

CASE NO.:
Appeal (civil) 8848 of 1994

PETITIONER:
O.P.Dahiya

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 22/11/2002

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The appellant before us challenged by way of a writ petition order an order dated 27.1.1993 directing re-trial by a fresh General Security Force Court. This order came to be made by the respondents while the petitioner was being tried by the fresh General Security Force Court for certain misconduct alleged against him and by the said order exercising the authority vested under Section 71(3) of the Border Security Forces Act, the Inspector General (H.Qs.) dissolved the said court on the ground that the functioning of the said court had become inexpedient for reasons arising out of the conduct of the members and Law Officer constituting the said court. By the said order, he also directed the constitution of a fresh court.

The allegation of the appellant before the High Court was that the proceedings before the General Security Forces Court had almost come to an end and a re-trial would prejudice his case, apart from the fact that it would amount to double jeopardy.

The High Court dismissed the said writ petition holding that the authorities had the power to dissolve the court and directed a fresh trial. It was also noticed that the dissolution took place primarily on the complaint made by the appellant himself alleging that the Law Officer was being very unfair to the appellant. In such situation, the High Court came to the conclusion that there was no error in the impugned order.

We have heard the learned counsel for the parties and perused the record. We also notice that the petitioner himself had alleged in para 27 of the writ petition that the trial that was being held was unfair as the law officer and the prosecutor were determined to deny him a fair trial and were endeavouring to get him convicted by unfair means. Therefore, it is crystal clear that it is at the instance of the appellant himself the respondent authorities took steps to dissolve the court and constitute a fresh court to protect the interest of the appellant. In such situation, we cannot permit the appellant to contend that any prejudice will be caused to him by such consequential reconstitution of the court. That apart, we notice that the respondents were well within their authority under Section 71(4) of the Border Security Force Act to issue the impugned order. The question of double jeopardy also does not arise because the petitioner was not either convicted or acquitted of the charges against him in the first trial.

For the reasons stated above, this appeal fails and the same is dismissed.

JUDIS