

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C No. 114/2006
Cr.M.P No. 113/2006

Date of Decision: **20.11.2008**

G.R.Bishnoi

v.

A.R.Khadar

CORAM:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing counsel:

For Petitioner(s) : Mr. J.R.Arora, Advocate.

For Respondent(s) : Mr. Tashi Rabstan, CGSC.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : Yes/No |
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Petitioner has filed this petition seeking quashing of proceedings initiated against him by Judicial Magistrate, Ist Class, Sub-Judge, Samba on respondent's complaint wherein he had been accused of committing offence punishable under Section 228 of the Ranbir Penal Code, in that, while appearing as Defense Counsel, Lt. Col. (Retd.) G.R.Bishnoi, the petitioner had passed derogatory remarks against all the members of the Court including the Senior Member and Judge Advocate, and while acting rudely, shouting furiously during the course of the proceedings, he had questioned the very integrity of the Court. He had, despite caution having been sounded to him several times during the proceedings, refused to carry out the orders of the Court.

Petitioner's learned Counsel Sh. Arora submitted that respondent's complaint was not maintainable because before filing the complaint, the

respondent had not complied with the provisions of Rule 150 of the Army Rules in holding the preliminary inquiry which the Rule mandated as a pre-requisite for filing the complaint. The process issued by the learned Magistrate being illegal is thus required to be quashed, says the learned counsel.

Per contra, Sh. Tashi Rabstan, learned Central Government Standing Counsel submitted that Rule 150 of the Army Rules is not mandatory in character and even in the absence of the preliminary inquiry contemplated by Rule 150 of the Army Rules, learned Magistrate would continue to have jurisdiction to take cognizance of the offence which had been clearly made out by the respondent in his complaint.

I have considered the submissions of learned counsel for the parties and gone through the provisions of Section 59 of the Army Act and Rule 150 of Army Rules, 1954.

Before dealing with the submissions of learned counsel for the parties to find out as to whether or not the process issued by learned Judicial Magistrate against the petitioner is justified, regard needs to be had to the provisions of Section 59 of the Army Act and Rule 150 of the Army Rules. These provisions, reproduced hereunder for reference, read thus:-

Section 59- Offences Relating to courts-martial- Any person subject to this Act who commits any of the following offences, that is to say-

- (a) being duly summoned or ordered to attend as a witness before a court-martial, willfully or without reasonable excuse, makes default in attending; or
- (b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or
- (c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or

(d) refuses when a witness to answer any question which he is by law bound to answer; or

(e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

Rule 150- Offences of Witnesses and others:- When any court-martial is of opinion that there is ground for inquiring into any offence specified in sections 59 and 60 and committed before it or brought under its notice in the course of its proceedings, or into any act done before it or brought under its notice in the course of its proceedings, which would, if done by a person subject to the Act, have constituted such an offence, such court-martial may proceed as follows that is to say-

(1) If the person who appears to have committed the offence is subject to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be placed in military custody with a view to his punishment by an officer exercising authority under section 80, 83, 84 or 85 or to his trial by a court-martial;

(2) If the person who appears to have done the act is amendable to naval or air force law, the court may bring his conduct to the notice of the proper naval or air force authority, as the case may be.

(3) If the person who appears to have done the act is not subject to military, naval or air force law, then in the case of acts which would, if done by a person subject to the Act, have constituted an offence under clause (a), (b), (c) or (d) of section 59, the officer who summoned the witness to appear or the presiding officer or officer holding the court, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having jurisdiction, and in the case of acts which would, if done as aforesaid, have constituted an offence under clause (e) of Section 59 or Section 60, the court, after making any preliminary inquiry that may be necessary, may send the case to the nearest Magistrate of the first class having jurisdiction for inquiry or trial in accordance with section 340 of the Code of Criminal Procedure, 1973 (Act of 1974).め

Reading of the two provisions quoted hereinabove demonstrates that whenever contempt of Court Martial, by using threatening language or by causing any interruption or disturbance in the proceedings of the Court, is committed by a person, **who is not subject to the Army Act**, the Presiding Officer of the Court is required to follow the procedure laid-down in Rule 150

(3) of the Army Rules which contemplates holding of a preliminary inquiry that may be necessary before forwarding the person accused of committing contempt of the Court Martial to the nearest Magistrate of the Ist Class having jurisdiction for holding inquiry or trial.

Requirement of following the procedure prescribed under Rule 150 of the Army Rules may be necessary only if proceedings in contempt were required to be issued against the delinquent. Such a procedure may not, however, be necessary for initiating process for commission of offence contrary to Section 228 of the Ranbir Penal Code, for the provisions of Section 195 of the Code of Criminal Procedure, Svt. 1989 do not contemplate holding of any such preliminary inquiry before a public servant may file a complaint against a person accused of committing an offence punishable under Section 228 of the Ranbir Penal Code.

That apart, holding of the preliminary inquiry, contemplated by Rule 150 of the Army Rules, as the plain reading of the Rule indicates, may be required only where holding of such inquiry is considered necessary by the Court. Omission to hold inquiry in terms of Rule 150 of the Army Rules may not in all circumstances be construed as bar to the initiation of Contempt of Court proceedings at the instance of the Court Martial.

Looking to the allegations appearing in the complaint of the respondent, who was himself the Presiding Officer of the Court Martial, there would not have been any necessity of holding any preliminary inquiry even if process for initiation of proceedings for committing Contempt of Court Martial had to be initiated against the delinquent.

As the learned Magistrate has not proceeded against the petitioner for committing Contempt of the Court Martial, so in any case, omission to hold inquiry in terms of Rule 150 of the Army Rules cannot be said to have vitiated learned Magistrate's order whereby a prima facie case for issuance of process for commission of offence punishable under Section 228 of the Ranbir Penal Code had been made out against the petitioner on the basis of what had been projected by the respondent in the complaint.

I, therefore, do not find any merit in Sh. Arora's submission that the learned Magistrate had erred in issuing process against the petitioner when the respondent had not held any preliminary inquiry before filing complaint against the petitioner.

For all what has been said above, I do not find any ground to quash the proceedings initiated by the learned Magistrate against the petitioner. These proceedings are found to be justified.

This petition is, accordingly, dismissed.

Records be returned forthwith.

(J. P. Singh)
Judge

JAMMU:
20.11.2008
Pawan Chopra