

**State Vs. Ram Lakhan**

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**Court :** Jammu and Kashmir

**Decided On :** Jul-27-1970

**Reported in :** 1971CriLJ470

**Judge :** S.M. Fazl Ali, C.J.,; Jaswant Singh and; Anant Singh, JJ.

**Appellant :** State

**Respondent :** Ram Lakhan

**Judgement :**

**Jaswant Singh, J.**

1. While dealing with civil original suit No. 70 of 1967 entitled Shri Harbans Lai and Ors. v. Union of India and Anr. I came across the following order passed on March 9, 1968, by the Sub Registrar Judicial Magistrate 1st Class, Jammu, in criminal challan No. 37 of 1966, preferred Under Sections 304-A, 279, 337 of the Ranbir Penal Code by the S. H. O, Police Station Saddar Jammu, against the respondent who was subject on the relevant date to the Army Act (Act XLVI of 1950) hereinafter called 'the Act':-

A. P. P. is present in person. A. P. P. has confessed that the accused is a military personnel and under the Indian Army Act, this Court has no jurisdiction to try the case against him. Therefore this Challan is dismissed as without jurisdiction. The file to go to records.

Since I held grave doubts about the correctness of the aforesaid order I gave a direction in exercise of the revisional power of the court that a rule be issued to the respondent to show cause why the said order be not set aside and the case remitted to the trial court for further enquiry and disposal in accordance with law.

2. Pursuant to the rule the respondent appeared before the Hon'ble Chief Justice before whom the matter originally came up for hearing and submitted that the order passed by the learned trial magistrate was correct and did not warrant any interference in view of a single bench decision of this Court In *Bimla Devi v. G. L. Bakshi* A.I.R. 1960 I and K 145.

3. The learned Counsel appearing on behalf of the State on the other hand placing reliance on a Division Bench decision of this Court in *Major A. J Anand v. State* A.I.R. 1960 J and K. 139 seems to have contended before the Hon'ble Chief Justice that the order passed by the learned Magistrate was palpably illegal and could not be sustained. His Lordship, however, being of the view that the case involved substantial questions of law as to the interpretation of Sections 125, 126 and 3(ii) of the Act and that the aforesaid Division Bench decision of the court required reconsideration as it did not appear to have noticed Section 549 of the Code of Criminal Procedure and the rules framed there under directed that the case be placed for hearing before a Full Bench of this Court. The case has accordingly been put up before this bench.

4. Appearing for the State the learned Assistant Advocate General has submitted that a statute ousting jurisdiction of an ordinary court of justice has to be strictly construed and that if the jurisdiction is intended to be ousted by the Legislature it must be done by express words or a clear intendment and that since the Act does not contain express words or necessary intendment excluding the jurisdiction of the ordinary criminal courts in offences of the kinds which formed the subject matter of the aforesaid police charge-sheet the trial magistrate was not right in dismissing the challan and discharging the accused.

5. He has further urged that as in view of the definitions of the words 'India' and 'Civil offence' occurring in Sections 69 and 70 of the Act, a court martial had no jurisdiction to take cognizance of and try the offences of which the respondent was

arraigned, and the matter could only be taken cognizance of and tried by an ordinary court of criminal justice in the State. While placing strong reliance on the decision of the Supreme Court in *Som Datt Datta v. Union of India* : 1969 CriLJ663 as also on the decision of a Division Bench of this Court reported in A.I.R. 1960 J and K 139 (Supra) he has tried to assail the judgment of the single Judge of this Court reported in A.I.R. 1960 J and K 145 (Supra) where Hon'ble Nair, J. observed:

The argument (of the learned Counsel for the complainant) is that as 'civil offence' is defined as one triable by a criminal court and as a criminal court situate in the State of Jammu and Kashmir is not a 'Criminal Court' within the meaning of Section 3(ii), an offence triable by a court of Criminal Justice in the State of Jammu and Kashmir is not a 'civil offence' as defined in the Act. This line of reasoning has led to the claim that Section 69 which deals with the commission of 'Civil offence' does not have operation so far as courts of criminal justice in the State of Jammu and Kashmir are concerned. Further support for the plea is sought from the Explanation to Section 70 of the Act which runs:

