REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4465 of 2005

Union of India & Ors. … Appellants

Versus

Ex-GNR Ajeet Singh … Respondent

J U D G M E N T

Dr. B.S. Chauhan, J.

1. This appeal has been preferred against the judgment and order, dated 8.3.2004, passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No.8573 of 2003 by way of which the High Court has set aside the order dated 3.4.2003 passed by the General Court Martial (hereinafter referred to as 'GCM'), that had awarded the punishment of dismissal from service and 7 years rigorous imprisonment (hereinafter referred to as 'RI') to the respondent. The High Court held that, under the Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter referred to as 'the JJ Act') the

respondent could not be tried by GCM for the charges related to the period when he was juvenile and therefore, the GCM proceedings stood vitiated in entirety. However, the High Court has given liberty to the appellant to hold a fresh GCM, on the charges related to offences committed by the respondent after he attained the age of 18 years.

2. The facts and circumstances giving rise to this appeal are that:-

A. The respondent was enrolled in the Army on15.12.2000, and was posted to 77 Medium Regiment. He absented himself without leave from 26.2.2002 to 8.3.2002 i.e. (11 days). The respondent, while on Sentry duty on 17/18.3.2002 at the Ammunition Dump of the said Regiment, committed theft of 30 Grenades Hand No.36 High Explosive and 160 rounds of 5.56 MM INSAS. The respondent once again absented himself without leave from 12.6.2002 to 2.9.2002 (81 days). The respondent absented himself without leave from 4.9.2002 to 26.9.2002 (23 days) yet again. The respondent also committed theft of a Carbine Machine Gun 9 MM on 27.9.2002. He was apprehended by the Railway Police Phulera (Rajasthan) with the said Carbine Machine Gun, and an FIR No.56/2002 was registered by the Railway Police on 4.10.2002.

B. On 11.10.2002, the respondent was produced before the Chief Judicial Magistrate, Jodhpur, who passed an order for handing over the respondent to the Military Authorities, and it was later at his instance that the buried, stolen ammunition i.e. 30 Grenades and 5.56 MM INSAS rounds were recovered on 13.10.2002. A Court of Inquiry was ordered and summary of evidence was recorded.

C. The chargesheet was served upon the respondent on 11.3.2003, and it contained six charges, under the provisions of the Army Act, 1950 (hereinafter referred to as `the Army Act'). After the conclusion of the GCM proceedings, the respondent was awarded punishment vide order dated 3.4.2003, as has been referred to hereinabove.

D. The sentence awarded in the GCM was confirmed by the Competent Authority, i.e. Chief of the Army Staff, while dealing with the petition under Section 164(2) of the Army Act. After such confirmation of sentence, the respondent was handed over to the civil jail at Agra to serve out the sentence. The respondent filed a post confirmation petition against the said order of punishment.

E. During the pendency of the post confirmation petition, the respondent filed a writ petition before the High Court, challenging the said order dated 3.4.2003, mainly on the ground that he was a juvenile at the time of some of the charged offences and in view of the provisions of the JJ Act, the joint trial of those offences that he had allegedly committed as a juvenile and other offences that he had allegedly committed after attaining majority had vitiated the GCM proceedings in entirety.

F. The appellant contested the said writ petition on the grounds that some of the offences with which the respondent had been charged, were of very serious nature, and they had been committed by the respondent after attaining the age of 18 years. Moreover, the respondent had not raised the plea of juvenility when the GCM proceedings were in progress.

G. The High Court allowed the writ petition, quashing the aforesaid punishment, and holding that the entire GCM proceeding stood vitiated, as the GCM could not be held for the offences alleged to have been committed by him as a juvenile. The High Court, therefore, directed release of the respondent forthwith. However, in

relation to particular charges that were related to offences committed by him after attaining the age of 18 years, the appellant was given liberty to proceed in accordance with law against him de novo.

Hence, this appeal.

3. Shri Paras Kuhad, learned ASG appearing for the appellants, has submitted that the High Court has committed an error by holding that the entire GCM proceedings stood vitiated, for the reason that serious offences had been committed by the respondent after attaining the age of 18 years, and that at least with respect to such specific charges, the GCM proceeding could not be considered to have been vitiated. Additionally, even if the High Court had observed that the respondent was a juvenile at the time of some of the charged offences at most the sentence could have been quashed; the conviction should have been sustained. Thus, the appeal deserves to be allowed.

