CHIEF OF ARMY STAFF AND ORS. A

v.

MAJOR S.P. CHADHA

DECEMBER 21, 1990

[RANGANATH MISRA, CJ AND M.H. KANIA, J] B

Army Act, 1950: Sections 3(ii), (vii), (viii) and (xvii), 117, 121, 126 and 127. Army Instruction No. 1/6/74 (As amended by Army Instruction No. 2/76) and No. 81 of 1986.

Criminal Courts and Court-Martial (Adjustment of jurisdiction) Rules, 1978: Rules 3 and 4. Army Officer—Civil offence—Disciplinary proceedings—Attachment—Reduction in Rank—Suspension—Trial—Choice between criminal court and Court-Martial—Prohibition of second trial—Accused put on trial before General Court-Martial—Dissolution of Court-Martial—Accused whether can be tried by an ordinary criminal court for the same offence—Validity of attachment, reduction in rank and suspension—Purpose of attachment—Explained. C D

'Offence'—'Civil Offence'—'Court-Martial'—'Criminal Court'—Meaning of.

Code of Criminal Procedure, 1973: Sections 190(1) (a) and 475. E

The respondent, a Lt. Colonel, was alleged to have committed a civil offence. He was attached to another regiment for purposes of completing the disciplinary proceedings, made to relinquish his acting rank of Lt. Colonel, on the basis of Army Instruction No. 1/6/74 and suspended from service. The Army authorities opted for his trial by a General Court-Martial under the Army Act, 1950. He filed a writ petition in the Supreme Court challenging action of the Army Authorities. However, the Court-Martial was dissolved under Section 117 of the Army Act and the respondent was handed over to civil authorities for trial of the same offence by a regular criminal court. Consequently, the Supreme Court dismissed his writ petition. F G

Pursuant to the handing over of the respondent to the civil authorities, a complaint was filed against him before a Magistrate's court under Section 190(1) (a) of the Criminal Procedure Code, 1973. The respondent filed a writ petition in the Punjab and Haryana High Court praying for restoration of his acting rank and for revocation of H

A his suspension. A Single Judge of the High Court ordered restoration of his acting rank by holding that since the authorities opted for his trial under the Army Act he could not be handed back to civil authorities for trial by an ordinary Criminal Court on the ground that trial by a Court-Martial was not feasible; and in view of his attachment to other regiment suspension should not have been resorted to.

B

The Letters Patent Appeal preferred by the appellants against the decision of the Single Judge was summarily dismissed by a Division Banch of the High Court.

In appeal to this Court, against the decision of the Division Bench C of the High Court, it was contended on behalf of the appellants that (i) since the Court-Martial could not be completed against the respondent there was no legal bar to his trial by an ordinary criminal court; (ii) Until the trial was completed, the respondent was neither entitled to get back his rank nor have his suspension revoked.

D On behalf of the respondent it was *inter alia* contended that since he was sent to a regular criminal court for trial his attachment could no longer survive.

Allowing the appeal, this Court,

E HELD: 1. Section 127 of the Army Act, 1950 deals with successive trials by a criminal court and Court-Martial and sub-section (1) of section 127 specifically provides that a person convicted or acquitted by a Court-Martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence or on the same facts. Under this section there is no general bar as such prohibit- F ing successive trials by a Court-Martial and by a criminal court and perusal of the section shows that even where a person has been convicted or acquitted by a Court-Martial of the offence in question, he can be tried for the same offence by a criminal court, with the previous sanction of the Central Government . In the instant case the question of sanction of the Central Government never arose because the respondent G was neither convicted nor acquitted by the Court-Martial or dealt with under sections 80, 83, 84 or 85. [698H, 699A-C]

2. Section 121 of the Army Act, deals with the prohibition of second trial. It has no application to the instant case as the respondent was neither acquitted nor convicted by the Court-martial or by a crimi- H nal court nor has he been dealt with under Sections 80, 83, 84 or 85 of the Act. [698G]

