Supreme Court of India
Bhuwneshwar Singh vs Union Of India (Uoi) And Ors. on 1 September, 1993
Equivalent citations: (1993) 2 CALLT 31 SC, 1993 CriLJ 3454, JT 1993 (5) SC 154, 1993 (3) SCALE 589, (1993) 4 SCC 327, 1993 Supp 2 SCR 56
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Bench: J Verma, A Anand
JUDGMENT A. S. Anand, J.

1. This appeal by special leave is directed against the judgment of the Division Bench of the Calcutta High Court in FMAT No. 3636/91 decided on 1st April, 1992.

2. Pursuant to his trial by the District Court Martial, on various charges, the appellant, who was a sepoy in the Indian Army, was dismissed from service and also sentenced to suffer rigorous imprisonment for four months. Through a writ petition in the High Court of Calcutta, he challenged his dismissal, conviction and sentence. In the writ petition, apart from disputing the factual foundation of the charges and the unsatisfactory nature of evidence to establish the same he also alleged violation of Rule 22 of the Army Rules; denial of his right to be represented by a Defending Officer at the DCM; defect in the promulgation of the findings and sentence, contrary to the mandate of Rule 71 of the Army Rules; the defect in the signing of the warrant for commitment to civil prison, by the officiating Commander instead of the Head of the Unit and violation of Rule 27 of the Army Rules read with Sections 101-103 of the Army Act as regards his pre-trial detention beyond the permissible period. Besides, the appellant also raised a plea that the period undergone by him in custody, before the trial by DCM was required to be set off against the sentence imposed on him by virtue of the provisions of Section 428 of the CrPC 1974. All the contentions raised by the appellant were considered by the learned single Judge who rejected the same, except the grievance concerning his pre-trial detention beyond the period prescribed under Sections 101-103 of the Army Act read with Rule 27 of the Army Rules. The learned single Judge found that the appellant had been detained beyond a period of three months, before the convening of the District Court Martial, without obtaining approval of the Central Government which rendered his detention beyond the period of three months illegal. The learned single Judge accordingly directed the respondents to pay a sum of Rs. 1,000/- by way of compensation to the appellant for his illegal detention of about one month, beyond the permissible period of three months. The appellant unsuccessfully pursued the matter by way of an appeal before the Division Bench of the High Court, which confirmed the findings recorded by the learned single Judge and dismissed the appeal.

3. The appellant has appeared in person before us and made his submissions in Hindi, not being familiar with the court language. We suggested to him that we could provide him the assistance of an advocate through the Legal Aid Board or request one of the advocates to appear for him, amicus curiae, without any financial burden on him, but the appellant did not want the assistance of any counsel and insisted on arguing the matter himself. Not being conversant with the procedure of the Court or the law, the appellant took time to argue on matters, which were strictly speaking not relevant, and inspite of our advising him to allow us to appoint a counsel for him, in his own interest, he remained adamant and therefore lot of judicial time, which could have been utilised for other work, was spent by us in trying to grasp his grievances, in which task, Mr. Reddy the learned

Additional Solicitor General gave us his valuable assistance. Taking note of the increase in the number of cases in which the parties appear in person in this Court, we feel that a stage has now reached when this Court, on the administrative side, is required to consider the desirability of providing some procedure to scrutinise their petitions and screen the parties, appearing in person, and only such of the parties who are certified by an authority/committee as "competent" to assist the Court in person, may, with the leave of the Court, be permitted to argue in person. Those of the litigants, who are not so certified, or those to whom leave is not granted by the court, should be referred to the Legal Aid and Advice board or the "Supreme Court Senior Advocates Free Legal Aid Society", which is a voluntary body and offers assistance, in appropriate cases, irrespective of the financial position of the concerned litigant. Apart from providing proper assistance to the Court, the assistance by the lawyers would ultimately tend to be in the interest of the litigants themselves. It would also take care of preventing objectionable and unparliamentary language in the pleadings, which some of the "parties in person' permit themselves the liberty of indulging in, not being familiar with the court craft and the bounds of law within which the parties must formulate their pleadings in proper language. Such a course would advance public interest while safeguarding individual interest also. Our experience shows that every advocate-senior, not so senior and junior-whenever requested by the Court to offer assistance has responded positively and generously and therefore the interest of the "party in person' who would be represented by such a counsel would stand adequately protected. We say no more on this aspect at this stage.

