

06.01.2025  
Item No.13  
RP  
Ct. No.07

**WPA 16346 of 2021**  
**Nasibul Islam**  
**Vs.**  
**Union of India & Ors.**

Mr. Imtiaz Ahmed  
Mrs. Ghazala Firdous  
Sk. Saidullah  
Mr. Debopam Roy  
Mr. Mithun Mondal  
Mr. Md. Arsalan

....For Petitioner

Ms. Sushmita Saha Dutta

....for Respondents

1. The petitioner has prayed for setting aside the order of the Commandant/Disciplinary Authority dated April 23, 2021 and the order of the Director General/Appellate Authority dated May 6, 2021.
2. While the petitioner was attached with FTR Headquarter, Border Security Force, North Bengal, Kadamtala as a Constable in 94 Battalion BSF he was served with a charge sheet dated April 3, 2020. Three charges were levelled against the petitioner. The first charge was that he had deliberately and maliciously acted with intention to outrage the religious feeling of a particular religious community by insulting its religion or religious belief. The second charge was that he had morphed photographs of Prime Minister of India and sent to

other persons in WhatsApp groups. The third charge was that the petitioner was having contact with some foreign nationals and WhatsApp Group of certain other foreign countries.

3. The petitioner was subjected to trial before the Summary Security Force Court. The Commandant of 94 Battalion, Border Security Force passed an order on April 23, 2020 holding that the petitioner has committed offences under Sections 46 and 40 of the Border Security Force Act, 1968 (for short “1968 Act”). The first and second charge against the petitioner was only proved. The Commandant awarded sentence of dismissal from service. The petitioner filed an appeal petition and the Appellate Authority passed an order on May 6, 2021 thereby rejecting the appeal petition upon holding that the same is devoid of any merit.
4. Mr. Ahmed, learned advocate appearing for the petitioner submits that the petitioner was charged with civil offences falling under Section 46 of the 1968 Act. He further submits that the Summary Security Force Court lacks jurisdiction to try an offence under Section 46 of the 1968 Act in view of the provisions laid down under Sub-section 2 of Section 74 of the 1968 Act.
5. Mr. Ahmed further submits that Summary Security Force Court proceeding was also conducted in

violation of principles of natural justice as the petitioner was not afforded any opportunity to lead any evidence to defend the charges levelled against him.

6. Mr. Ahmed further places reliance upon a decision of the Hon'ble Orissa High Court in the case of **Kalipada Acharya vs. Union of India & Ors.** reported in **2019 LabIC 981** in support of his contention that the Summary Security Force Court do not have the jurisdiction to try offences under Section 46 of the 1968 Act.
7. Per contra Ms. Saha Datta, learned advocate appearing for the BSF Authority submits that the petitioner was charged with offences falling under Sections 40 and 46 of the 1968 Act. She submits that the Summary Security Force Court has the jurisdiction to try the offences falling under Section 40 of the 1968 Act. She further submits that since the charges levelled against the petitioner falling under Section 46 of the 1968 Act are of grave nature, the authorities subjected the petitioner to trial before the Summary Security Force Court.
8. Heard the learned advocates for the parties and perused the materials placed. Since the issue of jurisdiction of the Summary Security Force Court was raised by Mr. Ahmed, this Court shall decide the said issue before entering into other issues.

9. For the purpose of deciding the said issue, it will be beneficial to take note of some of the provisions of the 1968 Act for which the same are extracted hereinafter.

**“46. Civil Offences.-** Subject to the provisions of Section 47, any person subject to this Act who at any place in, or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a Security Force Court and, on conviction, be punishable as follows, that is to say,-

- a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer any punishment, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and
- b) In any other case, he shall be liable to suffer any punishment, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

**47. Civil Offences not triable by a Security Force Court.-** A person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or of rape in relation to, a person not subject to this Act shall not be

deemed to be guilty of an offence against this Act and shall not be tried by a Security Force Court, unless he commits any of the said offences,-

- a) while on active duty; or
- b) at any place outside India; or
- c) at any place specified by the Central Government by notification in this behalf.

**74. Powers of a Summary Security Force Court.-**

(1) Subject to the provisions of sub-section (2), a Summary Security Force Court may try any offence punishable under this Act.

2) When there is 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.

3) A summary Security Force Court may try any person subject to this Act and under the command of the officer holding the court, except an officer, or a subordinate officer.

4) .....

5) .....”