3. Army Instruction No. 31 of 1986, *inter alia* provides that an officer who ceases to carry out the duties of his appointment by being attached to another Unit for disciplinary purposes will vacate his appointment or relinquish any acting rank after 21 days. It further provides that if such an officer is subsequently acquitted or for any purpose not brought to trial or his character is vindicated to the satisfaction of the appropriate authorities at Army Headquarters vide such inquiry as is made under para 346 of the Regulations for the Army, such officer will be reappointed to the post vacated by him and the acting rank of the officer will be deemed to have been held by him continuously with effect from the date he relinquished it. The respondent vacated his appointment and his acting rank 21 days after his attachment to a different regiment for purposes of completing the proceedings against him. As he has not yet been acquitted nor has his character been vindicated to the satisfaction of the appropriate authorities at Army Headquarters and he is to be tried by the criminal court, till the trial is completed or given up or till he is acquitted or his character vindicated to the satisfaction of the appropriate authorities, there is no case for revocation of the order of his suspension or restoration of his acting rank. [698C-D, 699G-H, 700A]

4. The only purpose of attachment of an army officer to a different unit is that the disciplinary proceedings against him could be speedily and satisfactorily completed without any interference by him. In view of the respondent being sent to the ordinary criminal court for trial, there was no question of his interfering thereafter with the disciplinary proceedings and in view of that, the order of attachment against him is set aside. Accordingly the orders of the High Court are set aside except to the extent that the attachment of the respondent to the other Unit will cease and he will be reverted to his original unit. [699E-F, 700B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3835 of 1990.

From the Judgment and Order dated 25.1.1990 of the Punjab and Haryana High Court in LPA No. 210 of 1990 in C.W.P. No. 5885 of 1988.

P.K. Goswami, Additional Solicitor General, Maj. T. Prasad, Ms. Kirti Misra and C.V. Subba Rao for the Appellants.

R.S. Randhawan and Ashok Mathur for the Respondent.

A The Judgment of the Court was delivered by

KANIA, J. This is an appeal by special leave from the decision of a Division Bench of the High Court of Punjab and Haryana summarily dismissing Letter Patents Appeal No. 210 of 1990 filed by the appellants herein.

B

The respondent was an officer commissioned in the Indian Army. In 1983 the respondent held the rank of Lt. Colonel and was commanding the support Company for IInd Sikh Light Infantry. On June 12/13, 1983, the loss of one Stengun belonging to 'C'—Company and held in the charge of Sepoy Sital Singh, was reported to the Com-
C manding Officer of 261KHLI. An investigation was ordered by the Commanding Officer. It was reported at about 12.00 P.M., on June 14, 1983, that Sepoy Sital Singh had expired and Sepoy Sir Singh had sustained several injuries in the course of an investigation by the respondent and some others. A suspicion arose that these injuries were caused on account of torture inflicted on these sepoys. An F.I.R.
D was filed with the Police Station, Charinda, District Amritsar at about 1.00 A.M., on June 1, 1983, to the effect that the death and injuries mentioned above had occurred as a result of scuffle between the said Sepoy Sital Singh and Sepoy Sir Singh. It seems to have been ascertained that the cause of injury stated in the F.I.R. was baseless. Investigation of the army authorities revealed that the death of Sepoy
E Sital Singh and injuries to Sepoy Sir Singh had resulted on account of torture by electric shocks, and that the respondent and othere army personnel concerned in the inquiry had been instrumental in inflicting the torture. Disciplinary proceedings were contemplated *inter alia* against the respondent and he was attached to HQ 15 Artillery Brigade. Consequent upon the attachment he was made to relinquish
F the acting rank of Lt. Colonel on the basis of Army Instruction No. 1/6/74 as amended by Army Instruction No. 2/76. The army authorities opted for a trial of the respondent by a Court Martial and hence, the respondent was put up for trial before a General Court Martial along with six other persons on March 6, 1985. Thereafter, the respondent filed a writ petition being Writ Petition No. 11823 of 1985
G before this Court, challenging the action of the army authorities in putting him up for trial as aforestated. The respondent was also suspended pending proceedings contemplated against him. The General Court Martial which assembled on 15th March. 1985, for trial could not proceed in view of the fact that one of the members constituting the said court had retired and a fresh Court Martial was not
H available to be constituted as a reference thereto was barred by limita-

tion. The Court Martial was, therefore, dissolved under Section 117 of the Army Act, 1950, (referred to hereinafter as "the Act") and the respondent was handed over to the civil authorities for being tried by a regular criminal court. In these circumstances, this Court dismissed the aforesaid writ petition filed by the respondent by an order dated May 17, 1987, There was some delay thereafter apparently on account of the hesitation of the police authorities but ultimately, a complaint was filed on September 4, 1987, before a Chief Judicial Magistrate, Amritsar under Section 190 (1)(a) of the Code of Criminal Procedure, 1908, against the respondent and others suspected to be involved in the torture which led to the death of Sepoy Sital Singh and severe injuries to Sepoy Sir Singh as aforestated.

