

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

% *Judgment Reserved on : January 20, 2015*
Judgment Delivered on : January 28, 2015

+ **W.P.(C) 6426/2000**

KEASHAV SINGH Petitioner

Represented by: Mr.Puneet Verma, Advocate

versus

DIRECTOR GENERAL, BSF & ORS Respondents

Represented by: Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The present writ petition has been filed by the petitioner challenging the order dated October 17, 1998 passed by the Summary Security Force Court (herein after referred as SSFC), the order dated November 20, 1998 passed by the DIG, BSF HQ, Gurdaspur confirming the same as well as the order dated September 24, 2000 passed by the DG, BSF rejecting the statutory petition filed by the petitioner.

2. The facts germane for adjudication of the present petition are that on January 09, 1996 while posted as L/Naik with the 122nd Bn. BSF at Barmer, a complaint was made against the petitioner by one Smt.Jhuri Bhuyan to the Commandant, 23rd Bn., BSF alleging that the petitioner had used criminal force on her with intent to outrage her modesty.

3. Regarding the aforesaid complaint dated January 09, 1996 made by Smt.Jhuri Bhuyan a note dated January 20, 1996 was submitted by

Insp.Bishambar Dayal to the Commandant of the Battalion to which the petitioner was attached i.e. the 122nd Bn. for taking necessary action against the petitioner. On the basis of the same, a charge was framed against the petitioner under Section 46 of the BSF Act for committing a civil offence of using criminal force against a woman with intent to outrage her modesty, an offence under Section 354 IPC for purposes of taking cognizance of an offence report as per Rule 43 of the BSF Rules, 1969 and after hearing the petitioner with respect to the offence report, a decision was taken by the Commandant that Record of Evidence be drawn up. The said order is dated January 20, 1996.

4. Proceedings to draw up the Record of Evidence commenced on February 16, 1996. At the ROE proceedings, the statements of 10 witnesses; namely : Sub.Bishamber Dayal, SI/CLK Ganga Singh Rawat, Kalpana Devi w/o L/Nk Keshav Singh, Jhuri Bhuyan w/o Ct.Kumud Bhuyan, Ct.Kumud Bhuyan, Ct.Ram Kumar Singh, Ct.Tej Bahadur Singh, HC Bhanwar Lal, ASI Sureshpal Singh and Sub.Harbans Lal was recorded.

5. The Record of Evidence was placed before the Commandant who, after considering the same was of the opinion that the petitioner should be tried before a Summery Security Force Court and for which a charge sheet was served upon the petitioner.

6. On said date the 122nd Bn. to which the petitioner was posted as a L/Nk. was to move out from Barmer to Bareilly. Since all witnesses were available in Barmer, a decision was taken to attach the petitioner with the 23rd Bn. BSF which was to be stationed at Barmer. Accordingly, vide order dated May 18, 1998 the petitioner was attached to the 23rd Bn. BSF.

7. After the attachment of the petitioner to the 23rd Bn., the officiating Commandant of the said Bn. vide order dated August 21, 1998 issued a fresh

charge sheet to the petitioner, which was identical to the earlier charge sheet dated March 02, 1996, issued by the Commandant, 122nd Bn. on the basis of the ROE proceedings conducted at that time. The same reads as under:

“ The accused No.800011756 L/NK Keshav Singh ‘F’ Coy 122nd Bn. BSF attached with 23rd Bn. BSF, Madhopur (Punjab) is charged with:

BSF Act 1968 Sec. 46 Committing a civil offence that is to say using criminal force to a woman with intent to outrage her modesty punishable u/s 354 IPC In that he, at about 21:30 hours on January 09, 1996 entered in the house of No.89007025 Ct.Kumud Bhuyan of 23rd Bn. BSF and forcibly tried to take Smt.Jhuri Bhuyan w/o No.89007025 Ct.Kumud Bhuyan on the bed intending to outrage her modesty.”

8. Thereafter, the SSFC proceedings commenced against the petitioner on October 17, 1998. Needless to state, the petitioner pleaded not guilty with respect to the charge leveled against him. During the SSFC proceedings, the prosecution examined eight witnesses in order to substantiate the charge.