4. The appellant invited us to go through the evidence recorded by the District Court. Martial and examine the discrepancies appearing therein. He disputed the correctness of the factual basis on which the proceedings had commenced, for recording of the summary of evidence and the trial by the District Court Martial. Undeterred by the findings recorded by the District Court Martial, which were confirmed by the confirming authority and against which the departmental appeal had also failed, as well as the judgments of the single Judge, and the Division Bench of the High Court, the appellant insisted that we should reappraise the evidence and accept his version regarding the incident and set aside his conviction and sentence. We politely but firmly declined the invitation to reappraise the evidence for testing the validity of the findings, as indeed it is not a case, nor was it the contention of the appellant in the High Court or before us, that the findings of the District Court Martial -were based on no evidence at all. Both the single Judge and the Division Bench of the High Court found that the proceedings before the District Court Martial had been conducted in accordance with law and that there was no defect in the appraisal of evidence by the District Court Martial. We agree. This Court cannot, in an appeal under Article 136 of the Constitution of India, be requested to reappraise the evidence and examine whether the incident took place in the manner suggested by the appellant or the prosecution.

5. Both the learned single Judge and the Division Bench of the High Court have considered the grievance of the appellant, based on the alleged non-compliance with Rule 22 of the Army Rules which requires hearing of the charge in the presence of the accused and found that Rule 22 had been properly complied with. We agree. The charges were heard on 29.3.1989 by Lt. Col. R.S. Sidhu, the then Commanding Officer, in the presence of the appellant, who was afforded ample opportunity to cross-examine the prosecution witnesses. It was only after considering the evidence so recorded, that the Commanding Officer ordered the recording of summary of evidence. In the counter affidavit

filed by the respondents in the High Court, it was clearly brought out that the requirements of Rule 22 had been complied with. The appellant was unable to point out any infirmity in the findings recorded by the learned single Judge or the Division Bench of the High Court on this aspect of the case.

6. The grievance of the appellant that he was denied an opportunity to be represented by a Defending Officer is wholly untenable. The High Court also found it so. A perusal of the record reveals that though the appellant had requested that one of the three officers named by him be nominated as defence counsel, on being informed that none of those three officers were available at the station, and having been supplied with a list of the officers available at the station, he was represented by Major S.K. Sharma as his defence counsel. Not only did the appellant agree to the appointment of Major Sharma but the said Defending Officer cross-examined the witnesses on behalf of the appellant and also filed written submissions at the close of the address. The appellant, during the proceedings in the District Court Martial did not raise any objection to be defended by Major S.K. Sharma. There has, thus, been no denial of providing proper defence assistance to the appellant during the Court Martial proceedings.

7. Both the leaned single Judge and the Division Bench also did not find any merit in the submission of the appellant that the warrant for his committal to civil prison had not been signed by the competent authority as envisaged by Section 169(2) of the Army Act. The appellant submitted before us also that since, the warrant for committal of a person sentenced by court martial, to a civil prison under Section 169(2) of the Army Act read with Rule 166 of the Army Rules, is required to be signed and forwarded either by the Commanding Officer or such other officer as may be prescribed, but in his case had been signed by respondent No. 4, in spite of the presence of the Commanding Officer in the unit, it was illegal. We cannot agree. Under Section 169(2) of the Army Act read with Army Rule 166, a warrant for the committal of a person sentenced by court martial to a civil prison is required to be forwarded and signed either by the Commanding Officer or such other Officer as may be prescribed. Respondent No. 4, at the relevant time was performing the duties as an officiating Commanding Officer of the Unit to which the appellant was attached, as an officiating incumbent, and therefore, Respondent No. 4 was fully competent to sign the warrant.

8. The grievance that there has been no promulgation of the findings and sentence recorded by the DCM, as required by Rule 71 of the Army Rules is also without any merit. A perusal of the record, which was produced before the High Court, establishes that the sentence was in fact promulgated together with its confirmation on 18.10.1989 as evidenced by letter of 3/4 Gorkha Rifles No. 425287-1K/TCM/BS/A dated 18.10.1989, addressed to the Head Quarters Calcutta, Sub-Area with a copy for record to the Defence Security Corps and 376 DSC Plantoon. There has, thus, been no defeat in the promulgation of the findings and the sentence.

9. We, however, find good and genuine basis for the grievance of the appellant that he had been detained beyond the permissible period, as prescribed under Sections 101-103 of the Army Act read with Rule 27 of the Army Rules, before his trial by the DCM. This grievance had found acceptance by the High Court also and-the respondents have not questioned the finding of the High Court in that behalf in this Court either.

