

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. 5136 of 2019
(Arising out of SLP (C) No.18113 of 2018)

UNION OF INDIA, REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS & ORS.

.... Appellant(s)

Versus

RANJIT KUMAR SAHA & ANR.

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. The first Respondent was working as Subedar (Building and Road) and the second Respondent was a Naib Subedar (building and Road) in Headquarter- 6 Sector, Assam Rifles, Kamrup, Assam. A sting operation was carried out by a contractor, Mr. C.C. Mathew, followed by a telecast in Matrabhumi News, a Malayalam Television channel and 'Tehelka.com' on 24/25th September, 2014 alleging corruption in the Assam Rifles.

On the basis of the said news, a Court of Inquiry was convened by Headquarters, IGAR (East.), Assam Rifles by an order dated 29.09.2014 which was later amended on 01.10.2014 in respect of the composition of the Court of Inquiry. A Court of Inquiry was conducted at Srikona, Silchar, Assam during which the Summary of Evidence was recorded. A charge-sheet was issued by the Convening Authority to the Respondents under Section 55 of the Assam Rifles Act, 2006 (hereinafter referred to as the “2006 Act”) for an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the “PC Act”) with an alternate charge under Section 49 of the 2006 Act. The General Assam Rifles Court (hereinafter referred to as ‘*the GARC*’) was convened on 10.11.2016.

2. The Respondents raised certain preliminary objections before the GARC which are:

1. During the Court of Enquiry and Summary of Evidence, no opportunity to cross -examine the

complainant of the case was given to the Respondents.

2. The composition of the GARC was in violation of Section 90 of the 2006 Act inasmuch as the members of the GARC did not have the required rank to be members of the GARC.

3. The GARC cannot try a case punishable under the PC Act.

3. The GARC rejected the preliminary objections raised by the Respondents under Section 139 of the 2006 Act by an order dated 09.01.2017. Aggrieved by the said rejection order, the Respondents filed a Writ Petition in the Guwahati High Court. A learned Single Judge of the High Court allowed the Writ Petition and declared that the GARC cannot try an offence punishable under the PC Act involving a person governed by the 2006 Act. The appeal filed against the judgment of the learned Single Judge was dismissed by a Division Bench of the High Court, aggrieved by which, the Appellants have filed this appeal.

4. The Respondents contended before the High Court that the GARC lacks jurisdiction to entertain the case against them as the jurisdiction to try an offence punishable under Section 7 of the PC Act was only with the Special Court established/appointed under the PC Act. After examining the definitions of ‘civil offence’, ‘criminal court’ and ‘member of the force’ in Sections 2 (e), (h) and (p) respectively of the 2006 Act, the learned Single Judge of the High Court held that an offence triable by a criminal court is within the jurisdiction of the GARC. However, the High Court was of the opinion that only a special Judge appointed by the Central Government or the State Government under the PC Act shall have the jurisdiction to try all offences punishable under the PC Act. The High Court was of the considered view that the jurisdiction exercisable by the Courts or other ‘Authorities’ mentioned in Section 25 is not affected by the PC Act. The High Court observed that the 2006 Act is not included in Section 25 (1) of the PC Act and, therefore the ‘members of the force’ shall be

governed by the PC Act. Finally, the High Court declared that the GARC cannot proceed to adjudicate the case against the Respondents under the PC Act.

5. The Division Bench of the High Court upheld the judgment of the learned Single Judge by reiterating that an offence punishable under the PC Act is triable only by a special Judge in view of Section 4 of the PC Act. For the removal of doubts, it was laid down in Section 25(2) of the PC Act that the Court of a special Judge shall be deemed to be a Court of ordinary criminal justice for the purpose of any law referred in Section 25(1) of the PC Act. Only the Army Act, 1950; the Air Force Act, 1950; the Navy Act, 1957; the Border Security Force Act, 1968; the Coast Guard Act, 1978 and the National Security Guard Act, 1986 are the statutes included in Section 25 of the PC Act. There was no declaration by the Legislature that the GARC constituted under the 2006 Act which is a Court of ordinary criminal justice, was a Court of special Judge under the PC Act. Therefore, the Division Bench dismissed the appeal and declared that

the GARC has no jurisdiction to try an offence punishable under Section 7 of the PC Act which can be tried only by a Court of a Special Judge appointed under the PC Act.