4. Per contra, Shri S.M. Dalal, learned counsel appearing for the respondent, has opposed the appeal contending that the High Court has taken into consideration all relevant facts and law, particularly the provisions of the JJ Act, and has interpreted the same in correct perspective, because the GCM could not have been conducted for

charges relating to offences that the respondent had committed as a juvenile, owing to which, the entire proceedings stood vitiated. Therefore, no interference with the impugned judgment is called for.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. Relevant parts of the chargesheet issued to the respondent read as under:-

i) Charged under Army Act Section 52(a)- theft of 30 Grenade Hand No.36 High Explosive and160 rounds of 5.56 MM INSAS on 17/18.3.2002.

ii) Charged under Army Act Section 52(a) - theft of carbine machine gun 9 MM on 27.9.2002.

iii) Charged under Army Act Section 39(a) – absent from duty without leave from 26.2.2002 to 8.3.2002.

iv) Charged under Army Act Section 39(a) – absent from duty without leave from 12.6.2002 to 2.9.2002.

v) Charged under Army Act Section 39(a) – absent from duty without leave from 4.9.2002 to 27.9.2002.

vi) Charged under Army Act Section 69 – possessing counterfeit seal with intent to commit forgery contrary to Section 473 of Indian Penal Code, 1860 (hereinafter referred to as `IPC').

7. We have summoned the original record of the GCM proceeding that makes it clear that the respondent was provided with a defense counsel, namely, Dr. Balbir Singh, a practicing advocate at the aforesaid GCM proceedings. Secondly, it also becomes clear that no witness was called in the defence by the accused. Thirdly, it is evident that he did not cross examine the court witnesses, and thus Rule 141(2) and 142(2) of the Army Rules were complied with. Upon being asked in question 16 whether the accused wanted to address the Court, he answered in the affirmative and stated:

> "…… that I am really ashamed of my acts and really regret my acts. The past seven months I have been attached to this Regiment and the misery and embarrassment which I am undergoing is more than a punishment. My family is also dependent on me for a permanent source of income. I have a younger sister whose marriage's responsibility is also on my shoulders. I am a soldier and have just started my career. I request the Honourable Judges to have mercy on me and give me a chance to serve, I shall never repeat such acts. I further request the Honourable Judges not to close all the ends of my career and life at this early age of service and give mea chance to redeem my prestige as well as keep up the aspirations of my parents."

8. Furthermore, it is evident from the record that the respondent had confessed before the Commanding Officer with respect to having stolen the arms and ammunition as mentioned in the chargesheet. It was the information furnished by him that led to the recovery of the stolen ammunition. He had also admitted to having sold 140 rounds of 156 mm INSAS to a civilian named Wasim Ali, for a sum of Rupees 30, 000, though he later asserted that he had fabricated these details.

In his prayer for mitigation of punishment, the respondent has stated that he was only 22 years of age, and that his entire life lay before him. His parents were old, and that he was the sole bread earner of the house. He had the responsibility of getting his sister married. From the initial stages of the proceeding, he had admitted to his crimes, and that any mistake he had made was only because of his immaturity. Further, he stated that he understood the serious nature of his crime.

9. The original record of the proceeding reveals that the respondent had initially pleaded not guilty to all 6 charges that had been framed against him. It was only on the 1st of April, 2003, during the examination of the fifth witness for the prosecution (Major S.R.

Gulia), the respondent had requested for grant of audience for defence. At that stage, he had stated:

> "I wish to withdraw my plea of 'Not Guilty', and to plead 'Guilty' to all six charges, as are contained in the charge sheet (B-2) against me, and therefore, that the Prosecution Witness present before the Court, may please be allowed to retire."

He further stated that he had wanted to accept his guilt from the very beginning of the Court Martial, but had been misguided by his parents and other relatives to plead 'Not Guilty'.

At this point, the Judge Advocate changed the plea of the accused from 'Not Guilty' to 'Guilty', and referred to Rules 52(2) and (2A); 54 and 55 Army Rules. It was duly pointed out by the Judge Advocate that the accused had the right to change his plea at any point during the trial, so long as the effect of doing so is properly explained to him.

10. Undoubtedly, given the date of birth of the respondent as per the service record is 20.4.1984, he attained 18 years of age on 20.4.2002. Accordingly, the charge nos. 2, 4, 5 and 6 relate to offences that the respondent committed after attaining the age of 18

years. Admittedly, during the GCM proceeding, the respondent did not raise the plea of being a juvenile, even though he was a juvenile at the time of commission of some of the offences.

