

(1985) 05 CAL CK 0026

Calcutta High Court

Case No: F. M. A. No. 231 of 1978

G.P. Singh and Others

APPELLANT

Vs

Santi Ranjan Sarkar

RESPONDENT

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**Date of Decision:** May 6, 1985**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** 89 CWN 941**Hon'ble Judges:** M.M. Dutt, J; J.N. Chaudhuri, J**Bench:** Division Bench**Advocate:** D.N. Das and Archana Sengupta, for the Appellant; T.N. Banerjee and Sadek Hossain, for the Respondent**Final Decision:** Allowed

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### Judgement

M.M. Dutt, J.

This appeal has been preferred by the Commandant, 71 Battalion, Border Security Force Krishnagar and others including the Union of India against the judgment and order dated August 4, 1977 of a learned single Judge, of this Court, whereby the learned Judge made absolute the Rule Nisi issued on the application of the respondent, Shanti Ranjan Sarkar, under Article 226 of the Constitution of India. The respondent was a constable of 71 Battalion of the Border Security Force. At the material time, he was posted at Modhugari Police Camp, P.S. Karimpur, District Nadia. He was charged with abetment of the offence of exacting money from one Md. Mohiuddin Mondal without proper authority. He was directed to be tried by the Summary Security Force Court. In the trial, he was found guilty of the charge and, by an order dated September 10, 1975 of the Summary Security Force Court, he was sentenced to undergo rigorous imprisonment in civil jail for a period of three months. He was also dismissed from service. The conviction and sentence of the Summary Security Force Court was approved by the Inspector-General of Border Security Force, West Bengal by his order dated September 29, 1975. The

respondent, being aggrieved by the finding and sentence of the Summary Security Force Court, while serving out the sentence in the civil jail, submitted a petition to the Inspector-General of Border Security Force, New Delhi through the Superintendent of Krishnagar Jail against such finding and sentence. The petition was rejected by the Law Officer, Grade I on the ground that it should have been submitted to the Commandant of the Unit in which the trial was held.

2. Being aggrieved by the finding and sentence of the Summary Security Force Court, the respondent filed a writ petition in this Court and obtained a Rule Nisi out of which this present appeal arises. At the hearing of the Rule Nisi, it was contended on behalf of the respondent, inter alia, that in view of section 50 of the Border Security Force Act, 1963, hereinafter referred to as the Act, the order for imprisonment in civil jail for a period of three months could not be combined with dismissal from service. The said contention was upheld by the learned Judge and, as stated already, the learned Judge quashed the impugned order of conviction and sentence and the dismissal of the respondent from service and made the Rule Nisi absolute. Hence this appeal.

3. The respondent was charged with abetment of the offence of exacting money from the said Md. Mohiuddin Mondal without proper authority. Section 43 of the Act provides as follows:

Any person subject to this Act who abets the commission of any of offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

4. Section 31 of the Act, inter alia, provides for a punishment for the offence of exaction of money from any person without authority. The punishment prescribed is imprisonment for a term which may extend to 10 years or such less punishment as mentioned in the Act. As the Officer who held the Summary Security Force Court for the trial of the respondent was not holding the post of Superintendent of Police or a post equivalent thereto, the limit of the sentence that could be imposed by him was imprisonment for three months as provided in clause (b) of sub-section (5) of section 74 of the Act. Indeed, in the instant case, the respondent was sentenced to rigorous imprisonment for three months in a civil jail. The question that arises for our consideration is whether the Summary Security Force Court can in addition to the punishment of imprisonment for three months impose the punishment of dismissal from service.

5. It is vehemently urged by Mr. Tarak Nath Banerjee, learned Counsel appearing on behalf of the respondent that as clause (b) of sub-section (5) of section 74 of the Act provides for imposition of only one punishment, that is, imprisonment the period of

which is limited to three months, the Summary Security Force Court had no jurisdiction to impose on the respondent the further punishment of dismissal from service.