At this stage the respondent filed a Civil Writ Petition No. 5885 of 1988 in the High Court of Punjab and Haryana under Article 226/227 of the Constitution, praying for the issue of a writ or order for restoring to him the rank of Lt. Colonel and for a declaration to the effect that the respondent continued to hold the rank of Lt. Colonel continuously and that bringing him down to the rank of Major was illegal and unconstitutional. The respondent also prayed for a writ or order quashing the order of suspension made against him, on the ground of its being *mala fide* and illegal.

A learned Single Judge of the High Court, who disposed of the said writ petition, held that once the respondent was claimed for trial under the provisions of the Act from civil authorities he could not be handed back to the civil authorities for trial on the ground that the trial under the provisions of the Act was not possible or feasible. The learned Judge held that as a consequence of this, the respondent was entitled to be granted his previous rank from the date he was made to lose the same. The learned Judge further held that once the attachment of the respondent to another regiment was made for the purposes of disciplinary proceedings, the suspension of the respondent could not be further resorted to and hance, was liable to be set aside.

The Letter Patents Appeal preferred by the appellants against the decision of the learned Single Judge of the High Court was summarily dismissed. This appeal is directed against the said order of dismissal.

It was submitted by learned counsel for the appellants that, although the respondent had been claimed for trial by the army authorities, as that trial could not be held, there was nothing in law

A which prevented the army authorities from handing over the respondent back to the civil authorities, namely. the Magistrate's Court, for trial according to ordinary criminal law. It was submitted by him that until the trial was completed, the respondent was neither entitled to get back his rank nor have his suspension revoked.

B Learned counsel for the respondent supported the judgment of the learned Single Judge submitting that the conclusions arrived at by the learned Single Judge and the resoning on which the same were based were correct in law.

In order to appreciate the contentions of the parties, it is necessary to take note of the relevant provisions of the Act.

C

The Army Act, (referred to as "the Act" as aforestated) was enacted in 1950 to consolidate and amend the law relating to the government of the regular Army. Under the Act, there are certain offences which are peculiar to the Army and which are triable by Court D Martial alone. Under clause (xvii) of Section 3 (definition section) of the Act, the word 'offence' is defined as "any act or omission punishable under this Act and includes a civil offence. The expression "civil offence" is defined in clause (ii) of said Section 3 as "an offence which is triable by a criminal court". Clauses (vii) and (viii) of the said section read as follows:

E

> "(vii) "court-martial" means a court martial held under this Act.
>
> "(viii) "criminal court" means a court of ordinary criminal justice in any part of India."

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It is common ground that the offence alleged against the respondent was a civil offence and could be tried by a court-martial or a regular criminal court. Section 125 of the Act runs thus:

> "125. *Choice between criminal court and court-martial*:
>
> When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and

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H

if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody."

Section 121 of the Act, which deals with the prohibition of second trial runs thus:

"121. *Prohibition of second trial* When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections."

Sub-section (1) of Section 127 of the Army Act provides thus:

"127. *Successive trials by a criminal court and court-martial*

(1) A person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence, or on the same facts."

Put briefly, Section 475 of the Code of Criminal Procedure, 1973, which deals with delivery to the Commanding Officer of persons liable to be tried by court-martial confers power on the Central Government to make rules, consistent with the laws applicable to the Armed Forces of the Union, in respect of the matters set out therein. Certain rules were framed by the Central Government regarding the adjustment of jurisdiction of Civil and Military Courts over military personnel accused of civil offences. These Rules are called Criminial Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1973. Briefly stated,, Rule 3 of the said Rules provides that where a person subject to any law relating to the Armed Forces of the Union is brought before a Magistrate and charged with an offence for which he is also liable to be tried by a court-martial or Coast Guard Court, as the case may be, such Magistrate shall not proceed to try such person or to commit the case to the Court of Sessions, unless he is moved to do so by a competent military, naval, air force or Coast Guard authority or he is of the opinion as set out in clause (b) of Rule 3 of the said

A Rules. Rule 4, in beief, provides that when such a person as aforestated is brought before the Magistrate for trial, before proceeding to frame the charge, the Magistrate shall give a notice to the Commanding Officer or the competent military authority or, as the case may be, of the accused and till the expiry of the period of 15 days
B from the date of service of such notice, the Magistrate concerned will not proceed to do any of the things set out in clauses (a) to (d) of Rule 4 of the said Rules.

