

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.6444-6445 OF 2005

KHEM CHAND

... APPELLANT

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

O R D E R

These two Civil Appeals are from the judgment and order dated December 16, 2003 passed by the High Court of Judicature at Allahabad. The Division Bench of that Court, by the impugned order has set aside the judgment of the learned Single Judge delivered on February 2, 2002.

The appellant and two others, namely, Isa Nand Dubey and Satya Deo Giri were tried by the General Court Martial for the murder of Havaladar Ram Phal and Sepoy Jagannath Prasad by shooting them down near village Bhatagaon. The General Court Martial vide its verdict on January 21, 1975 convicted the appellant, Isa Nand Dubey and Satya Deo Giri for the murder of the two above named persons and sentenced them to suffer life imprisonment. The General Court Martial also recommended the dismissal of the appellant and the other two persons from service. The appellant made representation to the Chief of Army Staff against the verdict of the General Court Martial. On February 25, 1975 the Chief of Army Staff rejected the appellant's representation.

The appellant and the other two persons filed

separate Writ Petitions before the High Court of Judicature at Allahabad and challenged the order of the General Court Martial dated January 21, 1975 and the order of the Chief of Army Staff confirming the verdict of the General Court Martial. The Writ Petition filed by Isa Nand Dubey was allowed by the Single Judge of the Allahabad High Court on April 6, 1978 and the order of the General Court Martial as well as the order of the Chief of Army Staff were set aside. The Writ Petition filed by Satya Deo Giri was also allowed by the High Court of Allahabad on October 11, 2002 and the impugned orders therein were set aside. Insofar as the appellant's Writ Petition is concerned, that was allowed by the learned Single Judge on February 10, 2003. The learned Single Judge quashed the order of the General Court Martial dated January 21, 1975 and the order of the Chief of Army Staff dated February 25, 1975.

Against the order of the learned Single Judge dated February 10, 2003, the Union of India, Chief of Army Staff and General Officer Commanding preferred intra-court appeal. The Division Bench, by its order dated December 16, 2003, as noticed above, has set aside the judgment and order of the learned Single Judge. The reason given by the Division Bench for setting aside the order of the Single Judge is as follows :

"It is well settled that in writ jurisdiction the High Court cannot go into findings of fact recorded by the Court below or Tribunal. In our opinion the Learned Single Judge has erred in law by treating the Writ Petition before him as if it was a First Appeal and he has interfered with findings of fact....."

We are unable to sustain the order of the Division Bench for

more than one reason. For one, the Division Bench has not at all considered and adverted to the reasons given by the learned Single Judge in support of his conclusions. The Single Judge dealt with the matter at considerable length and also noted that order of the General Court Martial has been set aside earlier in the Writ Petitions filed by the co-accused. Whatever be the worth of the reasons recorded by the Single Judge, they ought to have been considered by the Division Bench. Secondly and equally important, the appeal preferred by the Union of India and Chief of Army Staff against the judgment of the Single Judge in the matter of the co-accused, i.e., Satya Deo Giri is stated by Mr.R.Balasubramanian, on instructions, to be pending consideration before the Division Bench of the High Court. In view of the pendency of the appeal preferred by the co-accused, it is in fitness of things that both the appeals are heard together by the Division Bench of that Court or by the Armed Forces Tribunal on transfer of such matters as the order of General Court Martial is common. As a matter of fact, both the learned counsel agreed for this course.

The Civil Appeals are, accordingly, allowed; the order of the Division Bench dated December 16, 2003 is set aside and Special Appeal (No.198/2003) -Union of India & Ors. Vs. Khem Chand is restored to the file of the High Court of Judicature at Allahabad for proceeding afresh with the matter in accordance with law along with Appeal preferred by the Union of India against the order dated 11th October, 2002 in

the matter of Satya Deo Giri. No costs.

.....J.
(R.M. LODHA)

.....J.
(JAGDEESH SINGH KHEHAR)

NEW DELHI;
22ND SEPTEMBER, 2011

