

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Reserve : 31.1.2008
Date of Decision : 08.02.2008

+ WP(C) No.7132/2001

EX-NK/SHT K. KAMRAJ Petitioner

Versus

1. THE UNION OF INDIA
2. THE CHIEF OF THE ARMY STAFF
3. COL. HKEM PANIKKER ... Respondents

Advocates who appeared in this case :

For the petitioner : Mr. P.D.P. Deo, Advocate.

For the respondents : Ms. Maneesha Dhir with Ms. Preeti Dalal,
Advocates

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers may be allowed to see the judgment?	No
2. To be referred to Reporter or not?	Yes
3. Whether the judgment should be reported in the Digest?	Yes

J.M. MALIK, J.

1. The petitioner Ex-NK/SHT K. Kamraj was serving with 514

ASC Battalion in Indian Army. In August 1999, the said unit went to Bhatinda, Punjab as the unit of petitioner used to go on yearly training to civilian areas away from the permanent location of the unit. On 16th August, 1999, the petitioner along with Sepoy, S. Borah, Sepoy (MT) Driver V. Mani, and Hav. Rajkumar were commanded by their Officer Commanding Sub. A. Das to load four barrels of diesel into a vehicle called 'Four Tonner' of the composite platoon. While the above said personnel were unloading the barrels in a civil tractor, they were apprehended by personnel of military police and charged for selling diesel. Consequently, a court of inquiry was conducted for the alleged charge.

2. On 18th October, 1999 court of inquiry finalised with direction of competent authority for taking disciplinary action against all except Sepoy S. Borah and Sepoy V. Mani. On 11th January, 2000 separate tentative charge sheet was framed against the petitioner though in a joint trial case. The said charge sheet is reproduced as follows :

“TENTATIVE CHARGE SHEET

The accused No.6383361Y Nk./SHT K. Kamraj is charged with :

AA Sec 63

AN ACT PREJUDICIAL TO GOOD ORDERS AND
MILITARY DISCIPLINE

in that he,

at Bhatinda on 16 Aug 99 at 2000h, while performing duties with 11 Compo PL., complied with illegal order by JC-213826W Sub/SKT A.Das, officiating OC 11 Compo Pl., to unload four barrels of diesel into civil tractor, knowing that the same was being misappropriated.

Station : c/o 56 APO
Dated : 11 Jan 2000

(HKEM PANIKER)
Colonel
Commanding Officer"

Two separate tentative charge sheets were framed against the remaining accused.

3. Summary of Evidence was recorded against petitioner and other co-accused between March 2000 to November 2000. Petitioner as well as the remaining two co-accused were committed to trial by General Court Martial on revised charge vide charge sheet dated 16/17 April 2001. The said charge sheet runs as follows :

"CHARGE SHEET

The accused JC-213826W Sub/SKT A.Dass, (Accused no.-1), No. 6376812L Hav/SHT Rajkumar (Accused no.-2) and No.-6383361Y Nk./SHT K. Kamraj, (Accused no.-3), all of 514 ASC Bn. are charged with:

Army Act
Section 52(a)

COMMITTING THEFT OF PROPERTY
TO THE GOVERNMENT

(read with IPC Section 34) in that they together,

at Bhatinda, on 16 Aug 99,
committed theft in respect of four
barrels of diesel containing 816
(eight hundred and sixteen liters of
diesel, the property of the
government).

Place : Dehradun
Dated : 16 Apr 2001

(Sunil Khosla)
Colonel
Commanding Officer
514 ASC Bn.

to be tried by the general court martial

Place : Dehradun
Dated : 17 Apr 2001

(KK Khanna)
Maj. Gen.
(General Officer Commanding)
14 Infantry Division"

4. On 19.06.2001 the petitioner was declared guilty along with other two alleged accused and he was awarded the following punishment :

“(a) to be reduced to the ranks;

(b) to suffer rigorous imprisonment for 6 months; and

(c) to be dismissed from the service.”

Almost similar punishments were awarded to the other two accused also.

5. Under these circumstances the present writ petition, with

the following prayers, was filed in this court:

“(a) quash the proceedings of the General Court Martial as being illegal;

(b) quash the sentence passed by the General Court Martial;

(c) issue appropriate writ or direction to respondent no. 1 and 2 to reinstate the petitioner in service with all the consequential benefits; and

(d) pass such and other / further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

