(1998) 08 KAR CK 0033

Karnataka High Court

Case No: Writ Appeal No. 7600 of 1996

Union of India and Others		APPELLANT
	Vs	
Nabib Subedar R. Vanangamudi		RESPONDENT

Date of Decision: Aug. 21, 1998

Acts Referred:

- Army Act, 1950 - Section 164
- Army Rules, 1954 - Rule 147, 44
- Constitution of India, 1950 - Article 14, 16, 227

Citation: (1999) 2 ALT(Cri) 263 : (1999) 4 KarLJ 168

Hon'ble Judges: R.P. Sethi, C.J; K.R. Prasad Rao, J

Bench: Division Bench

Advocate: Sri v. Mukunda Menon, Central Government Standing, for the Appellant; Sri B.K. Sampath Kumar and K.B.S. Marian Advs., for the Respondent

Judgement

R.P. Sethi, C.J.

On the failure of the appellants to produce record of the General Court Martial (GCM), the learned Single Judge allowed the writ petition filed by the respondent quashing the proceedings of the GCM and setting aside the orders dated 28-10-1986 and 16-3-1987 impugned in the writ petition. A direction was issued to the appellants to reinstate the respondent into service giving him arrears of salary from the date of dismissal till the date of reinstatement and all other consequential benefits within the time specified. The writ petition v/as allowed mainly on the ground that the respondent had not complied with the mandatory provisions of Rules 44 and 147 of the Army Rules.

2. The relevant facts for proper adjudication of the pleas raised before us are that the respondent had joined the Indian Army in Madras Engineer Group as a driver on 13-10-1967. In July 1980 he was working as an administrative non-commissioned Officer in the Depot Battalion, Madras Engineer Group and Centre, Ulsoor,

Bangalore and the nature of his duties were to supervise the carrying out of repairs in the houses of the officers in addition to visit the railway station for booking tickets, collecting baggage and supervising the garden boys of the battalion. He was informed by his second-in-command that he would be tried by a General Court Martial on 01-03-1986 for allegedly misappropriating property belonging to the Government. He was served with the charge-sheet on 26-2-1986, wherein it was stated that the respondent had misappropriated Rs. 50,464-80 ps. while being an assistant to RTC Cashier namely Subedar Major (Honorary Lieutenant) S. Samudi. The period of alleged misappropriation was specified to be between 3-3-1983 to 30-8-1983. After the conduct of the trial the GCM held him guilty and passed the verdict of dismissing the respondent from bis job. The petition filed u/s 164 of the Army Act seeking his exoneration and quashing of the finding of the GCM was dismissed by the General Officer, Commanding-in-Chief, Southern Command, the intimation of which was conveyed to the respondent on 16-3-1987. It was further contended by the respondent that he submitted two petitions on 16-11-1986 and 6-4-1987 to the concerned authorities praying for being provided with copy of all the GCM proceedings and the copy of the staff Court of inquiry of proceedings so as to enable him to seek redressal in an appropriate Court of law for the alleged unjust punishment inflicted upon him. As his request was not accepted, he filed the petition seeking quashing of the GCM proceedings and the consequential punishment awarded to him on the ground of violation of the Army Rules as noted earlier and the alleged non-compliance of the principles of natural justice. He further contended that as the order of the GCM was not a speaking order, the same was liable to be quashed. It was alleged that there did not exist any tangible evidence on record which could have been made a basis for connecting the respondent with the commission of crime. The GCM was alleged to have committed an illegality by relying upon the uncorroborated testimony of the accomplice and other persons who were allegedly involved in the commission of the crime, if any. The action of the respondent was stated to be against the provisions of Articles 14 and 16 of the Constitution of India.

3. We have heard the learned Counsel for the parties and perused the record including the proceedings of the GCM shown to us by the learned Counsel for the appellants.