9. It would be beneficial to briefly extract the statements of the witnesses during the said SSFC proceedings.

10. Jhuri Bhuyan w/o Ct.Kumud Bhuyan PW-1 deposed that on the date of incident at about 21:00-21:30 hours, while petitioner's wife was helping her to prepare food in her quarters, the petitioner entered her quarter and sat on the same box in the kitchen on which she was sitting. She objected, but the petitioner told her that she was like a daughter to him. Thereafter, she sat on the floor near the wife of the petitioner. Petitioner's wife said that they would be going back to the quarter and would return again shortly saying that they would bolt the door from outside. Only petitioner's wife departed and he hid himself under the cot. She enquired from petitioner's wife as to

where was the petitioner to which she replied he must have gone home. She repeated the question; seeing that the petitioner was clearly hiding under the cot, but his wife still said that he was at his quarter. She told her that petitioner was hiding under the cot, at which point of time the petitioner emerged therefrom, asking her to kiss him. His wife also made said request, asking her to kiss him as he was like a father to her. She refused. After this, the petitioner persisted with his advances, and in the presence of his wife held her head with his hands and kissed her forehead three times. Both petitioner and his wife then started laughing and told her that they were simply joking around. Petitioner's wife then left, bolting the door from the outside. The petitioner remained inside. While she was cutting the garlic, petitioner grabbed her waist with both hands, whereupon she caught hold of the table in front of her (upon which the gas stove was also placed) and started shouting for help. He continued to pull her, and as a result, her grip on the table was loosened, dislodging the stove. He tried to take her to the bed but released her when she raised an alarm. She then picked up a knife and told him either he would be killed or she would get herself killed. Petitioner then told her not to cry and that he would leave. She asked him to get out, saying that she would not shout after this. He went out and she bolted the door. Shortly thereafter, the petitioner returned with his wife, requesting her to open the door to which she strongly objected and a verbal altercation between them ensued. She then left through the back door and went to quarters of Ct.Thapa and narrated the incident to him and asked him to call her husband, Ct.Kumud Bhuyan. He arrived shortly thereafter and she narrated the entire incident to him.

11. During cross-examination, she stated that she was wearing a maxi at that time and when she was being dragged to the bed, her maxi was not damaged/torn in any way.

12. Sub.Bishamber Dayal PW-2 deposed that on the date of incident he was sitting at the roznamcha when he came to know that the petitioner under influence of alcohol had molested Jhuri Bhuyan and thus he proceeded to the quarters of Ct.Kumud Bhuyan, in the company of HC Bhanwar Lal PW-6, ASI Suresh Pal Singh PW-7 and Sub.Harbans Lal PW-8. Upon reaching he observed the household items to be in disorder, with the table out of place and the gas chulha about to fall off it. Thereafter, Jhuri told them that the petitioner had kissed her thrice on the forehead and had tried to molest her in the presence of his wife. Ct.Kumud Bhuyan PW-3 was present by then and was in an angry mood. He then reached the petitioner's quarters accompanied by aforementioned persons; but the petitioner remained locked inside, refusing to let anyone enter his quarter despite repeated requests.

13. Ct.Kumud Bhuyan PW-3 deposed that on the date of incident at about 22:00 hours he returned to his quarter to find his wife weeping in front of Ct.Satish Kumar's quarter. Upon enquiry, she told him that the petitioner had molested her. Being furious he searched for the petitioner and learnt that he was in his quarter. Jawans from the barracks had gathered.

14. Ct.Ram Kumar PW-4 deposed that on the night of the incident, while on duty at the Family Line, at about 21:30-21:45 hours he saw a lady weeping and upon enquiry she started weeping even louder. She was speaking incoherently. Ct.Tej Bahadur WP-5, his wife and the wife of Ct.Satish Kumar also reached there and told him that somebody had misbehaved with the lady who was crying. Accompanied by Ct.Tej Bahadur PW-5 he went to Qtr.No.81 where families of the BSF personnel were

gathered. They said that the petitioner had misbehaved with the lady. Along with Ct.Tej Bahadur, PW-5 he proceeded to the petitioner's quarter. Petitioner's wife opened the window saying that he would not come out. Petitioner then came to the window and they requested him to come out. By this time, around 10 to 15 persons had gathered. They took the petitioner to the BHM.

