

A.C. Shukla Vs. the Director General, B.S.F. and ors.

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Court : Jammu and Kashmir

Decided On : Nov-03-1980

Reported in : 1981CriLJ558

Judge : I.K. Kotwal, J.

Appellant : A.C. Shukla

Respondent : The Director General, B.S.F. and ors.

Advocate for Pet/Ap. : Mr. Grover

Judgement :

ORDER

I.K. Kotwal, J.

1. The petitioner, an Assistant Commandant, in Border Security Force, was suspected of having committed' embezzlement to the tune of Rs. 57,600/-. A Court of Enquiry was constituted to conduct enquiry into the matter. On the conclusion of the enquiry, the Assistant Director (P) HQ IG BSF NWF, Jammu, wrote to him vide his letter dated 16-6-1978, whether he was willing to make good the loss of Rs. 57,600/- found to have been caused by him in the deal of drawal of 90,000 metres of flannelette from Army Ordnance Depots as found by the Court of Enquiry, The petitioner accepted the offer and deposited the aforesaid amount on 15-12-1978 by means of a bank draft. A charge-sheet was, thereafter, served upon him by the

I. G. P., B. S.F., to stand his trial for an offence under Section 30(e) of the Border Security Force Act of 1968, hereinafter the Act, before a General Security Force Court. This charge-sheet was served upon him on 3-2-1980. He has challenged the service of this charge-sheet on him and commencement of his trial pursuant thereto on the ground that he having been already punished for the aforesaid offence, could not be tried and punished for the same offence again, as that would be contrary to the guarantee of protection afforded to him under the Constitution against double jeopardy.

2. The petition has been resisted by the respondents on the ground that no punishment was inflicted upon the petitioner ever before and his trial for the offence was not barred under the provisions of the Act.

3. Mr. Grover, learned Counsel for the petitioner, has relying upon the provisions of Section 53 of the Act, argued that under this section, the Authority competent to inflict minor punishment, could in its discretion, treat any person subject to the Act otherwise than as an officer or a subordinate officer and impose on him any one or more of the punishments provided in the section, In particular, the learned Counsel has placed reliance upon Clause (i) of this section. This section, for the sake of ready reference, is reproduced as below:

53. Minor punishments. - Subject to the provisions of Section 54, a Commandant, or such other officer as is, with the consent of the Central Government, specified by the Director-General may, in the prescribed manner, proceed against a person subject to this Act, otherwise than as an officer or a subordinate officer, who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments that is to flay. -

(a) imprisonment in force custody up to twenty-eight days;

(b) detention up to twenty-eight days,

(c) confinement to the lines up to twenty-eight days;

(d) extra guards or duties;

(e) deprivation of any special position or special emoluments or any acting rank or reduction to a lower grade of pay,

(f) forfeiture of good service and good conduct pay;

(g) severe reprimand or reprimand; (h) fine up to fourteen days' pay in any one month;

(i) deductions from his pay of any sum required to make good such compensation for any expense, loss, damage or destruction caused by him to the Central Government, or to any building or property as may be awarded by his Commandant.

Amplifying his contention, Mr. Grover has argued that the act of recovering an amount of Rs. 57,600/- from the petitioner per se tantamounted to imposing punishment on him within the meaning of Section 53, as such, his second trial for the same offence was clearly barred under the provisions of Section 75 of the Act, Section 75 reads as under:

75, Prohibition of second trial.- (1) When any person subject to this Act has been acquitted or convicted of an offence by a Security Force Court or by a Criminal Court or has been dealt with under Section 53 or under Section 55, he shall not be liable to be tried again for the same offence by a Security Force Court or dealt with under the said sections,

(2) When any person, subject to this Act, has been acquitted or convicted of an offence by a Security Force Court or has been dealt with under Section 53 or Section 55, he shall not be liable to be tried again by a criminal Court for the same offence or on the same facts'. In my opinion, the contention raised by Mr. Grover, however ingenious it may be, is yet untenable. His whole argument proceeds on the assumption that under Section 53, it was in the discretion of the Commandant, or any other officer who with the consent of the Central Government had been specified to take action under this section by the Director General, to treat a person, even though otherwise an officer or a subordinate Officer, as not being so, and impose on him any of the minor punishments provided in the section. He has,

to bring home his contention, relied heavily upon the expression: 'otherwise than as an officer or a subordinate officer' occurring in the section and urged that in case the intention of the legislature would have been to exempt only officers and subordinate officers from the operation of this section, then the section would have surely been couched in a different language to make the legislature's intention more explicit. Mr. Grover contended that in such a case the legislature, in place of the expression: 'otherwise than as an officer or a subordinate officer', would have used the expression; 'against a person other than an officer or a subordinate officer subject to this Act'. Such a language, argued the learned Counsel, would have expressed the intention of the legislature more explicitly and without any equivocation. Here again, I do appreciate the ingenuity of the learned Counsel, but still it is not possible to place such an interpretation on this section.