11. The relevant Army Rules, 1954 (hereinafter referred to as `Army Rules'), which may be attracted in this appeal read as under:-

> **"51. Special plea to the jurisdiction. —** (1) The accused, before pleading to a charge, may offer **a special plea to the general jurisdiction of the court,** and if he does so, and the court considers that anything stated in such plea shows that the court has no jurisdiction it shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and, any address by or on behalf of the accused and reply by the prosecutor in reference thereto.
>
> xx xx xx xx
>
> **52. General plea of "Guilty" or "Not Guilty"**
>
> (1) ……..
>
> (2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the presiding officer or judge-advocate, on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead "Not Guilty".
>
> xx xx xx xx

65. Sentence. - The **Court shall award a single sentence in respect of all the offences** of which the accused is found guilty, and **such sentence shall be deemed** to be awarded in respect of the offences in each charge in respect of which it can be legally given and not to be **awarded in respect of any offence in a charge in respect of which it cannot be legally given.**

72. Mitigation of sentence on partial confirmation. -

(1) ……

(2) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one or **such charges the finding thereon is found to be invalid,** the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit or commute the punishment awarded according as it seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

79. Separate charge-sheets. —

(1) xx xx xx
(2) xx xx xx
(3) xx xx xx
(4) xx xx xx

(5) Where **a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges** in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such case the court unless they think his claim unreasonable, shall arraign and try the accused in like

manner as if the convening officer had inserted the said charge or charges in different charge-sheets."

(Emphasis added)

12. Unfortunately, the attention of the High Court was not drawn to the aforesaid relevant rules and to the scope of their application to the facts of the present case. The High Court has decided the case in a laconic manner, without considering the gravity of the charges against the respondent and without deliberating on whether, in light of such a fact-situation, any prejudice had been caused to the respondent. Questions with respect to whether there has been any failure of justice in the present case and whether in light of the facts of the case, the entire GCM proceedings actually stood vitiated, as the respondent indeed could not be tried by the GCM for those charges that had been committed when the respondent was a juvenile.

13. Though the case is labeled as a civil appeal, in fact it is purely a criminal case. GCM is a substitute of a criminal trial. Thus, the case ought to have been examined by the High Court keeping in mind, the principles/ law applicable in a criminal trial. The respondent is governed by the Army Act and Army Rules, and not by the provisions of Code of Criminal Procedure, 1973 (hereinafter referred to as the

`Cr.P.C.'). However, Cr.P.C. basically deals with procedural matters to ensure compliance of the principles of natural justice etc. Thus, the principles enshrined therein may provide guidelines with respect to the misjoinder of charges and a joint trial for various distinct charges/offences as there are similar provisions in the Army Rules. Section 464 Cr.P.C., provides that a finding or sentence would not be invalid merely because there has been a omission or error in framing the charges or misjoinder of charges, unless a "failure of justice" has in fact been occasioned.

14. In **Birichh Bhuian & Ors. v. State of Bihar**, AIR 1963 SC 1120, this Court has held, that a case of misjoinder of charges is merely an irregularity which can be cured, and that the same is not an illegality which would render the proceedings void. The court should not interfere with the sentence or conviction passed by a court of competent jurisdiction on such grounds, **unless the same has occasioned a failure of justice**, and the person aggrieved satisfies the court that **his cause has** in fact **been prejudiced** in some way.

A similar view has also been reiterated in **Kamalanantha & Ors. v. State of T.N.**, AIR 2005 SC 2132; and **State of U.P. v. Paras Nath Singh**, (2009) 6 SCC 372.

15. The JJ Act that came into force on 1.4.2001 repealed the JJ Act 1986, and provides that a juvenile will be a person who is below 18 years of age.

Section 6 of the JJ Act contains a non-obstante clause, giving overriding effect to any other law for the time being in force. It also provides that the Juvenile Justice Board, where it has been constituted, shall "have the power to deal **exclusively**" with all the proceedings, relating to juveniles under the Act, that are in conflict with other laws. Moreover, non-obstante clauses contained in various provisions thereof, particularly Sections 15, 16, 18, 19 and 20, render unambiguously, the legislative intent behind the JJ Act, i.e. of the same being a special law that would have an overriding effect on any other statute, for the time being in force. Such a view stands further fortified, in view of the provisions of Sections 29 and 37, that provide for the constitution of Child Welfare Committee, which provides for welfare of children in all respects, including their rehabilitation.