15. Ct.Tej Bahadur PW-5 deposed in sync with the testimony of PW-4 with clarification that Jhuri Bhuyan was the lady who was crying alleging that the petitioner tried to outrage her modesty.

16. HC Bhanwar Lal PW-6 deposed that on the night of incident, while on duty at the BHM, at about 22:00 hours, Ct.Ram Kumar Singh PW-4 and Ct.Tej Bahadur PW-5 brought the petitioner to the BHM stating that he had intruded into the quarter of Ct.Kumud Bhuyan and that his wife was weeping. He told them to go back to duty and reported the matter to Sub.Harbans Lal PW-8. After some time, ASI Suresh Pal Singh PW-7 and Ct.Kumud Bhuyan PW-3 reached there. Ct.Kumud Bhuyan was in an angry mood and they pacified him. They took the petitioner to the place of the incident.

17. ASI Suresh Pal Singh PW-7 deposed a version of events in sync with the depositions given by Ct.Kumud Bhuyan PW-3, Ct.Ram Kumar Singh PW-4, Ct. Tej Bahadur PW-5 and HC Bhanwar Lal PW-6. He added that while at the quarter of petitioner with Ct.Kumud Bhuyan PW-3 and Sub.Harbans Lal PW-8 the petitioner's wife threatened them saying that she was the daughter of an Inspector of Police and would get them jailed. He also stated that at the place of incident the household items were in a disorderly fashion.

18. Sub.Harbans Lal PW-8 deposed that on the night of incident, at about 22:30 hours, somebody told him about the incident and he proceeded towards the GD. There, ASI Suresh Pal Singh PW-7 and Ct.Ram Kumar Singh PW-4, Ct.T.B.Thapa and the petitioner were present. Smell of alcohol was coming from the mouth of the Petitioner. On being told that the petitioner had tried to molest Jhuri Bhuyan in her house he went there and saw the quarter in disarray. The petitioner was by then in his quarter and refused to come out. Petitioner's wife threatened to get them in prison saying that she was the daughter of a Police Inspector. He reported the matter to the Commandant.

19. The case for the prosecution having been closed, the defence led one witness, namely Smt.Kalpana Devi, the wife of the petitioner. She deposed that at 18:00 hours on the date of incident, she was preparing food at Ct.Kumud Bhuyan's quarter with his wife Jhuri Bhuyan, since she was unwell. While she was preparing food in Ct.Kumud Bhuyan's quarter her daughter came to call her home telling her that her husband had reached home. A few minutes later, her husband arrived and asked her to come home immediately and when she said she would come after preparing food since Jhuri Bhuyan was ill, her husband got enraged and slapped her twice on her cheek at which Jhuri Bhuyan intervened and caught her husband telling her not to hit her. Her husband took her to their quarter by holding her hand and that after 20 minutes two personnel in uniform and one in civil clothes came enquiring about her husband. Thereafter she saw her husband being beaten about 10 yards away.

20. During cross-examination, she denied that her husband hid under the cot or kissed Jhuri Bhuyan or had any verbal altercation with her. She

denied the suggestion that she instigated her husband when she made illicit advances towards Jhuri Bhuyan.

21. The SSFC proceedings were completed on October 17, 1998 and considering the evidence led the Commandant who was sitting as the court held the petitioner guilty and passed an order dismissing petitioner from service on October 17, 1998 itself which was countersigned and approved by the DG, BSF HQ on November 20, 1998. The statutory appeal filed by the petitioner to the Director General, BSF and the same was rejected vide order dated September 14, 2000.

22. Aggrieved by the aforesaid orders of the SSFC, the approving authority as well as the order rejecting the statutory appeal, the petitioner has filed the present writ petition.

23. Learned counsel for the petitioner sought to challenge the present proceedings on three main grounds. Firstly, it was urged that the present proceedings were violative of Section 74(2) of the BSF Act, 1968 which provides that when there is no grave reason for immediate action and reference can be made to the officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the section 14, 17 and 46 of the Act. It was contended that conducting the Summary Security Force Court after a period of 2 years and 10 months of the alleged incident was illegal.