In this Section and in Section 69 'India' does not include the State of Jammu and Kashmir. It is frankly admitted that the unmistakable result of acceptance of this interpretation of the provisions of the Act will be to enable the courts of criminal justice in the State of Jammu and Kashmir to try the officers and men of the Indian Army for all offences, under the Ranbir Penal Code and other Penal statutes of the State without being affected in any manner by the provisions of the Act. This will be a drastic result. This apart, I think the reasoning which has prompted the arguments already adverted to is unsound. No doubt, the explanation to Section 70 of the Act excludes the State of Jammu and Kashmir from 'India' for purposes of Sections 69 and 70 which means that a 'civil offence' committed in the State of Jammu and Kashmir will for the purpose of Section 69 be an offence committed 'beyond India'. This position does not, however, afford any valid foundation upon which the aforesaid-contentions on behalf of the petitioner can properly rest. We, therefore, have to ascertain the precise scope and true interpretation of the definition of the expressions 'Civil Offence'.

XX XX XXA particular act or omission may or may not be an offence in the State of Jammu and Kashmir. But that is not the test for deciding whether it is a civil offence as defined in the Act.

The true criterion is whether the Act or omission constitutes an offence triable by any court of ordinary criminal justice in any part of India other than the State of Jammu and Kashmir. If it is triable by such a court of Criminal: Justice it will be a civil offence within the meaning of the Act.

XX XX XXIt is irrelevant to consider whether or not a court of ordinary criminal justice in a place beyond India where the act or omission took place could under the law in force there try the person who was responsible for the act or omission. Applying the above proposition to the instant case, I find it extremely difficult to hold that the respondents are not accused of a 'civil offence' as defined in the Act. No doubt the offences mentioned in petitioner's complaint in respect of which process was issued to the respondents are those which fall Under Sections 392, 448 and 506 of the Ranbir Penal Code. . But these Sections are only a verbatim reproduction of the corresponding sections of the Indian Penal Code which is in force in the whole of India except the State of Jammu and Kashmir. If these offences had been committed say, in Uttar Pradesh, they would have been triable by a court of ordinary criminal justice situate in Uttar Pradesh. Therefore, the acts complained of by the petitioner are offences triable by a criminal court in a part of India other than the State of Jammu and Kashmir.

This is sufficient to constitute the act 'civil offence' within the intendment of the Act. Such civil offences could be committed as already stated, in India as well as beyond India. The mere circumstances that the acts which constitute the offences in the present case have allegedly been committed in the State of Jammu and Kashmir which must be deemed to be beyond India so far as the application of Section 69 of the Act is concerned does not afford even a semblance of justification for holding that 'civil offences' within the meaning of Section 69 of the Act have not been alleged to be committed by the accused persons.

I, therefore, hold that the complaint of the petitioner discloses that the accused persons have committed 'civil offence' under the Act. And if a person subject to the

Act commits a 'civil offence' he shall by virtue of Section 69 of the Act, be deemed to be guilty of an offence against the Act. and if charged under that Section shall be liable to be tried by a court martial. There is no express provision in the Act which ousts the jurisdiction and forbids the ordinary criminal courts to try offences committed by persons subject to the Act.