16. Clause (n) of Section 2 of the JJ Act defines 'offence', as an offence punishable under any law for the time being in force. Thus, the said provision does not make any distinction between an offence

punishable under the IPC or one that is punishable under any local or special law.

17. The provisions of the JJ Act have been interpreted by this Court time and again, and it has been clearly explained that raising the age of "juvenile" to 18 years from 16 years would apply retrospectively. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the initial stage of trial and has been taken only on the appellate stage, this Court has consistently maintained the conviction, but has set aside the sentence. (See: **Jayendra & Anr. v. State of U.P.**, AIR 1982 SC 685; **Gopinath Ghosh v. State of West Bengal**, AIR 1984 SC 237; **Bhoop Ram v. State of U.P.**, AIR 1989 SC 1329; **Umesh Singh & Anr. v. State of Bihar**, AIR 2000 SC 2111; **Akbar Sheikh & Ors. v. State of West Bengal**, (2009) 7 SCC 415; **Hari Ram v. State of Rajasthan & Anr.**, (2009) 13 SCC 211; **Babla @ Dinesh v. State of Uttarakhand**, (2012) 8 SCC 800 and **Abuzar**

Hossain @ Gulam Hossain v. State of West Bengal, (2012) 10 SCC 489).

18. So far as the joint trial of the charges is concerned, as the offences committed by the respondent after attaining majority were of a very serious nature, and in view of the provisions of Rule 65 of the Army Rules, only composite (single) sentence is permissible, the High Court could substitute the punishment considering the gravity of the offences committed by the respondent after attaining 18 years of age. But there was no occasion for the High Court to observe that the entire GCM proceeding stood vitiated.

19. The maximum punishment for absence from duty without leave, under Section 39(a) of the Army Act, is 3 years RI. For any offence committed under Section 52(a), the maximum punishment is 10 years RI; and under Section 69, the maximum punishment is 7 years RI. After considering the entirety of the circumstances, in view of the provisions contained in Rule 65 of the Army Rules, the respondent was awarded the punishment of 7 years RI for all the charges proved. Though for the 2nd charge alone, the respondent could have been awarded 10 years RI; for the 4th and 5th charges, he could have been

awarded a sentence of 3 years RI on each count; and for charge no. 6, a punishment of 7 years RI could have been imposed.

20. So far as the failure of justice is concerned, this Court in **Darbara Singh v. State of Punjab,** AIR 2013 SC 840, held that:

> *"Failure of justice" is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavour to find the truth.* ***There would be "failure of justice"; not only by unjust conviction, but also by acquittal of the guilty,*** *as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be overemphasised to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under the Indian criminal jurisprudence. "Prejudice" is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been* ***serious prejudice caused to him****, with respect to either of these aspects, and that the same has defeated the rights available to him under criminal jurisprudence, then the accused can seek benefit under the orders of the court."*
>
> (Emphasis added)

(See also: **Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra,** AIR 1973 SC 2622; **Rafiq Ahmed @ Rafi v. State of U.P.,** AIR 2011 SC 3114; **Rattiram & Ors. v. State of M.P.,** AIR 2012 SC 1485; and **Bhimanna v. State of Karnataka,** AIR 2012 SC 3026)

21. In **Ramesh Harijan v. State of U.P**., AIR 2012 SC 1979, this court dealt with the issue of the liberal approach adopted by the court to grant an unwarranted acquittal, and held that while dealing with a criminal case, it is a matter of paramount importance for any court to ensure that the mis-carriage of justice be avoided in all circumstances. (See also: **Sucha Singh v. State of Punjab,** AIR 2003 SC 3617**;** and **S. Ganesan v. Rama Raghuraman & Ors.**, (2011) 2 SCC 83)

