

S.K. JHA COMMODRE

v.

STATE OF KERALA AND ANOTHER  
(Criminal Appeal No. 1017 of 2010)

JANUARY 11, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.  
PRASAD, JJ.]

*Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978: Rule 3 r.w. s.475, Cr.P.C. – Naval Officers-accused arrested for offences punishable u/ss. 143, 147, 148. 452, 307, 326, 427 r.w. s. 149, IPC – Remanded to judicial custody – Application by the Commanding Officer of the Naval unit (to which the accused belonged) for handing over the accused for trial under the Navy Act, 1957 – Held: Not maintainable at this stage since the investigation had not been completed and charge-sheet had yet to be submitted – The option as to whether the accused be tried before the criminal court or by a court martial could be exercised only after police had completed investigation and submitted the charge-sheet and the provisions of the Rule could not be invoked in a case where police has merely started the investigation against the personnel who is subject to Military, Naval or Air Force law – Navy Act, 1957 – Code of Criminal Procedure, 1973 – s.475.*

*Som Dutt Datta vs. Union of India and Ors. AIR (1969) SC 414, Followed.*

**Case Law Reference:**

**AIR (1969) SC 414 Followed. Para 2**

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1017 of 2010.**

A From the Judgment & Order dated 16.01.2008 of the High Court of Kerala at Ernakulam in CrI. M.C. 212 of 2008.

P.P. Malhotra, ASG, Rajiv Nanda, S.K. Sahajpal, Anil Katiyar (for B. Krishna Prasad) for the Appellant.

B G. Prakash for the Respondent.

The following Order of the Court was delivered

### O R D E R

C Heard the learned counsel for the parties in extenso.

D It is clear to us that the judgment of the High Court is in conformity with the judgment of the Constitution Bench of this Court in *Som Dutt Datta vs. Union of India and Others* reported in AIR (1969) SC 414. The Constitution Bench while construing Rule 3 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules 1978 read with Sec. 549 of the Cr.P.C. (now Section 475 of the Cr.P.C.) held that the option as to whether the accused be tried before the Criminal Court or by a Court  
E Martial could be exercised only after the Police had completed the investigation and submitted the charge-sheet and that the provisions of the Rule could not be invoked in a case where the police had merely started an investigation against a personnel subject to Military, Naval or Air Force law. The facts  
F of the present case indicate that three Naval Officers were arrested on 10th January, 2008 for offences punishable under Sections 143, 147, 148, 452, 307, 326, 427 read with Section 149 of the I.P.C. and some other penal laws. They were produced before the Magistrate on the 11th January, 2008 who remanded them to judicial custody. An application was filed  
G on the 14th January, 2008 by the Commanding Officer of the Naval Unit to which they belonged for handing over the accused for trial under the Navy Act, 1957. This application was rejected by the Magistrate holding that the stage of consideration of the application would arise only on the completion of the police  
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investigation which was still at a preliminary stage and that the request of the Commanding Officer was premature. The order of the Magistrate was challenged before the High Court of Kerala in revision. This too has been dismissed on similar grounds. We see from the facts that the observations of the Constitution Bench apply fully to the facts herein. The stage at which the option can be exercised by the Commanding Officer (as to whether the accused should be tried before a Court Martial or a Criminal Court) cannot be examined at this stage as the investigation has not been completed and a charge-sheet has yet to be submitted.

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The appeal is accordingly dismissed.

D.G.

Appeal dismissed.