XX XX XXXX XX XXSection 125 of the Act cannot in my opinion apply when a court of criminal justice in this State has jurisdiction to try the offence. But this does not mean that courts of ordinary criminal justice in this State have unqualified power and authority to try 'civil offences' committed by Army personnel within the State. in spite of the admitted fact that the provisions of Section 69 of the Act apply to this State also. Section 549 of the Cr.PC in force in the State of Jammu and Kashmir and the rules framed under that Section show a way out of what could otherwise be characterised as a somewhat unique situation. XX XX XX

I am clearly of opinion that notice issued under Rule 3 of the rules framed Under Section 549. Cr.PC in force-in the State of Jammu and Kashmir must be acted upon and the proceeding before the Magistrate must be stayed.' He has lastly urged that the rules framed Under Section 549 of the Code of Criminal Procedure in force in the State being inconsistent with the Act ceased to be operative with the passing of the Act and that the aforesaid challan could not in any event have been dismissed' even according to the said rules.

6. Mr. S. L. Koul appearing on. behalf of the respondent has on the other hand urged that the jurisdiction of a. court-martial (constituted under the-Act) to try cases under the Ranbir Penal Code was not taken away and that a court martial had in view of Section 691 of the Act concurrent jurisdiction with an ordinary criminal court of the land to take cognizance of and try offences-falling under the said Code and according to Section 125 of the Act the discretion to decide before which court ordinary criminal court or court martial the-proceedings should be instituted lies with the Officer Commanding the army, army corps, division or independent brigade in which the accused person may be serving or other prescribed Officer.

7. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties: and have carefully studied the law bearing on the matter.

8. Three important questions arise for consideration in this case:

(1) Whether the Act ousts the jurisdiction of ordinary courts of criminal justice exercising jurisdiction in India to try offences other than those mentioned in Sections 34 to 68 of the Act, (2) whether a court martial and a court of ordinary criminal justice in the State of Jammu and Kashmir have each jurisdiction in respect of the offences for which the respondent was proceeded against in the court of the Sub-Registrar. Judicial Magistrate Jammu. and (3) whether the impugned order has any legal basis.

9. The first question does not present much difficulty. As pointed out by their Lordships of the Supreme Court in *E. G. Barasay v. State of Bombay* : 1961 CriLJ828 and reiterated in A.I.R. 1963 SC 414, Chapter VI of the Act envisages three categories of offences namely:

(1) Offences committed by a person subject to the Act triable by a court martial in respect whereof specific-punishments have been assigned. These offences are enumerated in Sections 34 to 63 of the Act and are exclusively triable by a court martial.

(2) Civil offences committed by the said person at any place in or beyond India but deemed to be offences committed under the Act and if charged Under Section 69 of the Act, triable by a court martial. As would be seen presently both an ordinary criminal court as well as a court martial have jurisdiction to try the person committing such an offence anywhere in India excepting the State of Jammu and Kashmir. The conflict of jurisdiction that may sometime arise in respect of the offences falling under this category appears to have been visualised by the framers of the Act and they have made ample provision for resolving and adjusting the conflict by means of Sections 125 and 126 of the Act which read:

125. When a criminal court and court martial have each jurisdiction in respect of an offence it shall be in the discretion of the officer commanding the army, the army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and if that officer decides that they should be instituted before a court martial to direct that the accused person shall be detained in military custody.

126. (1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice require the officer referred to in Section 125 at his option either to deliver over the offender to the nearest Magistrate to be proceeded against according to law or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.

Under the Scheme of these two Sections it is left in the first instance, to the discretion of the designated officer to decide before which Court the proceedings shall be instituted and if the officer decides that they should be instituted before a court-martial the accused person is to be detained in military custody. but if a criminal Court is of opinion that the said offence shall be tried before itself, it may issue the requisite notice Under Section 126 either to deliver over the offender to the nearest Magistrate or to postpone the proceedings pending a reference to the Central Government. On receipt of the said requisition the officer may either deliver over the offender to the said Court or refer the question of proper Court for the determination of the Central Government whose order shall be final.

10. It has also to be borne in mind in this connection that trial by a a court-martial is not a bar to a subsequent trial by a Criminal Court for Section 127 of the Act provides that a person convicted or acquitted by a Court martial can with the previous sanction of the Central Government be tried again by a criminal court for the same offence or on the same facts, the only limitation being that in awarding

punishment a criminal court is required to have regard to the punishment already undergone by the offender for the said offence.

