



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: Col Anil Kumar Gupta v Union of India

Alefiyah Hasan Kapasi^a

^aSavitribai Phule Pune University, Pune, India

Received 19 November 2022; *Accepted* 01 December 2022; *Published* 12 December 2022

INTRODUCTION

The Hon'ble Supreme court deals with many matters that impact largely the Indian Constitution and Judiciary at large, which are later used as references in many such cases. This is one of the impactful cases where the misconduct of the Army officer is at stake and the litigation takes 3 years to come into force for the charges on the officer. This court laid down the landmark judgement where the court said that though the case has already barred the limitation in section 122 of the Limitation Act the crime has been committed which can't be overlooked hereby the petition is partly allowed. The court upheld the modesty and the dignity of the officer and hence gave the army officer a chance to be proven not guilty before the court and exclude all the procedural errors. This case study is a combination of the Armed Force Act and the Limitation Act.

CASE DETAILS

Civil Appellate Jurisdiction: Civil Appeal 8968 of 2019

Appeals for the limitation Act by the letter given by Col Anil Gupta to his superior for his misbehaving and indecent behaviour towards his wife which was preceded in the Armed Force Tribunals and the judgement of which date on 30/09/2019 holding case no (OA 32 OF 2019 WITH MA 645 OF 2019). Later the court rejected the OA. The appellant challenged the OA stating the application was missing of signature in the produced charge sheet.

The case was decided by the Hon'ble Supreme Court.

Citation: 5 SCC 695 OF 2022

Appellant: Col Anil Kumar Gupta

Counsel for Appellant: Adv Abhishek Singh, Adv Indra Sen Singh, Adv Aditya Bari, Adv Elvin Joshy, Adv Ujjwal Verma, Adv J Amal Anand, Adv Alisha Sharma & Adv Sarvesh Singh on Advocate on Record.

Respondent: Union of India.

Counsels for Respondents: Adv Neela Gokhale, AAdv Arvind Kumar Sharma on Advocate on Record.

Date of Judgement: 07/11/2022

Bench: Hon'ble Umesh Lalit & Hon'ble Bela Trivedi

BRIEF OF FACTS

This is a case study of an army officer where the court dealings were handled and managed by the Armed Force Tribunals and later the appeal was filed before the Hon'ble Supreme Court. The facts of the case study are as below:

The case is against the respected army officer who has been charged with the offence of misbehaving towards another army personnel's wife. The petitioner is commissioned as an officer in the Indian Army battalion 14 of the Rajputana Rifles in the year 1996. On the date of August 13 2015, Col Ramneesh Pal wrote a letter to his colleague and his close friend Brig Ajay

Vig that the petitioner was sending indecent messages that are sexually explicit which results in having an illegitimate physical relationship. In the letter written by Col, he mentioned that he is planning to file a divorce petition in the courts and this incident requires proper investigation against the appellant. The Colonel in his letter even mentions that his wife has positively responded to the appellants' flirtatious and sexually explicit message and the appellant on 13/07/2015 after lying to his wife had visited the colonel's residents and was there for estimated 2 hours.

After that, the court of inquiry was conducted by the headquarters of Delhi to investigate the incident and follow up with the complaint made by the Colonel. The court for inquiry and investigation was finalized in the year 2016 with the direction of GOC Delhi to take requisite action against the appellant. The proceeding for the recording of the evidence was held and the charge sheet was prepared on 19/11/2018 summarizing three charges on the appellant having him misbehaving for the post he holds and holding a character unfair to his position according to Section 45 of the Army Act. On 22nd November 2018, the convening Authority directed the General Court Martial to hold the trial.

Thereafter the appellant wrote a letter to the Convening Authorities on 04/01/2019 regarding the issue of the period of limitation in the connection with Section 122 of the Army Act but the Convening Authorities suggested raising the issue before the General Court Martial, later the appellant filed a legal application before Tribunal on 07/01/2019 with the original application no 32/2019 challenging the gap of 3 years according to the Limitation Act & and charge sheet but the same got rejected and dismissed by the Tribunal. Hence the appellant in search of justice approached the Supreme Court.

SECTION INVOLVED

This case law deals with the two main heads of the Army Act t i.e. Section 122 and Section 45. Wherein **Section 122** speaks about the limitation period of the case study where no trials are to be conducted if the complainant crosses the boundary of three years in the gap. This section in the latter sub-sections defines various conditions for which this section is applicable and the

limit of its application. Once the complainant is known for the offence and the accused for such offence it's a mandatory obligation to follow the legal proceedings and if one fails to do such legal action has no right to avail justice according to this section, the benefit lies in the hands of the accused. The section is defined as:

Period of limitation for trial.

(1) Except as provided by subsection (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 1 and such period shall commence,-

(a) On the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or

(c) Where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.]

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

(3) In the computation of the period mentioned in subsection (1), any time spent by such person as a prisoner of war, 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 regular Army.

Section 45 states that the army officer holding a dignified degree has to maintain the basic mannerism and way of his behaviour in the respect of that position and being a government officer that is in safeguard the country. This section safeguards the army man's dignity and upholds loyalty toward their country. Such unlawful misbehaviour leads to serious action being taken against the officer and will be trialed before the tribunals.