4. The petitioner was admittedly an Assistant. Commandant, when the offence is alleged to have been committed by him. He was, therefore, neither a subordinate officer nor an under-officer, but an officer within the meaning of Section 2 of the Act. Clause (r) of Section 2 de-fines officer as a person appointed or in pay as an officer of the force, but does not include a subordinate officer or an under-officer. Subordinate officer has been defined in Clause (v) of the said section as person appointed or in pay as a Subedar Major, or a Subedar or Sub-Inspector of the post, and Clause (x) defines under-officer as a Head-constable, Naik and L/Naik of the force. Obviously, therefore, the petitioner was neither a subordinate officer nor an under-officer, but an officer according to the definition contained in Section 2. Whether or not he could be treated as a person other than an officer or a subordinate officer is, therefore, determinative of the entire controversy involved in the writ petition. In case the answer to the question be in the affirmative, then the petitioner has a very good case, and if the answer to it be in the negative, then he is surely out of Court. The interpretation sought to be placed by Mr. Grover, in my opinion, is not possible on a closer scrutiny of Section 53, for if the argument of the learned Counsel is stretched, to its logical conclusion, then any officer howsoever high in rank he may be, can be proceeded against and punished under this section by the Commandant or even an officer lower in rank to him, who has been authorised to take action under this section. The officer proceeded against in such a case may be even the I. G. P. himself. Such an inter-pretation is, therefore,

bound to lead to absurd results, for it is impossible to countenance a situation where a subordinate has an authority to punish his own superior. Such an interpretation would be manifestly obnoxious. The only interpretation which can, therefore, be placed upon Section 53 is that action under this Section can be taken against only those persons subject to the Act, who are neither officers, nor subordinate officers but belong to ranks lower than these. Once it is shown that a person sought to be proceeded against is either an officer or a subordinate officer, recourse to this section cannot be had. The word 'as' occurring in Section 53 does not, in my opinion, change its complexion and cannot induce the Court to give a different meaning to it. To say that a Commandant may proceed against a person other than an officer or a subordinate officer who is subject to the Act, is as good as saying that a Commandant may proceed against a person who is subject to this Act otherwise than as an officer or a subordinate officer. There is nothing unusual in saying that a person is subject to the Act as an officer or a subordinate officer. The word 'as' occurring in Section 53 has been employed to restrict the applicability of the section to a person in relation to his rank, and not to confer any discretion on the authority competent to proceed against him under the section by not treating him as an officer or subordinate officer, even though he may be either an officer) or a subordinate officer.

5. Mr. Grover then contended that had the intention of the legislature in enacting Section 53 been to exclude officers or subordinate officers from its purview, then there would have been no justification for the *raison d'être* of Section 55. Here again, I cannot agree with the learned Counsel. The highest authority which can take action under Section 53, and impose a minor punishment on a person who is neither an officer, nor a subordinate officer, is the Commandant. Power to impose certain types of punishments without holding a regular trial have also been conferred upon the Deputy Inspector General on subordinate officers and ranks lower to them under Section 55. There is, therefore, no question of mutual overlappings of Sees. 55 and 53, both of which operate in different spheres. The petitioner not being liable to be punished under Section 53 of the Act, his trial by a Security Force Court was not barred in terms of Section 75 of the Act.

6. That apart, it is difficult to hold that a minor punishment was indeed inflicted on the petitioner under Section 53. Punishment could have been inflicted on the petitioner by recovering the amount from him but only by ordering deductions from his pay under Clause (1) and in no other manner. What appears from the pleadings, however, is that the entire sum was paid in lump by the petitioner. There was thus no deduction from his pay. Mr. Grover's contention is that the mode of recovery did not make any difference so long as the fact remained that the entire sum was recovered from the petitioner. The answer to Mr. Grover's contention is simple. The petitioner might have, in a bid to avoid imposition of punishment on him, volunteered to pay the entire sum in lump. By doing so, he perhaps expected that he could not, under Section 53, be said to have been punished at all. This, he might have done to save his service career. In any event, therefore, it is not possible to hold that the petitioner could be punished under Section 53, or that he was actually punished under the said section.

In the result, the petition fails which is dismissed accordingly. The stay granted by this Court earlier shall stand vacated.