Gobinda Gopal Mondal Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: June 29, 2007

Acts Referred: Border Security Force Act, 1968 â€" Section 117, 40, 46, 48, 48(1)

Citation: (2007) 2 ILR (Cal) 295

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Debaprasad Nath and Sankar Halder, for the Appellant;Subir Pal, for the Respondent

Final Decision: Dismissed

Judgement

Jayaknta Kumar Biswas, J.
The Petitioner is aggrieved by the order of the Deputy Inspector General, Officiating Inspector General, FTR

Hq, BSF, South Bengal dated July 26, 2006 rejecting his petition filed u/s 117 of the Border Security Force Act, 1968. Feeling aggrieved by the

order of the security force court dated March 29, 2006 finding him guilty and awarding the sentence of imprisonment for sixth months in civil prison

and dismissal from services he presented the petition u/s 117.

2. By order dated February 16th, 2006 the competent commandant detailed the deputy commandant for preparing the record of evidence in

connection with the charge mentioned in the order. It was alleged that while on duty on February 15, 2006 the Petitioner had improperly allowed

safe passage to one civilian and one cow from India to Bangladesh and three civilians from Bangladesh to India by accepting Rs. 300/- as

gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do an official act. It was mentioned that the currency

notes were found in his possession. By order dated March 28, 2006 the commandant decided to try the Petitioner by a summary security force

court. It is not disputed that he was empowered to do that. Consequently the Petitioner was tried by the summary security force court held at the

battalion headquarters. The court tried him for offences committed under Sections 40 and 46 of the Act.

3. Three points have been argued before me: (1) the authority making the order dated July 26, 2006 did not deal with the specific serious

contentions raised by the Petitioner in his petition u/s 117; (2) the Petitioner was not allowed to examine defence witnesses at the time of trial

conducted by the summary security force court; and (3) since the security force court imposed the punishment of imprisonment for six months in

civil prison, in view of the provisions in Sections 48 and 50 it was not competent to impose the punishment of dismissal from service as well.

4. In support of the contention that the authority was under the obligation to deal with all the contentions raised by the Petitioner, counsel has relied

on Narinder Mohan Arya v. United India Insurance Co. Ltd. and Ors. (2006) 2 WBLR (SC) 619 and in support of his contention that denial of

opportunity to examine the defence witnesses vitiated the whole proceedings, he relied on State of Uttar Pradesh and Another Vs. Sri C.S.

Sharma, Counsel has referred me to paras. 10 of the writ petition, 10 of the affidavit-in-opposition and 4(iii) of the affidavit-in-reply to show that

the Petitioner was not given the opportunity of examining defence witness.

5. As to the contention that the petition u/s 117 was rejected by the authority without dealing with the Petitioner"s specific contentions, I find that it

has no merit. In his petition the Petitioner contented that the security force court had not considered the entire evidence adduced by him and by the

prosecution; that the officer detailed for preparing record of evidence had fabricated evidence in collusion with the commandant; that the security

force court had imposed punishment without any application of mind; that because of personal enmity the commandant had initiated the

proceedings and imposed the punishment; and that the security fore court had imposed a punishment grossly disproportionate to the proven

misconduct.

6. It is apparent on the face of he impugned order that the authority making it summarized all the contentions raised by the Petitioner in his petition

u/s 117, and that after dealing with them he recorded his opinions on them. The Petitioner was given an opportunity of personal hearing and after

considering the records of the proceedings held by the security force court, the authority making the impugned order did not find any reason to

interfere with the order date March 29, 2006 issued by the commandant indicating the punishments imposed by the security force court.

7. The authority rejecting the Section 117 petition re-appreciated the evidence of the witnesses examined, and concluded that the allegations made

against the Petitioner had stood proved. With respect to fabrication of evidence and personal enmity of the commandant, the authority said that at

no stage the Petitioner had made any allegation regarding those things, though he was at liberty to make complaint to the higher authority, if he had

been facing any problem with the officers connected with the preparation of record of evidence and conduct of the security force court trial. As to

the question of quantum of Punishment, the authority held that in the context of the seriousness of the charge he was unable to held that the

punishments were disproportionate.

8. There is no dispute regarding the propositions for which Narinder Mohan has been cited to me. If the order of the authority is an unreasoned

one, there can be no doubt that it cannot be sustained. The question whether the order is a reasoned one is to be ascertained only from the order

itself, and in the present case, as I have already indicated, there is no reason to say that the impugned order is not a reasoned one, or that the

contentions raised by the Petitioner in his Section 117 petition were not considered by authority.

9. I do not find any merit either in the contention that the Petitioner was denied the opportunity of examining witnesses in defence when the record

of evidence was prepared and the security force court tried him. At neither of the stages he made any complaint to any authority that the officer

preparing the record of evidence or the security force court trying him denied him the opportunity of examining his defence witnesses. In his

Section 117 petition as well he did not make any such complaint. It is for the first time in para. 10 of the writ petition, verified as derived from the

records and his submissions, that he made the allegation that opportunity had not been given to him to examine his witnesses when the security

force court tried him.

10. The Respondents in their opposition specifically stated that after recording evidence of prosecution witnesses he was asked to call upon his

defence witnesses. In the opposition the Respondents also stated that during trial by the security force court he was asked to submit list of defence

witnesses. In his Section 117 petition he alleged that evidence adduced by him had not been duly considered by the security force court. In para. 4

(iii) of the reply he stated that he wanted to examine the persons named therein as his defence witnesses. On these facts counsel for the Petitioner

invites me to hold that though the Petitioner wanted to examine witnesses in defence, the authorities denied him that opportunity.

11. I fully agree with counsel for the Respondents that the contention is an afterthought. There is absolutely no reason to accept the case sought to

be made out and then improved for the first time before this Court. Even the allegations made in paras. 10 of the writ petition and 4(iii) of the reply

have been verified as submissions, and not as true to knowledge. There is no dispute regarding the proposition for which C.S. Sharma has been

relied on. The Petitioner was entitled to get an opportunity of examining witnesses in defence. I find no reason to say that he was denied the

opportunity at any stage of the proceedings.

12. I do not find any merit either in the last contention that he security force court was not competent award the punishment of imprisonment and

dismissal from service together. It is clear from the provisions in Sections 48 & 50 of the Border Security Force Act, 1968 that the security force

court was competent to award both the punishments while sentencing the Petitioner. Section 50 provided as follows: ""Combination of punishments.

- 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 (I) (both inclusive) of that subsection.

13. The punishment specified in Clause (c) of Section 48(1) is dismissal from service. There is no dispute that the security force court was

competent to inflict the punishment of imprisonment in any civil prison. I therefore do not find any reason to say that the security force court

committed any wrong in awarding both the punishments. I see no reason either to hold that punishments imposed by the authorities were

disproportionate to the gravity of the proven misconduct. The authority rejecting the Section 117 petition, in my view, rightly held that in such a

case as this the punishments had been rightly imposed by the security force court.

14. For these reasons, I do not find any merit in the writ petition, which is hereby dismissed. There shall be no order for costs in it.

15. Urgent certified Xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by

the section concerned.