

In the High Court of Punjab and Haryana at Chandigarh

**CRWP No. 3942 of 2022
Date of Decision: 5.5.2022**

Degala Sivanarayana Reddy

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Arun Singla, Advocate
for the petitioner.

Ms. Gurmeet Kaur Gill, Sr. Panel Counsel
for respondents No. 1 to 4-UOI

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner herein, as revealed by Annexure P-2, became sentenced to undergo rigorous imprisonment for a term of 2½ years, and, also the penalty of dismissal from service, became imposed upon him. The afore drawn sentence, was in respect of charges drawn against him, qua commission of offences punishable under Sections 363, 354, 451, 342 of the IPC. Moreover, the afore cumulative substantive sentence of imprisonment, drawn against the petitioner, was also in respect of breaches being caused to certain relevant provisions, contained in Section 69 of the Army Act. The verdict of conviction, as made upon the convict-petitioner herein by the General Court Martial, and, also the consequent therewith sentence (supra), became appealed by him, before the Armed Forces Tribunal, Chandigarh.

Along with the appeal, an application constituted under Section 15 of the

Armed Forces Tribunal Act, 2007 (for short 'the Act') read with Section 389

of the Cr.P.C., became preferred before the Tribunal, wherein relief was sought for suspending, during the pendency of the apposite appeal, the execution of the afore term of the substantive sentence of imprisonment, as became imposed upon the petitioner. However, through an order made thereons, and, as becomes embodied in Annexure P-2, the above asked for relief became declined to the petitioner.

2. The petitioner is pained, and, is led to institute thereagainst the instant petition, before this Court.

3. Bearing in mind the afore term of the substantive sentence of rigorous imprisonment, rather extending upto 2½ years, thereupon, prima facie, the learned Tribunal, was vested with jurisdiction, as encompassed in clause (e) of Sub-Section (6) of Section 15 of the Act, to suspend the execution of the afore imposed substantive sentence of imprisonment, especially during the pendency of the appeal, as reared by him, before the Tribunal rather against the verdict of conviction (supra), and, consequent therewith sentence (supra), as became imposed upon the petitioner, by the General Court Martial.

4. Though, the above jurisdictional empowerment, is uncanalised, especially with respect to its exercising(s) qua the tenure of the substantive sentence of imprisonment, imposed upon the convict, and, also not does rather carry any provision, alike the mandate, as carried in Section 389 of the Cr.P.C., wherein, occurs an empowerment in the learned Appellate Court concerned, to during the pendency of the apposite appeal, rather suspend the execution of the substantive sentence of imprisonment, hence extending upto a term not beyond three years, but subject to certain conditions, being imposed upon the aggrieved convict. However, the wants in Section (supra)

of the Act, hence, the afore provision alike the one, as carried in the Cr.P.C., did yet vest jurisdiction in the Tribunal, irrespective of the fact, that the afore power being uncanalised, to make dependence upon Section 389 Cr.P.C., as significantly there is no explicit provision in the “Act”, which candidly speaks about the ouster of mandate of the Cr.P.C., more especially the one carried in Section 389 Cr.P.C. Therefore, if there is no explicit ouster in the “Act”, of the provisions, as carried in Section 389 Cr.P.C., thereupon the mandate of Section 389 Cr.P.C., can be inferred to be canalising the jurisdictional empowerment, as becomes vested, under Section 6(e) of the Act, rather in the Tribunal. In sequel, the power to suspend, during the pendency of the appeal, the execution of the substantive sentence of imprisonment, and, as becomes carried in Section 6(e) of the Act, and, becomes vested in the Tribunal, is to be read as an empowerment to the Tribunal, to during the pendency of the apposite appeal, to suspend the execution of the sentence of imprisonment, in case its tenure extends upto three years, but subject to imposition of certain conditions. The further consequence thereof, is that since the term of the substantive sentence of imprisonment, as imposed upon the convict-petitioner herein, by the General Court Martial, is less than three years, and, when thereagainst an appeal is subjudice before the Tribunal, therefore, the execution of above term of the substantive sentence of imprisonment, was enjoined to be suspended, during the pendency of the apposite appeal, before the Tribunal. The above would bring likeness with the jurisdiction, vested in Section 389 Cr.P.C., in the appellate Court concerned, provisions whereof are to be construed for reasons (*supra*) to be also regulating the jurisdiction of the Tribunal, in respect of suspending, during the pendency of the appeal, the

above term of substantive sentence of imprisonment.

5. Therefore, the impugned order is interfered with, and, the above term of the substantive sentence of imprisonment, imposed upon the convict-petitioner, shall remain suspended during the pendency of the appeal, filed by the convict-petitioner, before the learned Tribunal. However, the above shall be subject to the petitioner furnishing before the learned Registrar, of the Armed Forces Tribunal, Chandigarh Bench, Chandigarh, personal, and, surety bonds comprised in a sum of Rs. One lac each, to the satisfaction of the Registrar, and, also subject to his making an undertaking before him, that as and when he is required to make his personal appearance, for any purpose, before the Tribunal, he shall ensure his presence, unless exempted for valid reasons. If the petitioner is in judicial custody, he be released forthwith but subject to his making the compliances (supra).

6. The petition is disposed of.

(SURESHWAR THAKUR)
JUDGE

May 05, 2022
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No