation of the words of a Section particularly when the language of the Section is clear and unambiguous. Reference in this connection may be made to two decisions of the Supreme Court in *Dr. Sham Lai Narula v. Commr. of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala* : [1964]53ITR151(SC) and *Chandroji Rao v. The Commr. of Income Tax, M. P., Nagpur* : [1970]77ITR743(SC) .

7. If Section 70 of the Act does not contain anything to oust the jurisdiction of the court to try the offences of murder in the circumstances indicated above and the headings or the marginal notes cannot control the meaning of a Section of a statute, the jurisdiction of the court-martial cannot be said to be excluded. It will also be noticed that Section 70 consists of two parts the principal part and the exceptions. Whereas the first part ousts the jurisdiction of a court-martial in respect of a person subject to the Act who commits any of the three specified offences viz., offence of murder against a person not subject to military, naval, or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, the second part confers jurisdiction on a court-martial to try a person subject to the Act, when he commits any of the aforesaid offences of murder, culpable homicide not amounting to murder, or rape in relation to a person not subject to the Act while on active service or at any place outside India or at a frontier post specified by the Central Government by notification in this behalf. In the latter case he has to be deemed to be guilty of an offence against the Act and is triable by a court martial.

8. In the instant case the petitioner has himself admitted in Para 1 of his petition that he was on active service when he is alleged to have committed the offence. It cannot also be disputed that in view of the Explanation to Section 70, the State of Jammu and Kashmir has to be treated as outside India. Thus the offence of murder for which the petitioner was arraigned having been allegedly committed by him while on active service and at a place which by virtue of the Explanation to Section 70 falls outside India, has to be treated as an offence against the Act and

as such triable by the Court Martial. It is, therefore, difficult to understand how the jurisdiction of the Court Martial could be said to be excluded in the instant case.

9. The Full Bench decision of this court in State v. Ram Lakhan AIR 1971 J & K 54 : 1971 J &K; LR 140 : 1971 Cri LJ 470 (FB), on which strong reliance has been placed by the learned Counsel for the petitioner is clearly distinguishable. In that case the accused, it would be noticed, was neither charged with nor was he proceeded against in the criminal court for any of the aforesaid offences of murder, culpable homicide not amounting to murder or of rape but was charged for offences contrary to Secs. 304-A, 279, and 337 of the Ranbir Penal Code which manifestly fell out of the ambit of Section 69 of the Act in so far as our State is concerned. Moreover, while alluding to the three categories of offences envisaged by Chapter VII of the Act, it was clearly observed in that decision that if a case fell within the Exceptions as envisaged by Section 70 of the Act, it would be triable by a Court Martial. It would further appear from the Annexures to the petition that in the instant case the petitioner was charged with an offence under Section 302 of the Indian Penal Code and not of the Ranbir Penal Code and as such was not amenable to the jurisdiction of a Criminal Court in the State.

10. I am, therefore, clearly of the opinion that the jurisdiction of the Summary General Court Martial constituted by respondent No. 5 not having been excluded by the Act either expressly or by necessary intendment, it was fully competent to try the petitioner.

11. In the result the petition fails and is hereby dismissed.

S.M. Fazl Ali, C.J.

12. I agree.