11. The third category is of offences of murder and culpable homicide not amounting to murder or rape committed by a person subject to the Act against a person not subject to the military law. These offences, subject to a few exceptions are not triable by a Court martial but are triable by ordinary criminal courts.

12. Thus it is clear that there is no express provision in the Act which ousts the jurisdiction of and forbids the ordinary criminal courts to try offences other than those mentioned in Sections 34 to 68 of the Act committed by a person subject to the Act. I am fortified in this view by the following observations made by their Lordships of the Supreme Court in the ruling reported in A.I.R. 1961 SC 1762 (1772) (Supra):-

The scheme of the Act, therefore is self evident. It applies to offences committed by army personnel described in Section 2 of the Act, it creates new offences with specified punishments, imposes higher punishments to pre-existing offences and enables civil offences by a fiction to be treated as offences under the Act, it provides a satisfactory machinery for resolving the conflict of jurisdiction. Further it enables, subject to certain conditions, an accused to be tried successively both by court martial and by a criminal court. It does not expressly bar the jurisdiction of criminal courts in respect of acts or omissions punishable under the Act if they are also punishable under any other law in force in India, nor it is possible to infer any prohibition by necessary implication. Sections 125, 126 and 127 exclude any such inference, for they in express terms provide not only for resolving conflict of jurisdiction between a criminal court and a court martial in respect of the same offence but also provide for successive trials of an accused in respect of the same offence.

At another place in the said decision their Lordships observed as follows:-

Section 52 does not create new offences, but only prescribes higher punishments if the said offences are tried by a court martial. Where the accused are charged for having been parties to a criminal conspiracy to dishonestly or fraudulently



misappropriate or otherwise convert to their own use the military stores and also for dishonestly or fraudulently misappropriating the same, the said acts constitute offences under the Indian Penal Code and under the Prevention of Corruption Act, they are also offences Under Section 52. Though the offence of conspiracy does not fall Under Section 52 it being a civil offence, shall be deemed to be an offence against the Act by the force of Section 69. The 't offences are triable both by an ordinary criminal court having jurisdiction to try the said offences and a Court martial. To such a situation Sections 125 and 126 are clearly intended to apply. If the designated officer in Section 125 has not chosen to exercise his discretion to decide before which Court the proceedings shall be instituted, there is no occasion for the Criminal Court to invoke the provisions of Section 126. Section 12G (1) presupposes that the designated officer has decided that the proceedings shall be instituted before a Court martial and directed that the accused person shall be detained in military custody. If no such decision was arrived at, the Army Act could not obviously be in the way of a criminal court exercising its ordinary jurisdiction in the manner provided by law.

I am further fortified in this view by a recent decision of the Rajasthan High Court in *U. G. Menon v. State of Rajasthan*, where it has been held that Sections 125 and 126 of the Army Act make it manifest that the discretion exercised by the military authority about the forum of the trial of a military personnel, cannot be said to be final and the criminal court is within its right to question it. The mere intimation of the Commanding Officer to the criminal court that the accused would be tried by the court martial does not divest the ordinary criminal court of its jurisdiction if that court is of the view that the accused should be tried before itself. In that event Section 126 empowers a criminal court to require the military officer to deliver the offender to it or to postpone proceedings pending reference to the Central Government. When such a request, is made the military officer has either to comply with it or has to make a reference to the Central Government whose decision in the matter shall be final for the purpose of determining the venue of the trial. The discretion exercised by the military authorities is always subject to the final orders of the Central Government.

13. I am, therefore, clearly of the view that the Act does not bar the jurisdiction of a criminal court in respect of acts or omissions punishable under the Act if they are also punishable under any other law in force in India or in respect of acts or omissions not punishable under the Act but made punishable under any other penal statute in force in India.

