Nasiruddin Khan vs State Of Bihar on 20 September, 1972

Equivalent citations: AIR1973SC186, 1973CRILJ241, (1973)3SCC99, AIR 1973 SUPREME COURT 186, 1972 SCC(CRI) 161 1973 3 SCC 99, 1973 3 SCC 99

Author: I.D. Dua

Bench: A.N. Ray, I.D. Dua

JUDGMENT

I.D. Dua, J.

1. This is an appeal by special leave under Article 136 of the Constitution from the judgment and order of the High Court of Judicature at Patna dated January 23, 1968 affirming on appeal the appellant's conviction and sentence under Section 5(f) of the Bengal Military Police Act, V of 1892 (hereinafter called the Act). The appellant was appointed as sepoy in Bihar Military Police V on November 11, 1962. The headquarters of the Bihar Military Police V as also of the Bihar Military Police VIII are at Phulwari Sharif. The appellant was later transferred to 'C' Company of Bihar Military Police VIII. After some time this company was posted on active service at Kathua in Kashmir and the company left Phulwari Sharif on June 2, 1964. On September 2, 1965 the appellant deserted from the police force without giving any intimation to the officers of the company. He was tried for desertion by the Second Assistant Sessions Judge at Patna on alternative charges under Section 5(f) and Section 6(o) of the Act and also on the additional charge under Section 29 of the Police Act, 1861. In defence he pleaded that at the relevant time he was under suspension and further that he had received information from his home that his wife was ill and for that reason he had applied for leave which was refused. The trial court convicted him under Section 5(f) of the Act and sentenced him to rigorous imprisonment for seven years. He was, however, acquitted of the charges under Section 6(o) of Act and Section 29 of the Police Act.

2. On appeal the High Court affirmed his conviction and sentence. After the disposal of the appellant's appeal by the High Court an application was made there for a certificate of fitness under Article 134(1)(c) of the Constitution which was rejected as being without merit.

3. In this Court it was contended by Shri D. P. Singh, on behalf of the appellant, that the offence of desertion was committed at a place where the Act was not in force and, therefore, the appellant's desertion did not constitute an offence. In any event this offence could not. be tried at Patna, the criminal courts there having no jurisdiction to try this case because of Section 177, Cr.P.C. It was strongly emphasised that the Act creating the offence in question had no application to the areas of Jammu & Kashmir, and, therefore, the appellant's act of desertion in the said area could not be treated as an offence. Assuming, however, that his desertion in the State of Jammu & Kashmir was

an offence, said the counsel it having been committed at a place where the Act was inapplicable, the appellant's trial for his desertion in Kashmir in the courts at Patna was without jurisdiction and, therefore, wholly illegal. The counsel indeed described it as a nullity.

4. The Act was brought on the statute book by the Governor-General-in Council (the said Council having been constituted under the Indian Councils Act, 1861) with the object of regulating the Bengal Military Police and, as its preamble shows, it was designed for the better regulation of the Bengal Reserve Police. There were then no elected legislatures either for the Central Government or for the Provincial Governments in this country which was then known as British India. At the time of its enactment it extended to the whole of the territories subject to the Lt. Governor of Bengal. It is common case of the parties that at that time the present territory of Bihar formed part of the territory which was subject to the Lt. Governor of Bengal. The Act, therefore, clearly applies to the present territory of Bihar and it is also not disputed that the Bihar Military Police is governed by the Act. It may in this connection be pointed out that since the enactments by various States repealing this Act In their respective territories the Act has now ceased to be applicable to all other areas except the present State of Bihar. It is accordingly also not disputed1 that wherever "Bengal Police Force" occurs It has now to be construed as "Bihar Police Force".