10. “Civil Offence” has been defined under Section 2(d) of the 1968 Act to mean an offence which is triable by a criminal Court. Section 2(g) defines “criminal court” to mean a Court of ordinary criminal justice in any part of India. Section 46 starts with the expression “subject to the provisions of Section 47”. Section 47 deals with civil offence not triable by Summary Security Force Court. After going through Section 47 of the 1968 Act this Court finds that an offence of murder or of culpable homicide not amounting to murder or of rape in relation to, a person not subjected to this Act shall not be deemed to be guilty of any offence under this Act and shall not be tried by a Security Force Court unless he commits any of such offence while on active duty or at any place outside India or at any place specified by the Central Government by notification in this behalf.
11. It is not the case of the petitioner that the charges levelled against the petitioner falls within Section 47 of the 1968 Act.
12. Now the question arises as to whether the charges levelled against the petitioner falling under Sections 40 and 46 of the 1968 Act could have been tried by the Summary Security Force Court.
13. Sub-section 2 of Section 74 states that when there is 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. Mr. Ahmed would strenuously contend that in absence of any finding recorded by the concerned authority in the manner as required under Sub-section 2 of Section 74 of the 1968 Act, the Summary Security Force Court lacks jurisdiction to try an offence under Section 46 of the said Act.

14. It is not in dispute that the petitioner was charged with three charges, two of the charges fall within Section 40 the 1968 Act and the other falls within Section 46 of the 1968 Act. It is not the case of the petitioner that Summary Security Force Court lacks jurisdiction to try an offence under Section 40 of the 1968 Act.
15. Upon going through Sub-Section 2 of Section 74 of the 1968 Act this Court finds that the Summary Security Force Court also has the jurisdiction to try an offence falling under Section 46 of the 1968 Act but the same is subject to certain conditions as stipulated in Sub-Section 2 of Section 74 of the 1968 Act. Thus, it cannot be said that there is inherent lack of jurisdiction of the Summary Security Force

Court to try the charges falling within Sections 46 of the 1968 Act.

16. In the case on hand the petitioner was charged with offences under Section 40 as well as 46 of the 1968 Act. The petitioner did not raise any objection as to the jurisdiction of the Summary Security Force Court to try the charges at the first instance. The petitioner participated in the proceeding before the Summary Security Force Court. In the appeal petition the petitioner also did not raise the issue of jurisdiction of the Summary Security Force Court. It is only for the first time before this Court that the petitioner has raised the issue of jurisdiction. The petitioner cannot be permitted to raise the issue of jurisdiction at this belated stage. However, this Court has already held that there is no inherent lack of jurisdiction of the Summary Security Force Court to deal with charges under Section 46 of the 1968 Act and since the charges against the petitioner was composite charges falling under Sections 40 and 46 of the 1968 Act, this Court holds that the Summary Security Force Court had the jurisdiction to try the offence for which the petitioner was charged with.
17. Having decided the issue of jurisdiction against the petitioner this Court shall now proceed to decide the other issues raised by Mr. Ahmed. Though Mr. Ahmed submits that the petitioner was not afforded

any opportunity to lead evidence but this Court finds that the Appellate Authority after going through the materials on record, has recorded a factual finding that the petitioner was given opportunity for preparation of defense. It was observed that the officer nominated by the petitioner was also appointed as friend of the accused. The Appellate Authority further recorded that the petitioner was explained about the charges levelled against him several times at the pre-trial stage and also during Summary Security Force trial. The Appellate Authority recorded a factual finding that at no point of time the petitioner was ever compelled to sign any documents or his signature was obtained forcefully. The Appellate Authority has further recorded that the petitioner was given opportunity to cross-examine the witness of the management which the petitioner declined to avail. The Appellate Authority recorded that the petitioner declined to produce defense witness but intended to make a statement.

18. In course of hearing of this writ petition the learned advocate for the petitioner could not satisfy this Court that there is any perversity in the aforesaid factual finding recorded by the Appellate Authority.
19. This Court, therefore, holds that the petitioner has failed to satisfy that the proceeding before the Summary Security Force Court was conducted in

violation of the principles of natural justice. For such reasons, this Court is not inclined to interfere with the concurrent finding of the fact arrived at by the Disciplinary Authority.

20. In Kalipada Acharya (supra), it has been held that the offence committed under Section 354 of the Indian Penal Code cannot be included within the meaning of Section 46 of the 1968 Act so as to be tried summarily by Summary Security Force Court. The said decision being distinguishable on facts cannot come to the aid of the petitioner in the case on hand.
21. Accordingly, this writ petition stands dismissed.
22. There shall, however, no order as to costs.
23. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

**(HIRANMAY BHATTACHARYYA, J.)**