4. It is true that the order of the GCM is not a speaking order. It is also true that the GCM was held in the year 1986. The then prevalent Army Rules did not prescribe the assigning of reasons by the Court Martial while giving the verdict and passing the sentences. Sub-rule (1) of Rule 62 of the Army Rules provided, "the finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded simply as a finding of ''guilty'' or ''not guilty'' ". The aforesaid rule was substituted by way of amendment of the Army Rules made on 6-12-1993 providing:--

"The finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in those rules, shall be recorded a finding of ''guilty'' or of ''not guilty''. After recording the finding on each charge, the Court shall give brief reasons in support thereof. The Judge Advocate or, if there is none, the presiding officer shall record or cause to be recorded such brief reasons in the proceedings. The above record shall be signed and dated by the presiding officer and the Judge Advocate, if any".

The amendment was necessitated keeping in view the observations made by various constitutional Courts and the Apex Court. The established position of law as practised and followed by the Court Martials before 1993 was to not assign reasons for the charges framed, but only to return the finding of being ''guilty'' or ''not guilty''. In this regard reference can be made to various pronouncements of the Apex Court including the judgment in Union of India and others Vs. J.S. Brar, , wherein it was held:--

"The Act and the rules do not require reasons to be given for the findings and sentences rendered by the Court Martial. See S.N. Mukherjee v Union of India and Ram Sarup v Union of India. In the absence of reasons, it is not possible to say whether the GCM had placed any reliance at all on the testimony of the so-called accomplices or the retracted confession of Pradhan in coming to its findings against the accused. As stated earlier, the findings are fully supported by other evidence which is unimpeachable".

5. There does not appear to be any violation of Rule 147 of the Army Rules as alleged by the respondent. The records of the appellant show that vide letter dated 29-6-1987 the copy of the GCM proceedings relating to the respondent herein were supplied to his Advocate Sri Olak-kengil. It appears that the respondent suppressed this material fact and let the Court to presume that the proceedings of the GCM had not been supplied with the result that his writ petition was allowed.

6. The GCM proceedings reveal that the trial in the case commenced on 1-3-1986 when the order convening the Court was read over and marked as Exhibit ''A''. The names of the presiding officer and members of the Court were read over in the hearing of the case and he was asked as to whether he objected to be tried by any of the officers constituting the Court to which he replied, "No". These proceedings show sufficient compliance of Rule 44 of the Army Rules. Thereafter the presiding officer, members of the Court and the Judge Advocate were duly sworn. The accused was arraigned upon the charge. His objection regarding the allotment of J.C. number was accepted by making necessary amendment. In reply to the question as to whether he pleaded guilty or not to the charges framed against him, the respondent filed his written statement which was received, read and marked as Ex. L. After dealing with various objections raised on behalf of the respondent, the GCM ultimately recorded his plea of "not guilty". In view of the pendency of another Court Martial, the proceedings of the Court Martial against the respondent were

adjourned to 2-4-1986. However the GCM could not assemble on 2-4-1986 and had in fact re-assembled on 7-10-1986. Thereafter statement of various witnesses were recorded and the respondent afforded sufficient opportunity to cross-examine them. Prosecution closed its evidence and thereafter the respondent was specifically asked as to whether he intended to call any witness in his defence, to which he replied in the negative. He also declined to be examined under Rule 59-A of Army Rules. In his defence, the respondent submitted written address which was marked by the GCM as Ex. PP. Various questions were put to the respondent intimating him the substance of the evidence led by the prosecution. The defending officer-submitted a written closing address which was marked as Ex. RR. The Judge Advocate also submitted a written summing up of address which was read, marked and exhibited as ''SS''. After deliberations, the Court concluded:--

"FINDING

Court closed.--The Court is closed for the consideration of the finding.

Special finding guilty.--The Court find that the accused JC-144096H Nb Sub. R. Vanangamudi, Depot Battalion, Madras Engineer Group and Centre, Bangalore is guilty of the charge with the variation that figures and words Rs. 50,464.80 (Rupees fifty thousand four hundred and sixty four and paise eighty) shall read as Rs. 32,782.61 (Rupees Thirty-two thousand seven hundred and eighty two and paise sixty one).

ANNOUNCEMENT OF FINDING

Court reopened.--The Court reopened, the accused is again brought before it. The finding is read in open Court and is announced as being subject to confirmation".