6. Mr. Atmaram N.S. Nadkarni, learned Additional Solicitor General submitted that the judgments of the High Court suffered from the vice of erroneous interpretation of the provisions of the PC Act and the 2006 Act. He relied upon Sections 55 and 56 of the 2006 Act to argue that every civil offence which is not exempted under Section 56 of the 2006 Act shall be tried by the GARC. He further relied upon Section 2 (e) of the 2006 Act which defines a “civil offence” to mean an offence which is triable by a criminal court and the definition of a criminal court in Section 2 (h) of the 2006 Act to mean a Court of ordinary criminal justice in any part of India. He made an attempt to submit that the 2006 Act would fall within the sweep of Section 25 of the PC Act, in view of S.R.O. 318 issued under the Army Act, 1950. S.R.O. 318 which was issued under Section 4 (1) of the Army Act made the provisions of the Army Act,

except those specified in the Schedule annexed thereto, applicable to every unit of the Armed Forces. He also relied upon Section 11 of the Assam Rifles Act, 1941 by which the members of the Assam Rifles were deemed to be a part of the Indian Army for certain purposes. The submission of the learned Additional Solicitor General is that the GARC as well as the Court of a Special Judge under the PC Act will have jurisdiction to try and punish a person for an offence under the PC Act. There is no ouster of jurisdiction of the GARC to try an offence under the PC Act.

7. Mr. Dushyant Parashar, learned counsel for the Respondent supported the judgment of the High Court and submitted that Section 25 of the PC Act is not applicable to the facts of this case. As the 2006 Act does not find a mention in Section 25, no exemption from the applicability of the PC Act to the 2006 Act can be claimed by the Appellants. He supported the view of the High Court that only a Special Judge under the PC Act can try an offence under the said Act. As the GARC

was not declared to be a court of special Judge, he submitted that no jurisdiction can be vested in the GARC to try an offence under the PC Act.

8. Sections 55 and 56 of the 2006 Act read as follows:

“55. Civil offences.— Subject to the provisions of section 56, any person subject to this Act who at any place in, or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by an Assam Rifles Court and, on conviction, be punishable as follows, that is to say,—

(a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer any punishment assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as in this Act mentioned.

56. Civil offences not triable by an Assam Rifles Court.—*A person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or of rape in relation to, a person not subject to this Act shall not be deemed to be guilty of an offence against this Act and shall not be tried by an Assam Rifles Court, unless he commits any of the said offences,—*

- (a) while on active duty; or*
- (b) at any place outside India; or*
- (c) at any place specified by the Central Government, by notification in this behalf.”*

It is also relevant to refer to Section 2 (e), 2 (h) and Section 2 (r) of the 2006 Act which are as under:

(e) "civil offence" means an offence which is triable by a criminal court;

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(h) "criminal court" means a court of ordinary criminal justice in any part of India;

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(r) "offence" means any act or omission punishable under this Act and includes a civil offence;

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It is clear from the above provisions that any member of the Assam Rifles shall be liable to be tried by the GARC for committing a civil offence which means an offence which is triable by a criminal court. A 'criminal court' means a Court of ordinary criminal justice in any part of India. The only offences which are not triable by the GARC are those specified in Section 56 of the 2006 Act.

9. Section 4 of the PC Act provides that an offence punishable under the PC Act shall be tried only by a special Judge. A special Judge under the Act is appointed by a notification issued under Section 3 of the PC Act either by the Central Government or the State Government. According to the Section 5 of the PC Act, the Court of the special Judge shall be deemed to be a Court of Sessions. It is also necessary to refer to Section 28 of the PC Act which provides that the provisions of the PC Act shall be in addition to, and not in derogation of, any other law for the time being in force. As per Section 25 of the PC Act, the jurisdiction exercisable by and the procedure applicable to any Court or authority under the Army Act, 1950; the Air Force Act; 1950, the Navy Act, 1957; the Border Security Force Act, 1968; the Coast Guard Act, 1978 and the National Security Guard Act, 1986 shall not be affected by the PC Act. For the removal of doubts, it was declared in Section 25 (2) of the PC Act that for the purposes of any laws mentioned in Section 25 (1), the Court of a special Judge shall be deemed to be a Court of ordinary criminal justice.

10. The point answered against the Appellants by the High Court is that the 2006 Act is not included in Section 25 (1) of the PC Act and that the criminal court under the 2006 Act has not been declared to be a Court of special Judge. Therefore, the High Court decided that the cases triable under the PC Act even against the members of the Assam Rifles have to be necessarily tried by a special Judge under the PC Act. There is no doubt that the 2006 Act is not included in Section 25 (1) and exemption from applicability of the provisions of the PC Act cannot be claimed by the Appellants. We are not in agreement with the submission made by the learned Additional Solicitor General that the Appellants are entitled to a relief on the basis of Section 25 of the PC Act. We also reject the submission that the S.R.O. issued under the Assam Rifles Act, 1941 shall continue to hold the field even after the repeal of the 1941 Act and the promulgation of the 2006 Act.