14. I now pass on to the consideration of the second question. For a proper decision of this question it is necessary to refer to Sections 69 and 70 of the Act which run as under:-

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; and

(b) in any other case, he shall be liable to suffer any punishment, other than imprisonment for a term, which may extend to seven years or such less punishment as is in this Act mentioned.

70. Civil offences not triable by court martial.- A 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.

A close and careful scrutiny of the first of these provisions i. e. Section 69 in the light of the abovementioned rulings of the Supreme Court makes it clear that it is only when a civil offence is also an offence under the Act or deemed to be an offence under the Act, that both an ordinary criminal court as well as a court martial would have jurisdiction to try the person committing the offence. It follows, therefore, that if the act or omission is not punishable under the Act as well as under any law in force in India or is not a civil offence which can be deemed to be an offence against the Act, a court martial would not have concurrent jurisdiction with an ordinary criminal court to try the person committing the offence and there would be no occasion for the applicability of Sections 125 and 126 of the Act, in conjunction with which Section 69 of the Act has to be read, according to the decision of the Bombay High Court in *E. G. Barsay v. State* A.I.R. 1958 Bom 354, which was upheld by the Supreme Court on appeal in A.I.R. 1961 SC 1762 (Supra), for these sections presuppose that in respect of an offence both a criminal court as well as a court martial have concurrent jurisdiction. Thus bearing in mind that an ordinary criminal court as well as a court martial would have concurrent jurisdiction by force of Section 69 of the Act only if the offence is a civil offence, let me now examine the position in the present case. It is (not) disputed that the offences for which the respondent was charged and proceeded against by the police were not offences under the Act. It remains to be seen whether these offences were civil offences and could be deemed to be offences against the Act by force of Section 69 of the Act because liability of a person subject to the Act to be tried by a court martial would arise only when he is accused of a civil offence and is charged therewith Under Section 69 of the Act. To ascertain whether the said offences were civil offences as contemplated by the Act we will have to refer to the dictionary of words and expressions used in the Act which is furnished by Section 3 of the Act. Section 3(ii) defines a 'civil offence' as meaning an offence which is triable by a criminal court. Section 3(viii) defines a criminal court as

meaning a court of ordinary criminal justice in any part of India other than the State of Jammu and Kashmir. Section 3(xvii) defines an offence as meaning an act or omission, punishable under the Act and includes a civil offence as hereinbefore defined. Thus it is evident that it is only offences which are triable by an ordinary criminal court in any part of India excepting the State of Jammu and Kashmir that have been classified as civil offences under the Act. Now it cannot be gainsaid that offences under the Ranbir Penal Code or offences created by any other Penal Statute enacted by the State Legislature and having operation in the State cannot be tried by a court of ordinary criminal justice in any other part of India outside the State. As acts or omissions punishable under the Penal Code are not triable by courts of ordinary criminal justice in the rest of India, they neither amount to civil offences as defined by Section 3(ii) read with Section 3(viii) of the Act nor can they be deemed to be offences against the Act by virtue of Section 69 of the Act but for which a court martial would not have jurisdiction to take cognizance of and try an offence which is triable by a court of ordinary criminal justice. Such being the situation the offences with which the respondent was charged were clearly not triable by a court martial and Sections 125 and 126 of the Act would have no applicability, for, as already stated it is well settled that these Sections presuppose that in respect of an offence both a criminal court as well as the courts martial have each jurisdiction. Reading Section 69 of the Act in the light of the definitions contained in Clauses (ii) and (viii) of Section 3 of the Act, it becomes absolutely clear that an offence triable by an ordinary court of criminal justice in Jammu and Kashmir is not a civil offence as contemplated by the Act. In these circumstances the conclusion is irresistible that a court martial could not have any jurisdiction in the present case.

