

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5006 OF 2012

UNION OF INDIA and others .. APPELLANT(S)

VERSUS

MANGE LAL .. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 3909 of 2015

O R D E R

C.A. NO. 5006/2012

1. The only question raised before us in this appeal is whether the Armed Forces Tribunal (for short, "the Tribunal") was right in concluding that Summary Court Martial (SCM) of the respondent was vitiated due to the admitted fact that the respondent's signature was not obtained on the 'plea of guilty' taken by the respondent. The incident for which the respondent was charged and tried is not of much relevance in the present case. Suffice it to say that the respondent along with another Gunner Ram Kumar said to have molested and outraged the modesty of two girls. Ram Kumar held convicted on evidence. The respondent was also convicted. Though the respondent was convicted, it is an admitted fact that

the evidence of the two girls does not implicate him with any overt act. He was apparently convicted because of his presence. However, the respondent raised the plea that so called 'plea of guilty' which he took before SCM was not recorded in accordance with law and, therefore, the entire trial was vitiated. According to the respondent, the law in this regard requires the 'plea of guilty' to be recorded. The Tribunal upheld the contention of the respondent and concluded the matter in his favour.

2. Before us, Col. R. Balasubramanian, learned Senior Counsel submitted that there is no requirement in the law, i.e., under the Army Act, 1950 (for short, "the Act") and the Army Rules, 1954 (for short, "the Rules") that when an accused pleads guilty, such a plea should be recorded and signed by the accused. Learned counsel relies on Rule 115 of the Rules which reads as follows :

"115. General plea of "Guilty" or "Not Guilty".-

(1) The accused person's plea—"Guilty" or "Not Guilty" (or if he refuses to plead, or does not plead intelligible either one or the other, a plea of "Not Guilty")—shall be recorded on each charge.

(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, 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 (if any) or otherwise that the accused ought to plead not guilty.

1[(2A) Where an accused pleads "Guilty", such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner:-

"Before recording the plea of "Guilty" of the accused the court explained to the accused the meaning of the charge (s) to which he had pleaded "Guilty" and ascertained that the accused had understood the nature of the charge (s) to which he had pleaded "Guilty". The court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge (s) and the effect of his plea of "Guilty", accepts and records the same. The provisions of rule 115(2) are thus complied with.]

(3) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (2) of this rule has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court."

3. In any event, according to learned counsel Rule 125 of the Rules saves the plea of guilty recorded by the SCM. Rule 125 reads as follows :

"Signing of proceedings. - the court shall date and sign the sentence and each signature shall authenticate the whole of the proceedings."

4. The Tribunal relied on the administrative instructions issued by the Army in the year 1984,

specifically requiring a 'plea of guilty' to be signed by the accused who take such a plea. These administrative instructions have been issued in exercise of powers of the Chief of Army staff as an officer commanding the Regular Army. There is no dispute about the validity or the efficacy of the said instructions. There is no doubt that the administrative instructions require that signature of the accused must be obtained on a 'plea of guilty'. In this backdrop we must consider whether the Tribunal committed any mistake in law in upholding the trial to be vitiated and acquitting the respondent for failure of the SCM to obtain signature of the respondent on the 'plea of guilty'.

5. We have given our anxious consideration to the judgment and find that the lacuna in not obtaining the respondent's signature is serious. Non observance of the requirement must indeed have the effect of vitiating the entire trial. It is not disputed before us that the status of an administrative instruction is clearly to supplement the Rule and to fill up the gaps. Once promulgated, an administrative instruction has the force of Rules (See: judgments of this Court in the case of State of

Madhya Pradesh and Anr. v. M/s. G.S. Dall and Flour Mills and connected matters, 1992 Suppl. (1) SCC 150 and in the case of Senior Superintendent of Post Offices, Allahabad and Ors. vs. Izhar Hussain, (1989) 4 SCC 318). Paragraph 19 of the judgment in the case of M/s G.S. Dall and Flour Mills' case (supra) reads as follows :

"19. The second ground on which the Full Bench has sought to invoke the instructions is also not correct. Executive instructions can supplement a statute or cover areas to which the statute does not extend....."