22. The expression "failure of justice" would appear, sometimes, as an etymological chameleon. The Court has to examine whether there is really a failure of justice or whether it is only a camouflage. Justice is a virtue which transcends all barriers. Neither the rules of procedure, not technicalities of law can stand in its way. Even the law bends before justice. The order of the court should not be prejudicial to anyone. Justice means justice between both the parties. The

interests of justice equally demand that the "guilty should be punished" and that technicalities and irregularities, which do not occasion the "failure of justice"; are not allowed to defeat the ends of justice. They cannot be perverted to achieve the very opposite end as this would be counter-productive. "Courts exist to dispense justice, not to dispense with justice. And, the justice to be dispensed, is not palm-tree justice or idiosyncratic justice". Law is not an escape route for law breakers. If this is allowed, this may lead to greater injustice than upholding the rule of law. The guilty man, therefore, should be punished, and in case substantial justice has been done, it should not be defeated when pitted against technicalities. (Vide : **Ramesh Kumar v. Ram Kumar & Ors.**, AIR 1984 SC 1929; **S. Nagaraj v. State of Karnataka**,1993 Supp (4) SCC 595; **State Bank of Patiala & Ors. v. S.K Sharma**, AIR 1996 SC 1660; and **Shaman Saheb M. Multani v. State of Karnataka**, AIR 2001 SC 921)

23. In **Delhi Administration v. Gurudeep Singh Uban**, AIR 2000 SC 3737, this Court observed that justice is an illusion as the meaning and definition of 'justice' vary from person to person and party to party. A party feels that it has got justice only and only if it succeeds before the court, though it may not have a justifiable claim. (See also:

Girimallappa v. Special Land Acquisition Officer M & MIP & Anr., AIR 2012 SC 3101)

Justice is the virtue by which the Society/Court/Tribunal gives a man his due, opposed to injury or wrong.

Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering justice with mercy, the Court must be very conscious, that it has to do justice in exact conformity with some obligatory law, for the reason that human actions are found to be just or unjust on the basis of whether the same are in conformity with, or in opposition to, the law.

24. Rule 51 of the Army Rules requires that the accused must raise the objection in respect of jurisdiction at an early stage of the commencement of proceedings. Had the respondent raised the issue of juvenility at the appropriate stage, the authority conducting the GCM could have dropped the charges in respect of offences committed by him as a juvenile. Further, Rule 72 provides for mitigation of sentence in case of invalidity in framing of charges or on finding thereon.

The respondent pleaded guilty to all the offences, though at a belated stage. As a member of the Indian Army, the respondent was duty bound to protect the nation. Regrettably, however, his conduct

reminds one of situations when the "legislator becomes the transgressor" and the "fence eats the crops". Put simply, he abused the nation instead of protecting it. Therefore, his conduct had been unpardonable and not worthy of being a soldier.

25. At the cost of repetition, it may be observed that after attaining 18 years of age, the respondent committed four serious offences; he could have been punished with 10 years' RI for the 2nd charge, 7 years' RI for the 6th charge and 3 years' RI on each count for the 4th and 5th charges. Further, there had been a joint trial, and in view of the provisions of Rule 65, a composite sentence of 7 years RI had been imposed.

26. Undoubtedly, each charge had been in respect of a separate and distinct offence. Each charge could have been tried separately. Thus, the trial by way of a GCM remained partly valid. The offences committed by the respondent after attaining the age of 18 years, were not a part of the same transaction i.e. related to the offences committed by him as a juvenile. Nor were the same were so intricately intertwined that the same could not be separated from one another. Thus, invalidity of part of the order could not render the GCM

proceedings invalid in entirety. Therefore, the valid part of the proceedings is required to be saved by applying the principle of severability of offences.

27. The respondent could have asked for a separate trial of different charges as provided under Rule 79. However, in that case the punishment would have been much more severe, as all the sentences could not run concurrently. In fact, the respondent has benefited from the joint trial of all the charges and thus, by no means can he claim that his cause stood prejudiced by resorting to such a course. The High Court ought to have taken a cue from Rule 72 of the Army Rules for the purpose of deciding the case, as the same provides for mitigation of sentence in the event that a charge or finding thereon is found to be invalid, as the respondent could not have been tried by a GCM for the offences that had been committed by him as a juvenile, keeping in view the provisions of Rule 65 thereof.

Thus, considering the nature of service of the respondent, the gravity of offences committed by him after attaining the age of 18 years and the totality of the circumstances, we are of the considered opinion that grant of relief to the respondent, even on the principles of "justice, equity, and good conscience"; was not permissible.

28. In view of the above, the appeal succeeds, and is allowed. The judgment and order passed by the High Court impugned herein, is set aside and the order of conviction recorded by the GCM is restored. However, in light of the facts and circumstances of the case, the sentence imposed by the GCM is reduced to five years. There shall be no order as to costs.

…….....J.
(Dr. B.S. CHAUHAN)

…….. .....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI;
APRIL 2, 2013