Army Instruction No., 31 of 1986, *inter alia* provides that an officer who ceases to carry out the duties of his appointment by being
C attached to another Unit for disciplinary purposes will vacate his appointment or relinquish any acting rank after 21 days. There is a further provision in the said Instruction that if such an officer is subsequently acquitted or for any purpose not brought to trial or his character is vindicated to the satisfaction of the appropriate authorities at Army Headquarters vide such inquiry as is made under para 346 of the
D Regulations for the Army, such officer will be reappointed to the post vacated by him and the acting rank of the officer will be deemed to have been held by him continucusly with effect from the date he relinquished it.

E The first question which arises for consideration is whether, after having opted for trial of the respondent by a court martial under the Army Act, he could have been sent back by the army authorities to the ordinary criminal court for standing trial of the same offence. It was submitted by learned counsel for the respondent that as the offence alleged to have been committed by the respondent was a civil offence
F under the Act, the army authorities had the option of allowing the ordinary criminal court, namely, the Magistrate's Court, to try the respondent for the offence, or claim the respondent for trial by a court martial. After having exercised that option in favour of a trial by court-martial, it was no longer open to the army authorities to send the respondent back for trial by the Magistrate's Court.

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In our opinion, Section 121 of the Act, which deals with the prohibition of second trial, has no application to the present case before us as the respondent was neither acquitted nor convicted by the court martial or by a criminal court nor has he been dealt with under Sections 80, 83, 84, or 85 of the Act. Section 127 of the Act deals with
H successive trials by a criminal court and court martial and sub-section

(1) of section 127 thereof specifically provides that a person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence or on the same facts. A perusal of the provisions of this section clearly snows that there is no general bar as such prohibiting successive trials by a court-martial and by a criminal court and that even where a person has been convicted or acquitted by a court-martial of the offence in question, he can be tried for the same offence by a criminal court, with the previous sanction of the Central Government. In the case before us, the question of sanction of the Central Government never arose because, as we have already pointed out, the respondent was neither convicted nor acquitted by the court-martial or dealt with under any of the sections set out earlier. In our opinion, therefore, the aforesaid submission of learned counsel for the respondent must be rejected.

It was submitted by learned counsel for the respondent that, as far as the attachment of the respondent to HQ 15 Artillary Brigade is concerned, he was attached to the said Unit for purposes of completing the disciplinary proceedings under the Army Act. As he was sent to a regular criminal court for standing trial, the attachment can no longer survive. In our view, this argument deserves acceptance. The only purpose of attachment of an army officer to a different unit is that the disciplinary proceedings against him could be speedily and satisfactorily completed without any interference by him. In view of the respondent being sent to the ordinary criminal court for trial, there was no question of his interfering thereafter with the disciplinary proceedings and in view of that, the order of attachment against him must be set aside and the respondent must be reattached to the IInd Sikh Light Infantry which was his original Unit. The correctness of this argument was not disputed by learned counsel for the appellants.

As far as the question of suspension is concerned, we find that the respondent was suspended pending proceedings contemplated against him, as set out earlier. Under Army Instruction No. 31 of 1986 to which we referred to in some detail earlier, he vacated his appointment and acting rank 21 days after the attachment to a different regiment for purposes of completing the proceedings against him. As he has not yet been acquitted nor has his character been vindicated to the satisfaction of the appropriate authorities at Army Headquarters and he is to be tried by the criminal court, till the trial is completed or given up or till he is acquitted or his character vindicated to the satisfaction

A of the appropriate authorities, there is no case for revocation of the order of his suspension or restoration of his acting rank. That claim made by the respondent must, therefore, fail.

In the result the appeal is allowed and impugned orders of the
B High Court are set aside except to the extent that the attachment of the respondent to the other Unit will cease and he will be reverted to his original unit, as set out earlier.

Parties will bear their own costs throughout.

T.N.A. Appeal allowed.