Paragraph 6 of the judgment in the case of Izhar Hussain's case (supra) reads as follows :

".....A statutory rule cannot be modified or amended by executive instructions. A valid rule having some lacuna of gap can be supplemented by the executive instructions, but a statutory rule which is constitutionally invalid cannot be validated with the support of executive instructions. The instructions can only supplement and not supplant the rule."

6. We must therefore hold that the law in this regard is that the signature of accused must be obtained on a plea of guilty. We find that this is also the view of the several High Courts in the decisions which have been noted by the Tribunal.

7. Col. R. Balasubramanian, learned senior counsel next contended that Rule 125 provides that at the end of the trial, the Court is required to date and sign and that such signature has the effect of authentication on whole of the proceedings. According to the learned counsel, the Court having done so in the present case, the entire proceeding stood authenticated. In other words, the 'plea of guilty' required by the Court also stood authenticated. The question really is whether the authentication of proceedings can substitute the effect of curing a non-compliance of the Rules in a matter as important as not obtaining signature of the accused on the 'plea of guilty'. We are afraid that Rule 125 of the Rules cannot have this effect. The effect of Rule 125 is only that the entire proceeding is authenticated. The Black's Law dictionary defines the word 'authenticate' as follows :

"1. To prove the genuineness of (a thing); to show (something) to be true or real.

2. to render authoritative or authentic, as by attestation or other legal formality."

(See: the judgment of the Bombay High Court dated 06.12.1974, in the case of Dhondiba Parshuram Kakade vs. Shri Someshwar Sahakari Sakhar Karkhana Ltd.,

(1979) 81 BOMLR 31)

Relevant portion of the aforementioned judgment reads as follows :

“Furthermore, what cannot be lost sight of is that under rule 4(2), it is an authenticated list that has to be sent by the society to the Collector. In the Act or the Rules, there is no definition of the word “authenticated”. However, the dictionary meaning of the word “authenticate” to be found in Random House dictionary is :

[To make authoritative or valid. To establish as genuine. To establish the authorship or origin of conclusively or unquestionably.]”

8. Such a Rule cannot be pleaded in advance of non-compliance of an important requirement such as that provided by the Rules even though introduced by the administrative instructions. We are, therefore, of the view that the judgment and order of the Tribunal deserves to be upheld.

9. Accordingly the appeal is dismissed.

10. The consequential benefits to which the respondent is entitled shall be paid within a period of three months.

C.A. NO. 3909 of 2015

11. For the reasons recorded in C.A. No. 5006/2012, this appeal is also dismissed. We, however, direct that the respondent shall be entitled to continuation in service for all other benefits, including, notional pay fixation. Needless to say that he is not entitled to the back wages for the period when he has not worked.

.....CJI.  
[ S.A. BOBDE ]

.....J.  
[ B.R. GAVAI ]

.....J.  
[ SURYA KANT ]

NEW DELHI,  
FEBRUARY 25, 2020



ITEM NO.101

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5006/2012

UNION OF INDIA &amp; ORS.

Appellant(s)

VERSUS

MANGE LAL

Respondent(s)

WITH

C.A. No. 3909/2015 (XVII)

Date : 25-02-2020 These appeals were called on  
for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s)

Mr. R. Balasubramanian, Sr. Adv.  
Mr. Sachin Sharma, Adv.  
Mr. Vinod Sharma, Adv.  
Mr. Rahul Gaur, Adv.  
Mr. Arvind Kumar Sharma, Adv.  
Mr. B.V. Balaram Das, AOR  
Mr. Mukesh Kumar Maroria, AOR

For Respondent(s)

Brig. (Retd.) S.K. Mohan, Adv.  
Mr. Subhasish Mohanty, AOR  
Mr. Sahil Mohan, Adv.

Mr. Mohan Kumar, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are dismissed in terms of the  
signed order.

Pending applications, if any, stand disposed  
of.

[ CHARANJEET KAUR ]  
A.R. - CUM - P.S.

[ INDU KUMARI POKHRIYAL ]  
ASSTT. REGISTRAR

[ Signed order is placed on the file ]