10. Section 101 of the Army Act provides that any person subject to the Army Act charged with an offence may be taken into military custody, under orders of the superior officer. The method of arresting a person subject to Army Act, however, is informal. Section 102 of the Act provides that a Commanding Officer shall ensure that such a person is not detained for more than 48 hours after the committal of such person into custody, without the charge being investigated, unless investigation within that period appears to the Commanding Officer to be impracticable having regard to the public service. In case the period of detention is to exceed 48 hours, Section 102(2) of the Act enjoins that the reasons thereof shall be reported by the Commanding Officer to the General or other officer, competent to convene a general or district Court Martial for the trial of the person charged. In calculating the period of 48 hours, Sundays and other public holidays, are required to be excluded. Section 103 of the Act then deals with the intervals between committal and the court martial and provides that where a person remains in custody for a period longer than 8 days, without the Court Martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by the Commanding Operator and a similar report shall be forwarded at the interval of every 8 days, till the Court Martial is convened or the person is released from custody. The form in which the report is required to be made, every 8 days of the continued detention of such a person, is prescribed by Army Rules 27. Sub Rule 3 of Rule 27 lays down that the detention in military custody beyond 2 months of a person in whose case a court martial has been ordered to assemble (before the commencement of the trial), would require sanction of the Army Chief or any officer authorised in that behalf with the approval of the Central Government and that the period of detention in such a case may extend to a total period of three months but not beyond. Rule 27 (3)(ii) of the Rules then mandates that any detention beyond a period of three months, would required the approval of the Central Government. The basic object of Sections 101-103 of the Act read with Rule 27 of the Rules appears to be to dispose of court martial cases expeditiously and to minimise the period of pre-trial detention. The object is both salutary and laudable. It is not disputed that in the instant case, the appellant was taken into custody on 28th March 1989 and the District Court Martial was convened on 25th July 1989. The appellant, therefore, remained in custody for more than three months prior to his trial by the District Court Martial. No sanction or approval of the Central Government for the detention of the appellant beyond a period of three months was obtained and, therefore, the safeguards provided for in Sections 101-103 of the Army Act read with Rule 27 of the Rules were respected in their breach, without any explanation being furnished for non-compliance with the requirements of those provisions. The learned single Judge noticed this and observed:

Therefore, the petitioner was kept in custody for more than 3 months. Any detention beyond a period of 3 months requires the approval of the Central Government. There is nothing to show that any approval of the Central Government has been obtained. Therefore, I am of the view that the petitioner has been detained from 29th June 1989 to 25th July 1989 illegally without any approval of the Central Government. There is no explanation as to why no such approval of the Central Government was taken.

(Emphasis ours)

11. The Single Judge, however, held that the "illegal detention" of the appellant did not vitiate his "detention" and came to the conclusion that the appellant deserved to be awarded compensation for his illegal detention and awarded Rs. 1,000/- as compensation to him. The Division Bench concurred with the above findings. In the established facts and circumstances of the case, we agree with the findings recorded by the High Court that the pre-trial detention of the appellant for a period beyond three months without the approval of the Central Government as required by Rule 27(3)(ii) of the Rules was illegal. Would this illegal vitiate the trial and if not, is the compensation of Rs. 1,000/-awarded by the High Court proper and reasonable, is the question which now needs our attention?

12. The continued pre-trial detention of the appellant for a period beyond three months was on account of the fact that there was delay in the convening of the District Court Martial. No mala fide have been alleged, let alone established, for detaining the appellant beyond a period of three months, without obtaining the approval of the Central Government. The authorities appear to have been negligent and have shown scant respect for the provisions of the Army Act and the Rules. That is objectionable. Those who feel called upon to deprive other persons of their liberty in the discharge of their duty, must strictly and scrupulously observe the norms and rules of law. The object of Sections 101-103 of the Army Act read with Rule 27 of the Army Rules is that a person charged under the Act should not be unnecessarily deprived of his freedom on the ground that he is accused of an offence triable by the Court Martial. The protection granted to persons subject to the Act by the above provision would become meaningless if one who is supposed to be the protector of the person concerned acts callously and unconcerned with the rights available to such a person.

13. Keeping in view the limited nature of judicial review in matters arising out of Court Martial proceedings, it is not only desirable but necessary that the authorities under the Army Act strictly follow the requirements of the Act and the Rules. The authorities cannot be permitted to deal with the liberty of a person subject to the Army Act, in a casual manner and cannot be allowed by their commission or omission, to frustrate the object of speedy trial as envisaged by the Act, of the persons to be tried by a Court Martial In our opinion, however, keeping in view the object of the provisions of Section 101-103 of the Act and Rule 27 of the Rules, the illegal detention of the person charged under the Army Act, for a period beyond the prescribed one, before commencement of his trial by the Court Martial, would neither vitiate the Constitution of the District Court Martial nor effect the trial held by the District Court Martial under the provisions of the Army Act, much less render the conviction and sentence recorded thereat bad. The failure to prevent unnecessary and prolonged custody prior to the trial by the Court Martial would not, in any way, effect the Court Martial would not, in any way effect the Court Martial proceedings or render negatory the findings of the District Court Martial or the General Court Martial, as the case may be. Since the proceedings of the District Court Martial were held strictly in accordance with the provisions of the Army Act and the Rules framed thereunder and do not suffer from any infirmity whatsoever, the pre-trial illegal detention of the appellant for a period of about one month or so would not vitiate the finding of guilt and the sentence recorded by the District Court Martial, which was confirmed by the confirming authority and against which departmental appeal was dismissed by the appellate, authority and the challenge in the High Court failed. We, therefore, hold that for the failure of the authorities to obtain approval of the Central Government for detaining the appellant in custody, prior to his trial by