5. "Military Police Officer" according to Section 2(1) of the Act means a person appointed to the Bengal Police Force under Section 7 of the Police Act V of 1861 who has signed the statement in the Schedule to the Act in accordance with its provisions. "Active service" as defined in Section 2(2) means service against hostile tribes or other persons in the field. It is not disputed that the battalion which concerns us was on active service in the State of Jammu & Kashmir. Section 3 of the Act provides:

> Enrolment and discharge of Military Police Officers:
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> 3(1) Before an. officer appointed to the Bengal Police Force under Section 7 of Act V of 1861 is appointed to be a Military Police-officer, the statement in the Schedule shall be read and if necessary explained to him in the presence of a Magistrate, Commandant or Second-in-Command, and shall be signed by him in acknowledgment of its having been so read to him.
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> (2) Notwithstanding any notice given under Section 9 of Act V of 1861, a Military Police-officer shall not be entitled to be discharged from the Bengal Police Force except in accordance with the terms of the statement which he has signed under this Act.

It is unnecessary to refer in detail to the statement embodied in the Schedule, which statement it is not disputed had been signed by the appellant. Suffice it to say that according to this statement the Military Police Officer concerned when on active service has no claim to a discharge and he must remain on his duty until the necessity for detaining him in the State Military Police ceased. The relevant part of the statement, which is necessary to produce here, reads:

> ...But when on active service you have no claim to a discharge, and you must remain and do your duty until the necessity for retaining you in the Bengal Military Police ceases when you make your application in the manner hereinbefore prescribed....
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> The appellant had, therefore, no right to ask for discharge when serving in Jammu & Kashmir.

6. The respondent's learned Counsel has produced certain directions issued by the Government of India to all the States and Union Territories in our Republic. On October 3, 1961, the Ministry of Home Affairs conveyed to all States and Union Territories the sanction of the President to the grant of the terms of deputation for the armed police battalions/companies at that time on loan from various State Governments to the Government of India, for operations in Jammu & Kashmir, Nagaland, Manipur and Tripura. The terms of deputation were to take effect from August 1, 1961. On December 30, .1964 the Ministry of Home Affairs, Government of India, conveyed to the Government of Bihar, Political (Police) Department, its agreement to treat BMP VIII Battalion as "India Reserve" Battalion with effect from May 13, 1964, the date of the issue of the sanction for raising an additional battalion from the Bihar State, provided such additional battalion was considered surplus to the requirements of the State Government. The recurring expenditure of the said battalion was to be the liability of the Government of India beginning from May 13, 1964. On June 14, 1965 the Home Ministry of the Government of India wrote to the Chief Secretary to the Government of Jammu & Kashmir conveying the sanction of the President to the deputation to Jammu and Kashmir of PAP Battalion and BMP VIII Battalion from the date of induction till September 30, 1965 while on deputation to that State. The personnel of these battalions were to be entitled to the standard terms of deputation sanctioned in the Government of India, Home Ministry Letter of 1961. The expenditure involved on these battalions though initially met by the parent State Govern merit concerned, was to be reimbursed from the police grant of the Home Ministry of the Government of India. On November 6, 1965 Political (Police) Department of the Government of Bihar informed the Inspector General of Police, Bihar, about the directions of the Home Ministry of the Government of India contained in their letter of June 14, 1965. From these documents it is clear that services of this battalion had been lawfully lent on deputation by the State of Bihar to the Government of India for serving in certain Union Territories and in the State of Jammu & Kashmir. If that be so, then quite obviously wherever in the aforesaid territories this battalion was serving pursuant to the directions of the Government of India, it would continue to be governed by the provisions of the Act. As already noticed, according to the Statement in the Schedule to the Act, the appellant had no claim to a discharge and he was under an obligation to remain on duty. When he deserted the service while on active service he rendered himself liable to be proceeded against under Section 5(f) of the Act. The actual place where he deserted would obviously be immaterial. The statement signed by the appellant imposes on him an obligation not to leave service wherever his battalion is directed by the competent authority to serve. It is not shown that the deputation of the battalion was either unauthorised or contrary to law or that it was not sent to the State of Jammu & Kashmir by the proper authority. The contention that the appellant's act in deserting the service at Kathua was not an offence is thus repelled.

