

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-28464-2018 (O&M)

Date of Decision: 13.09.2019.

Wing Commander S. K. Sharma and Ors ... Petitioners

vs.

Union of India and Ors .. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. K.D.S.Hooda, Advocate
for the petitioners.

Mr. Sanjay Vashisht, Advocate
for the respondents.

Mr. Sant Kashyap, Advocate
for applicant-Ajit Singh Tomar
in CM-9429-CWP-2019

ARUN MONGA, J.(ORAL)

CM-9429-CWP-2019

For the reasons stated in the application, the same is allowed.

Applicant, namely, Ajit Singh Tomar, is impleaded as respondent No.5
herein.

Amended memo of parties is taken on record.

CWP-28464-2018 (O&M)

Impugned herein is an order dated 05.10.2016 (Annexure P-5),
whereby the request of the petitioners for transfer/taking over the trial of a
private complaint has been declined on the ground that the same is barred
by limitation as envisaged under Section 121 of Air Force Act, 1950.

2. Before advertizing on the merits of the case, it would be apposite
to reproduce Section 121, *ibid*, hereinbelow:-

121. Period of limitation for trial.—

(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion, other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the Air Force.”

3. A perusal of the above leaves no manner of doubt that the period of limitation shall reckon from the date of offence except in those cases where the accused has been evading arrest after the commission of an offence in which the said period shall be excluded for the purpose of limitation.

4. In the present case, the accused /Officials of the Air Force at the relevant time were posted at Faridabad and in the course of discharge of their duties had got certain land vacated from the alleged encroachers. In pursuit of the same, an FIR No.274 dated 8.7.2013 (Annexure P-1) was also instituted by the said Officials.

5. As a counter blast thereof, contends the learned counsel for the

petitioners, a private complaint (Annexure P-2) behind the back of the officials was instituted by respondent No.5/complainant. All throughout the petitioners were not aware of institution of the said criminal proceedings and knowledge of the same, for the first time, came to them when summoning order of the trial Court was served on them, requiring them to appear before the Court, seek bail and defend themselves in the said proceedings. Immediately on coming to know of the same, they made a request for transfer of the criminal proceedings under the Air Force Act, *ibid* and adjudicate the same by way of Court Martial in accordance with law. The said request was declined, hence the present writ petition.

6. I have heard the learned counsel for the parties.

7. I am of the view that there is merit in the contention of learned counsel for the petitioners that in view of absence of any knowledge of institution of complaint, there was no occasion for the petitioners to make a request for transfer of criminal proceedings to be tried by way of Court Martial under Air Force Act, *ibid* and on the very first occasion, when they came to know the same, said request was made.

8. In the premise, it seems rather unjust that the said request was declined on the ground that it is barred by limitation since the alleged offence/institution of complaint is much prior to the date of knowledge of the same.

9. Learned counsel for the petitioners has rightly given an illustration, which seems fair and equitable, that in case, an FIR is registered and the person does not surrender and/or does not subject himself to the jurisdiction of the Investigating Officer under the Code of Criminal Procedure and decides to either evade the arrest and much worse, prefers to

be a proclaimed offender, in that case, the limitation by operation of Sub-Section 3 of Section 121, *ibid* would stand extended till the date he decides to present himself before the Investigating Officer or in perpetuity in case he is never arrested by virtue of his having evaded the said arrest process.

10. In the present case, even though the petitioners admittedly did not evade any arrest but in the absence of not having any knowledge of the same, they are entitled to the benefit of extension of period of limitation with effect from the date of filing of the complaint or till the knowledge of the summoning order having been issued against them requiring them to defend themselves in the criminal proceedings at Faridabad.

11. In view of my discussion above and the reasoning contained therein, the present writ petition is allowed. Impugned order dated 05.10.2016 (Annexure P-5) is quashed. Respondents are directed to transfer/take over the criminal proceedings and institute appropriate Court Martial proceedings at Hindan and adjudicate the same in accordance with Air Force Act, *ibid*.

12. Respondent No.5 is at liberty to participate in the said criminal proceedings in accordance with law.

13.09.2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No