DCM, for a period beyond 3 months, would not vitiate his trial by the DCM or otherwise effect his conviction and sentence. The pre-trial illegal detention does not effect the jurisdiction of the DCM, validly convened, and such an illegal detention would not amount to a jurisdictional defeat vitiating the trial or the findings.

14. We, however find that the award of compensation of Rs. 1,000/- by the High Court for the established illegal detention of the appellant, for about one month or so, is grossly inadequate and hopelessly unimaginative. After having recorded the findings that the appellant had been illegally detained from 29th June 1989 to 25th July 1989, the High Court was expected to take a more realistic view of the deprivation of the personal liberty of the appellant, rather than indulge only in a lip service, by awarding him a poultry sum of Rs. 1,000/- as compensation.

15. This Court in Nilabati Behera v. State or Orissa and Ors. (1) observed:

This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Article 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.... It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned.

16. The Court then opined:

The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compeasation' in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such case is to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary

damages' awarded against the wrongdoer for the breach of its public law duty.

17. This Court as also the High Courts under Article 226 have the power of judicial review, in respect of proceedings of court martial as well as the proceedings subsequent thereto, even though to a limited extent, and can in appropriate cases grant relief, where there has been denial of the fundamental rights of the citizen or if the proceedings before the Court Martial suffer from a jurisdictional defect or any other substantive error of law apparent on the face of the record See S.N. Mukherjee v. Union of India - Constitution Bench. Having found that the appellant was in illegal detention from 29th June 1989 to 25th July 1989, in our opinion it would be appropriate to award him adequate compensation for violation of his fundamental right of personal liberty as guaranteed by Article 21 of the Constitution and we accordingly direct that the appellant shall be entitled to a sum of Rs. 30,000/- as compensation for his illegal pre-trial detention and we make an order accordingly.

18. In so far as the last submission made by the appellant i.e. with regard to the set off of the period of pre-trial detention against the period of sentence is concerned, suffice it to say that it is now settled by this Court in Ajmer Singh and Ors. v. Union of India and Ors. (2) that in the case of person tried by court mertial, there is neither any investigation nor inquiry, nor trial under the CrPC and as such the provisions of set off contained in Section 428 of the Cr.P.C. are not attracted to the cases of persons convicted and sentenced by court martial to undergo imprisonment. The High Court was therefore, perfectly justified in rejecting the prayer of the appellant and the view of the High Court is unexceptionable.

19. Since, the period of pre-trial detention is not set off against the sentence of imprisonment under Section 428 Cr. PC, the Parliament with a view to avoid hardship to the persons convicted by Court Martial, has in 1992 incorporated in the Army Act itself a provision similar in terms as Section 428 Cr. PC. Section 169A of the Army Act, as introduced by the Army Amendment Act, 1992, provides:

169A. Period of detention undergone by the accused to be set-off against the sentence of imprisonment. - When a person or officer subject to this Act is sentenced by a court-martial to a term of imprisonment, not being an imprisonment in default of payment of fine, the period spent by him in civil or military custody during investigation, inquiry or trial of the same case and before the date of order of such sentence, shall be set off against the term of imprisonment imposed upon him and the liability of such person or officer to undergo imprisonment on such order of sentence, shall be restricted to the remainder, if any, of the term of imprisonment imposed upon him.

Section 169A of the Army Act would, therefore, after 1992 mitigate the hardship of the persons sentenced by the Court Martial under the Army Act. However, the benefit of this provision is not available to the appellant, because he was sentenced to suffer the imprisonment long before this amendment came into force in 1992.

20. Thus, except for the enhancement of compensation from Rs. 1,000/- to Rs. 30,000/- payable by the respondent to the appellant for his pre-trial illegal custody. We do not find any infirmity in any other finding recorded by the High Court and therefore in all other respects, the appeal Sails and is

dismissed.

21. The amount of compensation shall be paid by the respondents to the appellant within Three months from the date of this order provided, however, the appellant shall deposit his kit etc. with the competent authority, in case he is still retaining the same, before receiving the compensation.