7. Coming now to the objection to the territorial jurisdiction of the courts at Patna to try the appellant, his learned Counsel has not drawn our attention to any provision of the Act which prescribes any particular place for the trial of offences mentioned therein: nor has any special procedure for such trials been canvassed. The present trial was held under the CrPC. Reliance has been placed only on Section 177 of the Code In support of this objection. This section says:

> 177. Ordinary place of inquiry and trial-Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed, According to the scheme or the code trial within a wrong territorial jurisdiction does not by itself vitiate it. Section 531 of the Code provides:
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> 531. Proceedings in wrong place.- No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

On behalf of the appellant, however, reliance has been placed in support of this objection on Narumal v. State of Bombay . This decision, in our opinion, is of little assistance to the appellant The Court in that case was concerned with the Bombay Prevention of Hindu Bigamous Marriages Act, XXV of 1946. The appellant there had contracted a bigamous marriage in Madhya Pradesh when his first wife was living, whom he has not divorced. He had thus rendered himself liable to be punished under Section 5 of the Bombay Act. He and Ms second wife were both charged with having committed an offence under Section 6 of that Act and were tried by the Judicial Magistrate, First Class, at Nasik. An objection was raised to the competence of the Magistrate to try the case. According to the majority view of this Court the word "ordinarily" used in Section 177, Cr.P.C. means "except where provided otherwise in that Code" and that though the State Legislature is competent to provide for trials of offences created by its statutes otherwise than prescribed by Section 177, departure from the general principle prescribed by Section 177 must clearly appear from the relevant provisions of the special statute. Section 8-A of the Bombay Act was thus held not to modify the provisions of Section 177 of the Code. The dissenting judgment of Subba Rao J., (as he then was) took a different view and construed the Bombay Act to provide an exception to Section 177 of the Code. In our opinion, the point which was canvassed before this Court in Narumal (supra) was quite different and so was the scheme of the Bombay enactment. The offence of desertion from active service in the field under the Act which would be a continuing offence must stand on different footing. Macleod v. Attorney General for New South Wales (1891) AC 455 : 60 LJ PC 55 also a case of bigamous marriage is equally unhelpful. Construing a section of the Criminal Law Amendment Act of New South Wales, it was observed there that the words used in that section were intended to apply to those actually within the jurisdiction of the legislature and consequently there was no jurisdiction in that colony to try the appellant there for offence of bigamy alleged to have been committed in the United States. There is no analogy between offence of bigamy and offences of desertion from active service when the battalion in question was on deputation in Jammu & Kashmir State.

8. The appellant's learned Counsel before us has, as already observed, relied on Section 177, Criminal Procedure Code in support of the argument that the appellant's trial and conviction by the criminal Court at Patna was wholly without jurisdiction. This objection was not raised either in the committing Court or in the Court of Assistant Sessions Judge which tried and convicted the appellant. In the High Court this objection was raised for the first time and according to that Court, in view of Section 531 of the Code the order of the criminal Court convicting the appellant could not be set aside merely on the ground of the trial having taken place in a wrong sessions division, district sub-division or other local area unless such error had occasioned failure of justice. There being no allegation of failure of justice on account of trial having been conducted in Patna this objection was held to be unmeritorious. Before us nothing new has been urged. Our attention has not been drawn to any provision of the Code which would show that some other Court had exclusive jurisdiction to try this offence. Once, therefore, we repel the appellant's contention that desertion in the State of Jammu and Kashmir did not constitute an offence and hold that the appellant by deserting in Jammu and Kashmir State was liable to be tried and convicted if found guilty of the offence of desertion as contemplated by the Act which is a continuing offence, then, in the absence of any provision showing that under some law some other Court has exclusive jurisdiction to try him it cannot be said that his trial in the Patna Court is without jurisdiction, particularly, when his desertion continued. We are unable to find any cogent ground for setting aide the appellant's conviction and sentence in the present appeal under Article 136 of the Constitution. Incidentally, we are informed that the appellant has already served out the entire sentence. There is no suggestion that any grave injustice has been done to the appellant or he has been prejudiced in his defence by the trial having been held at Patna. This appeal accordingly fails and is dismissed.