The section is defined as: *Unbecoming conduct. Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by the court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.*

PROCEDURAL HISTORY OF THE CASE

The case was first investigated by the court inquiry in the Delhi headquarters and further investigation was taken up and was produced by the charge sheet against the appellant. After the proceeding of the court inquiry the matter was taken up by the Court Martial and later was headed by the Tribunals. Where the application by the appellant was dismissed. After the refusal of the application by the subordinate courts the appellant filed a petition in the Hon'ble Supreme court, where the Supreme Court justice **CJI UU LATIL AND JUSTICE BELA TRIVEDI** partly allowed the application.

ARGUMENTS BY THE PARTIES

Appellant

The learned counsel by the appellant holding the strong grip over section 122 of the Armed Forced Act stated that the trial initiated by the Court Martial had already crossed the period of three years by the provision mentioned under the act. He further stated that the Colonel was very versed with the alleged offence as in his letter dated 13/08/2015, mentioned the divorcing his wife and necessary action to be taken place against the Brigade Anil Kumar Gupta. The court martial ordered the trial on 22/11/2018 which is three years after the letter by Colonel

Ramneesh. This clearly states that the period of three years had already expired and is contemplating section 122 of the Armed forces Act. He further states that the tribunal tried the matter after three years and the charge sheet was submitted on 19/08/2018 i.e. after three years which also needs to be quashed by the said act. The charges levied on the appellant stand void as the trial has already crossed the boundary of three years limitation and the order thereby is also void which the honorable Supreme Court needs to take charge of it. Hence the learned counsel requested the court to quash the order and the charges levied on the appellant stand void and unreasonable.

Arguments by the Respondent

The senior Advocate representing the respondent MR.R. Balasubramanian opposed the appellant and stated that the letter was initiated on 13/08/2015 by Colonel Ramneesh in which it clearly states that the respondent knew the alleged offence being committed and after the summary of the evidence the prima facie is being made out on the appellant. The charge sheet was submitted on 19/11/2018 and the convening authority directed the court martial on 22/11/2018 to initiate the trial which is rightly performed by the authorities. He further drew the attention of the court to the letter dated 01/2000 written by the Lt General, for the Adjutant General Branch, Army Headquarters, Delhi for the dealings and trial policy regarding the disciplinary aspect and matrimonial affairs resulting in adultery by the end of the officer resulting in the misconduct on the part of the officer. This kind of action is not just stealing one's wife's affection at the same time results in court inquiry for such a respected officer to behave in this inappropriate manner. And in such an instant case the prima facie and summary of evidence are only made out after the instance of the incident. The counsel stated that the trial was serious and it is rightly done by the tribunal to not interfere with the proceeding of the trial. The counsel urged the court to dismiss the application and let the court tribunals run its proceedings as the offence is serious and the misconduct is performed by the officer of the government holding a respected position which is not acceptable.

ISSUE OF THE CASE

1. Whether or not section 122 of the armed force act is applicable? If yes then shall the trial be dismissed?
2. Shall the misconduct of the officer be upheld?
3. Is the delay of 3 years mean any kind of faulty investigation by the court of inquiry?

JUDGEMENT

The court thought that as both the counsel hold the righteous argument it would be right to conclude if the law is taken charge for, herein the law speaks under section 122 of the Armed Force Act the trial cannot proceed after the expiration, and the section speaks that the knowledge about the alleged offence is counted as the first day of the trial on the part of the complainant. As in this case, the knowledge about the offence came into knowledge on 13/08/2015 to Ramneesh Pal, and the court order dated 22/08/2018 stands void and is needed to be quashed by the reading of the said section. The court further stated:

‘From the bare reading of the said provision, it transpires that no trial by Court Martial of any person subject to the Army Act, for any offence could be commenced after the expiration of a period of three years, and such period would commence on the date of offence or where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier’. But as it is to be considered the authorities are to be informed and the dealings of the said letter by the Colonel was further inquired by the court inquiry, it is known that the offence was of prima facie and cannot be ignored just on the grounds of the proceedings of the said law.

The act of misconduct is said to be performed by Colonel Anil Gupta as said by Colonel Ramneesh pal in his letter is needed to be trying to avail rightful justice in such a sensitive scenario. Section 122 is a procedural section that cannot be a hindrance in prevailing justice for the victim. Therefore this court concludes that the present charge sheet dated 19/08/2018 on the

appellant needs to be continued and justice must surely prevail. Hence this petition and application before the court is partly allowed. The court upheld both ends of the case rightfully.

COMMENTS

I strongly agree with the judgement passed by the Hon'ble court as the legal loophole cannot be a mere stand for an accused to escape from the hands of the law. Section 122 can be specially exempted in such scenarios, the act of misbehaving could have been conducted, and hence it needed to be trialed to know the roots of the case. Speaking about the Indian Judiciary the judiciary is a slow process which caused the delay in the case. The knowledge of the said act was been seen by colonel Ramneesh pal who wrote the letter. The quashing of the application wouldn't be justified lawfully to Colonel Ramneesh's pal.

Though the doubt towards the petitioner does prevail when one is well versed with the yet takes three years to act upon it thereby all the information written in the letter to the applicant stands void, here comes a doubt of something being fish by the end of the Ramneesh pal. If the crime is being committed then it is rightfully to act towards the path of justice, the justice cannot be denied due to some procedural or personal delays. As the lower and higher courts agree seems the accused has committed serious damage to Mr. Ramneesh's pal. The accused applicant is a dignified officer and the charges levied upon him must be classified and justified before the open court to either prove one's guilt or innocence. Thereby I conclude it is rightly said "*JUSTICE DELAYED IS JUSTICE DENIED*".