7. The perusal of the record clearly and unambiguously show the compliance of Rule 44 of the Army Rules. There does not appear to be any deviation from the procedure prescribed for holding of the GCMs. The allegation that the Court Martial was not conducted in a fair manner are apparently concocted and fabricated for the purpose of initiating the proceedings in this Court. This is the acknowledged position of law that the Court Martial proceedings are not subject to either the appellate jurisdiction or to the power of superintendence conferred upon this Court under Article 227 of the Constitution of India.

The Supreme Court in Union of India and Others v Major A. Hussain, held that if a Court Martial was proved to have been properly convened and there was no challenge to its composition and the proceedings were found to be in accordance with the procedure prescribed, the High Court should normally not interfere, as admittedly the proceedings of a Court Martial cannot be compared with the proceedings in a Criminal Court under the Code of Criminal Procedure. It was further held that.-

"It has been rightly said that Court Martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. It is for the special need for the Armed Forces that a person subject to Army Act is tried by Court Martial for an act which is an offence under the Act. Court Martial discharges judicial function and to a great extent is a court where provisions of Evidence Act are applicable. A Court Martial has also the same responsibility as any Court to protect the rights of the accused charged before it and to follow the procedural safeguards. If one looks at the provisions of law relating to Court Martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the Court martial unless it is shown that accused has been prejudiced or a mandatory provision has been violated".

The findings of fact arrived at by the Court Martial cannot be disturbed or substituted by this Court in exercise of the writ jurisdiction.

8. The learned Counsel appearing for the respondent has further submitted that as the conviction of his client was based upon inadmissible evidence and the Judge Advocate had failed to inform the Court Martial about this legal aspect of the matter, the order of conviction and of sentence passed by Court martial is liable to be quashed. He has specifically referred to the statement of Sri G.C. Edward, P.W. 4 and submitted that as the said witness was an accomplice, no conviction could be passed on his sole testimony. It is reiterated that the learned Judge Advocate failed to apprise the Court Martial this aspect of the legal position. A perusal of the record of the GCM belies the contention. The summing up addressed by the Advocate Judge marked as Ex. SS clearly shows that vide submissions contained in para No. 21, the Judge Advocate informed the Court about the legal position regarding the admissibility of the evidence of an accomplice and interested witnesses. He specifically informed the Court that if there was no corroborative evidence in material particulars, the Court may consider the rejection of the testimony of P.W. 1 and P.W. 4 either wholly or partly. He further informed the Court that benefit of doubt, if any, be given to the respondent accused. The Judge Advocate also referred to various statements of the witnesses produced on behalf of the prosecution which showed that there was sufficient corroborative evidence to the testimony of the witnesses who have been termed to be the accomplices. We have also perused the statement of the witnesses produced in the case and are not in a position to hold that the conviction was based either upon no evidence or inadmissible evidence, as has been argued on behalf of the respondent. We are also sure that had the record of the GCM been produced before the learned Single Judge, he would have definitely come to the same conclusion as we have arrived at. It is regrettable that

the record of the Court Martial proceedings was not produced by the appellant before the learned Single Judge despite the pendency of the writ petition for over 9 years. It is however contended that the record of the Court martial proceedings could not be produced on account of the short date given and that no specific directions had earlier been issued by the Court for production of such record. We are not impressed with these submissions as it was not the duty of the Court to ask for the record but in fact the obligation of the appellant to produce the record in a writ petition filed for issuance of a writ of certiorari seeking the quashing of the proceedings of the Court Martial. However such a delay or failure on the part of the appellant did not affect the merits of the case as it had admittedly not prejudiced his case. It is established that the respondent had mis stated the facts in his petition and tried to mislead the Court on the ground of alleged non-compliance of the provisions of Rules 44 and 147 of the Army Rules. Despite supply of the GCM proceedings and recording of his statement in terms of Rule 44 of the Army Rules, he wrongly stated the violation of the aforesaid rules. A person convicted of misappropriation of huge public funds cannot have any sympathy either under law or in equity. The trial against the respondent is shown to have been conducted fairly, properly, legally and in accordance with the procedure prescribed under the Army Act and the Rules framed therein.

9. Under the circumstances the appeal is allowed by setting aside the order of the learned Single Judge. Writ petition filed by the respondent shall be deemed dismissed and the rule issued against the appellant discharged. No costs.