6. In this connection, we may refer to two other provisions of the Act. Section 48 of the Act provides as follows :

38. (1) Punishment may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale, following that is to say, -

(a) death;

(b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in Force custody;

(c) dismissal from the service;

(d) imprisonment for a term not exceeding three months in Force custody;

(e) reduction to the ranks or to a lower rank or grade or place in the list of their rank in the case of an under officer;

(f) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion;

(g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(h) fine, in respect of civil offences;

(i) severe reprimand or reprimand except in the case of persons below the rank of an under officer;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty;

(k) forfeiture in the case of persons sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal;

(1) stoppage of pay and allowances until any proved loss or damage occasioned by the offence for which he is convicted is made good.

(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

7. Section 50 of the Act provides for a combination of punishments. Section 50 runs as follows :

50. A sentence of a Security Force Court may award in addition to, or without any one other punishment, the punishment specified in clause (c) of sub-section (1) of section 48, and any one or more of the punishments specified in clauses (e) to (1) (both inclusive) of that subsection.

8. Section 48 enumerates the different degrees of punishments that can be awarded by a Security Force Court. Section 50 lays down that in addition to a punishment for an offence, the Security Force Court may award the punishment of dismissal under clause (c) and any one or more of the punishments specified in clauses (e) to (1) of section 48(1).

Therefore, the Security Force Court can combine any punishment with the punishment of dismissal and any other lesser punishment. We are unable to subscribe to the view of the learned Judge that an order for imprisonment in a civil jail for a period of three months cannot be combined with dismissal from service under clause (c) of section 48(1) of the Act. In other words, according to the learned Judge, clauses (c) and (d) of section 48(1) of the Act which are respectively dismissal from service and imprisonment for a term, not exceeding three months in Force custody cannot be combined together by a sentence of the Security Force Court.

9. Section 50, in our opinion, is very clear. It has been specifically mentioned in section 50 that any punishment that may be awarded by the Security Force Court can be combined with the punishment of dismissal. The object for such a provision is not far to seek. It is not desirable that a person who is guilty of an offence of say, theft, extortion etc., and convicted and sentenced to rigorous imprisonment for a term should be kept in the service of the Border Security Force where one has to maintain discipline and integrity of character. The respondent was found guilty of the charge of abetment of the offence of exaction of money. He has been convicted and sentenced to rigorous imprisonment for three months by the Summary Security Force Court. We do not find any unreasonableness or impropriety in the order of the Summary Security Force Court imposing on the respondent the additional punishment of dismissal from service as provided in section 50 of the Act so long as the finding of guilt of the respondent stands. We are, therefore, unable to sustain the judgment and order of the learned Judge quashing the conviction and sentence of the respondent.

10. Before we part with this appeal, we may dispose of a short point that has been raised on behalf of the respondent. It is submitted that the petition of the respondent which was submitted to the Inspector-General of Border Security Force through the Superintendent of Krishnagar Jail should not have been rejected on the ground that it was not submitted to the Commandant of the Unit in which the trial was held. Indeed, clause (b) of Rule 169(1) of the Border Security Force Rules, 1969 provides for the submission of such a petition to the Commandant of the Unit in which the trial was held. We do not think that as the petition was not submitted to the Commandant of the Unit, it should be rejected in limine. The respondent was

Serving out the sentence of imprisonment in the civil jail. He submitted a petition to the Superintendent of civil jail who, it can be presumed, must have been aware of Rule 169(b). The Superintendent of the Jail should have submitted the petition to the Commandant of the Unit for being dealt with by the authority concerned. Accordingly, we direct that the said petition be considered by the proper authority in accordance with law. Such consideration shall be made within a period of six weeks from date and the respondent shall be communicated with the decision of the authority within a week thereafter.

11. Subject to the above direction for consideration of the petition of the respondent, we set aside the impugned judgment and order of the learned Judge. The Rule is disposed of as above.

12. The appeal is allowed. There will, however, be no order for costs. We make it clear that we have no expressed any opinion on the merits of the Ending and sentence of the Summary Security Force Court.

J.N. Chaudhuri, J.

I agree.