15. Mr. Sham Lal has laid great stress on the Explanation to Section 70 of the Act which excludes the State of Jammu and Kashmir from the ambit of the word 'India' for the purpose of Sections 69 and 70 of the Act and has emphasised that the respondent who was charged with offences under the Ranbir Penal Code must be deemed to be guilty of offences against the Act and was liable to be tried by the court martial. The contention of Mr. Sham Lai is clearly fallacious for it ignores that even Under Section 69 of the Act a person subject to the Act who commits an offence beyond India can be deemed to be guilty of an offence against the Act. As

already seen the offences with which the respondent had been charged in the instant case were not civil offences as contemplated by the Act and the legal fiction created by Section 69 thereof could not be invoked. I am, therefore, unable to accede to the contention of Mr. Sham Lai. It appears to me that the only purpose of appending an explanation to Section 70 and excluding the State of Jammu and Kashmir from the purview of the word 'India' occurring in Sections 69 and 70 of the Act was to bring these Sections in line with Section 3(ii) read with Section 3(viii) of the Act.

16. The contention of Mr. Sham Lai based on the single bench authority of this Court reported in A.I.R. 1960 J and K 145 (Supra) cannot also hold water. In that ruling Hon'ble Nair J. while admitting that Section 125 of the Act cannot apply when a court of criminal justice in State has jurisdiction to try an offence observed:-

But this does not mean that courts of ordinary criminal justice in this State have unqualified power and authority to try 'civil offences" in spite of the admitted fact that the provisions of Section 69 of the Act apply to this State also. Section 549 of the Cr.PC in force in the State of Jammu and Kashmir and the rules framed under the Section show a way out of what could otherwise be characterised as a somewhat unique situation.

17. The way out discovered by the learned Judge in what is characterised by him as an 'otherwise unique situation' is not to my mind and I say so very respectfully, the one to which the plain and natural construction of the words used in the statute leads us. Moreover it seems it was not brought to the notice of the learned Judge that with the passing of the Army Act (which is a Central Act and which the Parliament was competent to enact in relation to the State of Jammu and Kashmir under Article 240 read with the Constitution (Application of Jammu and Kashmir) Order, 1954, issued by the President in exercise of the powers conferred on him by Clause (1) of Article 370 of the Constitution of India) the rules framed Under Section 549 of the Jammu and Kashmir Code of Criminal Procedure (Act No. XXIII) of 1989, Bikrami; 1933 A. D.) in the light of Sections 41 and 42 of the Jammu and Kashmir Army Act (No. XIV of 1989 (Bikrami); 1932 A. D.) ceased to

be operative, more so when they were also inconsistent with Sections 69 and 70 of the Act. With due deference to the learned Judge the decision rendered by him cannot therefore, be held to have laid down correct law. On the other hand the opinion as expressed above by me receives support from the decision of a Division Bench of this Court in A.I.R. 1960 J & K 139 (Supra) to which My Lord the Hon'ble Chief ' Justice was a party. The fact that it did not take notice of Section 549 of the Code of Criminal Procedure or the rules framed thereunder is of no consequence. Section 549 of the Criminal Procedure Code reads as under :-

549 (1) The Government may make rules, consistent with this Code and the Army Act in force in the State or any similar law for the time being in force as to the cases in which persons subject to military law, shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act in force in the State, to be tried 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 offence of which he is accused, to the Commanding Officer of the regiment, corps or detachment, to which he belongs, or to the Commanding Officer of the nearest military station, for the purpose of be-in' tried by Court-martial,

(2) Every Magistrate shall, on receiving a written application for that purpose by the Commanding Officer of any body of troops stationed or employed at any such place, use his utmost endeavors to apprehend and secure any person accused of such offence.' The underlined words in the later half of Clause (1) of the above provision show that it is only when a person subject to the military law is charged with an offence for which he is liable under the Army Act in force in State to be tried by a Court martial that a Magistrate before whom he is brought is required to have regard to the rules referred to therein and to deliver him over to the designated military officer. In the present case the respondent as shown above, was not liable to be tried by a court-martial. The necessity of complying with the mandate contained in Section 549 of the Code of Criminal Procedure did not therefore, exist.