6. The respondents have contested the present petition. We have heard the counsel for the parties.

7. The argument urged by the learned counsel for the petitioner has the following three prongs. The key argument urged by the learned counsel for the petitioner was that the Army authorities were not empowered to change the charge. The first charge dated 11th January, 2000 was in regard to compliance of illegal order given by A. Dass to unload four barrels of diesel into Civil Tractor knowing that the same was misappropriated. The second charge pertains to dishonest misappropriation of 816 litre of diesel owned by the Government. Learned counsel for the petitioner vehemently argued that there was no conspiracy and the respondents have failed to produce even an iota of evidence

in this regard. He also pointed out that Army Rule 22 has been violated. In support of his case, he has cited an authority reported in ***Lance Dafedar Laxman Vs. UOI and Ors. [DRJ 1992 (24)]***. He, however, failed to explain as to how the provisions of Rule 22 of Army Rules have been violated. Secondly, there is no evidence, worth the name, to show that the petitioner had the knowledge that the above said diesel was being misappropriated. The petitioner was just obeying the orders of his senior. He lastly pleaded that the punishment awarded to the petitioner is disproportionate.

8. We are unable to locate any substance in these arguments.

Rule 22 of the Army Rules is reproduced as follows:

[22. Hearing of Charge.-(1) Every charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call such witness and make such statement as may be necessary for his defence:

Provided that where the charge against the accused arises as a result of investigation by a Court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the commanding officer may dispense with the procedure in sub-rule (1).

(2) The commanding officer shall dismiss a charge brought before him if, in his opinion the evidence does not show that an offence under the Act has been committed, and may do so if, he is

satisfied that the charge ought not to be proceeded with:

Provided that the commanding officer shall not dismiss a charge which he is debarred to try under sub-section (2) of Sec. 120 without reference to superior authority as specified therein.

(3) After compliance of sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time-

(a) dispose of the case under section 80 in accordance with the manner and form in Appendix III; or

(b) refer the case to the proper superior military authority; or

(c) adjourn the case for the purpose of having the evidence reduced to writing; or

(d) if the accused is below the rank of warrant officer, order his trial by a summary court-martial:

Provided that the commanding officer shall not order trial by a summary court-martial without a reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless-

(a) the offence is one which he can try by a summary court-martial without any reference to that officer; or

(b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(4) Where the evidence taken in accordance with sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge(s) on the basis of the evidence so taken as well as the investigation of the

9. Col. HKEM Pannikar, Station Headquarters was examined as

defence witness at the request of the petitioner and his two co-accused. He testified that Army Rule 22 was complied in each case in letter and spirit. He was cross-examined at length but nothing of importance was elicited during his cross examination. Learned counsel could not point out any flaw therein.

10. The facts of the above-cited authority are altogether different. No such illegalities were pointed out in the instant case. The above cited authority has no application to the facts of this case. It stands established that the charge was legally amended within the parameters of law. It appears that this objection was raised merely for the sake of cavil.

11. Now we turn to the knowledge of the petitioner about the commission of the above said crime. The motivation behind the commission of the crime is transparent. The Army case is clear. There is no hinge nor loop to hang a doubt on. This is an admitted fact that Sub A. Das accused no. 1 had given orders to driver S. Borah to go to four guards location along with four tone vehicle containing the four barrels of diesel. All the three accused including this petitioner were sitting in the vehicle. The vehicle did not go to four guards location. It was diverted and was taken towards Bibiwala village and subsequently the unloading was

done in the trolley of the civilian tractor. The petitioner also kept on participating in the above said deal without even a whisper or protest, objection or resistance. The evidence also reveals that the driver of the vehicle had stated that he did not know the location of four guards. The petitioner directed him to take the vehicle to four guards location. The evidence further goes to show that he had subsequently directed him not to take the vehicle to four guards but to the above said predesignated place to deliver the consignment to a civilian. The evidence produced by the prosecution consists of Sepoy MT V. Mani, PW1, he has stated in clear and unequivocal terms that the petitioner and other three were also sitting in the vehicle. Naib Subedar (M.P) B.R. Sharma second witness for prosecution also supported the prosecution case.

12. All these facts and circumstances clearly establish mens rea and common intention on the part of the petitioner. The petitioner's argument that he was doing it at the behest of the Commanding Officer is of no consequence. He should have raised the objection as to why the vehicle had come at an unknown place and why the unloading was being done in the trolley of the civilian tractor. All these facts adequately attribute knowledge on

the part of the petitioner. The facts of this case speak for themselves. The petitioner has no defence to make.

13. Now we advert to the quantum of punishment. Those who indulge in outlawry, should know how to stand the gaff. Suck like criminals neither love the country nor they have any respect for the law. The punishment awarded by the authorities should have deterrent effect on the potential wrong doers and it should commensurate with the seriousness of the offence. The above said punishment fits the above said crime. In the result, the petitioner's tilt at windmills fails.

14. The instant writ petition is therefore dismissed but there will be no orders as to costs.

J.M. MALIK, J.

A.K. SIKRI, J.

February 08, 2008
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