24. Secondly, it was urged that the present proceedings were violative of Section 80 of the BSF Act, which provided that when a criminal court and a security force court have jurisdiction in respect of an offence, it shall be in the discretion of the Director General or the Inspector General or the Deputy Inspector General within whose command the accused persons is serving or

such other officer as may be prescribed, to decide before which court the proceedings shall be instituted, and, if that officer decides that they shall be instituted before a Security Force Court, to direct that the accused person shall be detained in Force custody. It was pleaded that in the present case, no such decision was taken despite the offence being punishable under Section 354 IPC and a decision was only taken as to whether the petitioner would be tried by the PSFC or SSFC and the same was not as per Section 80 of the Act and therefore, the proceedings stood vitiated on this ground.

25. Lastly, it was urged that the petitioner was attached to the 122nd Bn. BSF, and therefore, it was only the Commandant, 122nd Bn. who had the power to initiate disciplinary proceedings against the petitioner, whereas the petitioner was attached with the 23rd Bn. during the disciplinary proceedings which was a clear violation of Rule 16(5) of the BSF Rules, which provides that the disciplinary powers over a person subject to the Act shall be exercised by the commandant of the Battalion or unit to which such a person is attached. It was contended that in the backdrop of the same, the Commandant of the 23rd Bn. had no authority and power to take any disciplinary action against the petitioner.

26. We find no violation of Section 74(2) of the BSF Act for the reason Sub-Section 2 reads : *‘Where there was no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the Sections 14, 17 and 46 of this Act, or any offence against the officer holding the Court’*, and in the instant case, on facts we find that the Commandant of the 122nd Bn. made a reference to the Competent Authority, namely the DIG

BSF Barmer who, vide communication dated May 10, 1996 opined that the Commandant may dispose of the case after holding a SSFC Trial. It is apparent that the Competent Authority had accorded the necessary permission envisaged by sub-Section 2 of Section 74. The sub-Section simply says that where there is no grave reason for immediate action and reference can be made to the officer empowered to convene a petty summary force court for the trial of an alleged offender, an officer holding a Summary Security Force Court shall not try, without such reference, any offence punishable under Sections 14, 17 and 46 of the Act. If after a reference is made, the Competent Authority directs trial by holding a Summary Security Force Court, the letter and spirit of the law would be satisfied.

27. As regards the contention that there was a violation of Section 80 of the BSF Act, the argument overlooks that Section 80 contemplates a choice between a criminal trial and a Security Force Court only if for the offence in question an FIR is registered for the reason cognizance by a criminal court of an offence can be either when post FIR a charge sheet is filed or a complainant files a petition before the Criminal Court. In the instant case, the said discretion was not required to be exercised for the reason no FIR was registered against the petitioner at the instance of the complainant, much less had any criminal court taken cognizance of the offence based on the police report or otherwise.

28. As regards the trial of the petitioner by the Commanding Officer of the 23rd Bn., it may be true that as of the date of the incident the petitioner was attached with the 122nd Bn. who had taken cognizance of the offence report and had ordered the Record of Evidence to be drawn up. But before the petitioner could be tried before the Summary Security Force Court, the

122nd Bn. had to move to Bareilly. The witnesses were in Barmer and thus a decision was taken to attach the petitioner to the 23rd Bn. which was in Barmer. A policy decision had been taken by the respondents way back in the year 1992 which has since been crystallized in a policy letter of May 15, 1998, that where a Battalion is moved out and a personnel attached thereto has to be tried and if the witnesses are at the place where the Battalion was stationed when the offence was committed, the person concerned should be attached to a Battalion stationed at the place of the offence. The logic behind the said policy is that witnesses are not expected to travel to a far off place where the BSF Battalion is transferred. Rule 16(5) of the BSF Rules, 1969 simply states that disciplinary power over a person subject to the act shall be exercised by the Commandant of the Battalion to which such a person belongs. The Rule does not prohibit the attachment of a person to a different Battalion if exigencies of a situation so warrants.

29. There was no argument advanced regarding quantum of the sentence imposed.

30. The writ petition is accordingly dismissed but without any order as to costs.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

JANUARY 28, 2015

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