11. The charge-sheet issued against the Respondent is for committing an offence under Section 7 of the PC Act.

Offences punishable under the PC Act shall be tried only by special Judges,¹ appointed by a notification of the Central Government or the State Government². We are not concerned with Section 25 of the PC Act as the 2006 Act is not included in Section 25 (1).

12. We proceed to examine the provisions of the 2006 Act. Section 55 of the 2006 Act provides that any civil offence committed by a member of the Assam Rifles shall be tried by the GARC. As referred to earlier, a civil offence is defined by Section 2 (e) as an offence which is triable by a criminal court. A criminal court is defined in Section 2 (h) as a Court of ordinary criminal justice in any part of India. A combined reading of the definitions of 'civil offence' and 'criminal court' under Sections 2 (e) and (h) respectively and Section 55 of the 2006 Act would make it clear that an offence under the PC Act can be tried by the GARC in respect of a member of the Assam Rifles. There is an apparent conflict between Section 4 of the PC Act and Section 55 of the 2006 Act.

¹ Section 4 of the PC Act.

² Section 3 of the PC Act.

If there is repugnancy between the provisions of the PC Act and the 2006 Act, the conundrum is whether the 2006 Act, being a later Act, impliedly repeals the provisions of the PC Act and whether both the statutes can be harmoniously construed.

13. There is a presumption against repeal by implication and the reason for this rule is based on the theory that the Legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation.³

14. The presumption is, however, rebutted and repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot stand together. But, if the two can be read together and

³ *State of M.P. v. Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389, para 13; See: *Municipal Council, Palai v. T.J. Joseph*, (1964) 2 SCR 87; *Northern India Caterers (P) Ltd. v. State of Punjab*, (1967) 3 SCR 399; *Municipal Corporation of Delhi v. Shiv Shanker*, (1971) 1 SCC 442; *R.S. Raghunath v. State of Karnataka*, (1992) 1 SCC 335, and *Ratan Lal Adukia v. Union of India*, (1989) 3 SCC 537.

some application can be made of the words in the earlier Act, repeal will not be inferred.⁴

15. The Courts, as a rule, lean against implying repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in *pari materia* although in apparent conflict, should also, so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject-matter, that the former, being the later

⁴ *Id.*

expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict⁵.

16. Consolidation and amendment of laws relating to the prevention of corruption is the object of the PC Act whereas consolidation of laws relating to the governance of Assam Rifles for ensuring the security of the borders of India, to carry out the counter insurgency operations in the specified areas etc., is the object of the 2006 Act. Since the objects of the two Statutes are different and as the applicability of the 2006 Act is restricted to the members of the Assam Rifles, following the aforementioned principles on the presumption against implied repeal, Section 4 of the PC Act and Section 55 of the 2006 Act which are in apparent conflict can be harmoniously construed. This is on the basis that there is no real conflict between the provisions of the two Statutes and they can run in parallel lines.

⁵ *Municipal Corporation of Delhi v. Shiv Shanker*, (1971) 1 SCC 442, para 5.

17. It is also pertinent to refer to the following extract from Sutherland's Statutory Construction:⁶

"A general statute applies to all persons and localities within its jurisdictional scope, prescribing the governing law upon the subject it encompasses, unless a special statute exists to treat a refinement of the subject with particularity or to prescribe a different law for a particular locality. Likewise, where a later statute adapted for a particular locality conflicts with a general law of State-wide application, the special or local law will supersede the general enactment. *Where, however, the later special or local statute is not irreconcilable with the general statute to the degree that both statutes cannot have a coterminous operation, the general statute will not be repealed, but the special or local statute will exist as an exception to its terms.*"

[Emphasis supplied]

⁶ Sutherland's Statutory Construction, 3rd ed. Vol. 1, p. 488 as quoted in *Ram Chandra Mawa Lal v. State of U.P.*, (1984) Supp SCC 28, para 48

We reiterate that Section 4 of the PC Act is not irreconcilable with Section 55 of the 2006 Act, which is a later local statute, to such an extent that the two cannot stand together. Therefore, the jurisdiction exercisable by the GARC under Section 55 of the 2006 Act can be treated as an exception to the provisions of the PC Act.

18. In view of the aforesaid findings, we are of the opinion that the GARC has the jurisdiction to try offences under the PC Act against the members of the Assam Rifles.

19. Therefore, the judgment of the High Court is set aside and the appeal is allowed.

.....J.
[L. NAGESWARA RAO]

.....J.
[M.R. SHAH]

New Delhi,
July 01, 2019.