18. Furthermore, the rules to be framed by the Government pursuant to the aforesaid provision have to be consistent with the Code of Criminal Procedure and the Army Act or similar law in force in the State. Now the rules framed under the above noted Section 549 of the Code of Criminal Procedure and reproduced at pages 164 and 165 of the compilation styled as Rules and Orders for the Guidance of Courts Subordinate to the High Court, Jammu and Kashmir State (1st Edition) Samvat. 1970, do not appear to be consistent with the Army Act, 1950 (Act No. XLVI of 1950) and ceased in my opinion to be operative in the State with the passing of the Act. This is also because of the fact that Sections 41 and 42 of the Jammu and Kashmir Army Act No. XIV of 1939 do not appear to be *pari materia* with Sees. 69 and 70 of the Army Act No. XLVI of 1950. That apart the offences under Ranbir Penal Code or offences under any other penal statute enacted by the State legislature not being civil offences as conceived by the Act i. e. Army Act, 1950 there could be no question of applicability of the rules.

19. The above discussion cannot but lead to the inference that a court martial and a court of ordinary criminal justice in the State of Jammu and Kashmir did not each have jurisdiction in respect of the offences for which the respondent was proceeded against in the court of the Sub Registrar, Judicial 'Magistrate, 1st Class, Jammu.

20. This brings me to the consideration of the third question. It is clear from the foregoing analysis that the observation of the learned trial Magistrate that 'the accused being a military personnel this Court has no jurisdiction' has absolutely no legal basis and cannot be sustained. As already indicated before a person charged with an offence can be delivered to the Commanding Officer of the regiment, corps or detachment to which he belongs or to the Commanding Officer of the nearest military station it is necessary that he should be liable to be tried by a court martial. As in the instant case the respondent was not liable under the Army Act as at present in force in the State, to be tried by court martial there was no question of his being delivered over to the designated or the prescribed officer. I am, therefore, clearly of the opinion that the trial court was the proper forum for the trial of offences for which the respondent was proceeded against by the police and there was nothing to divest it of its jurisdiction.

21. For the foregoing reasons I would quash the aforesaid order of the trial court in exercise of the power of revision of this Court and remit the case to it for further enquiry and disposal in accordance with law.

22. It must be observed in conclusion that I was not at all impressed by the contention of Mr. Sham Lai that the acceptance of the interpretation sought to be placed by the learned Assistant Advocate General would lead to anomalous results.

23. It is now well settled that where the text is clear and anomalous interpretation is irresistible the court has to adopt it leaving it to the Legislature to amend and alter the law and remove the anomalies. Reference in this connection may usefully be made to the decisions of various courts in India reported in (1) 35 Ind Cas 782 : (A.I.R. 1917 Cal 392), (2) A.I.R. 1943 FC 13, (3) A.I.R. 1948 Oudh 162 (FB), (4) : AIR1950 Mad124 , (5) A.I.R. 1956 Pat 425, (6) : AIR 1959 SC422 and (7) 0044/1960 : AIR1960 All214 .

24. The following observations made in N. T. Veluswami Thevar v. G. Raja Nainar : AIR 1959 SC422 are worth quoting in this connection:-

It is no doubt true that if on its true construction, a statute leads to anomalous results the courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law. But when on a construction of a statute, two views are possible one which results in an anomaly and the other not, it is the duty of a court to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies.

In the present case on the construction of the relevant provisions of the statutes two views as indicated in the above ruling of the Supreme Court are not possible. To my mind the only view possible is the one expressed by me above. In the circumstances I would leave it to the Parliament to see if the Army Act, 1950, as applied to the State suffers from any anomaly and if so how best to resolve it.

**Anant Singh, J.**



25. I agree.

S.M.F. Ali, C.J.

26. I agree.

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