

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

T.A NO. 180 OF 2010
(WRIT PETITION (CIVIL) NO. 2537 OF 1998)

NAIK (SHOD) DINESH CHAND SHARMA
NO. 14476785n (1890 LIGHT REGIMENT)
S/O SHRI RAMESHWAR DAYAL
VILLAGE & p.o SALPUR, DIST. ALIGARH (U.P)

THROUGH: MR. N.L BAREJA, ADVOCATE

... APPELLANT

1. UNION OF INDIA
THROUGH THE CHIEF SECRETARY
MINISTRY OF DEFENCE,
NEW DELHI.
2. CHIEF OF THE ARMY STAFF
DMC P.O (SOUTH BLOCK),
NEW DELHI-110 011.
3. G O C-IN-CHIEF
SOUTHERN COMMAND, PUNE.
4. COMMANDED-CUM-C.F.O
ARTY RECORDS, NASIK TOICIAL CANTT.
MAHARASHTRA

5. SUPERINTENDENT
CIVIL JAIL, ALIGARH.

THROUGH: MR. ANKUR CHIBBER, ADVOCATE
WITH LT. COL. NAVEEN SHARMA

... RESPONDENTS

CORAM

HON'BLE MR. JUSTICE S.S KULSHRESTA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER

JUDGMENT

26.07.2010

1. This writ petition has been filed challenging the order passed by the Summary Court Martial (SCM) of 23.2.1993 conducted by Commanding Officer, 1890 Light Regiment at Devlali (Maharashtra), wherein the petitioner was sentenced to be reduced to ranks, suffer rigorous imprisonment for one year and to be dismissed from service.

2. It was alleged by the petitioner that at the time of the incident, i.e. on 6.10.1997, the petitioner had completed 16 years of meritorious service, during which there had been no complaint about

his discipline or conduct. On that particular date, i.e. 6.10.1997, in a very illegal and arbitrary manner, the petitioner was accused of allegedly molesting the prosecutrix by entering her house and touching her breasts. This accusation was strongly denied by the petitioner. It was alleged that when this incident supposedly occurred at 11.30 hours in the morning, the prosecutrix had not raised any alarm or shouted for help or informed her neighbours. It was only subsequently, when her husband returned at about one O' clock, that she informed him. The only linkage of the petitioner that the prosecutrix was able to establish was that she supposedly saw the petitioner at some distance getting into a "lorry" kind of vehicle. The petitioner is also aggrieved by the fact that the manner in which the identification process was conducted by the authorities was against all norms of law and natural justice. It transpired that when she made the complaint to her husband, he supposedly showed her a lot of photographs of the unit personnel in an effort to identify the accused. When she was unable to identify the accused from the photographs shown to her by her husband, he borrowed additional photographs of various unit personnel from his neighbour, L/Nk.

Chetia and it was from one such photograph borrowed from his neighbour that the prosecutrix supposedly identified the petitioner. Thereafter, the vehicle in which the petitioner was travelling was arbitrarily stopped by her husband and the prosecutrix was asked to identify the petitioner. Thereafter, in the evening at 5.00 p.m, the Adjutant of the Regiment, Capt. M.S Dawra, drove the petitioner to the house of the prosecutrix and in a most authoritarian manner, asked to stand at attention and asked the prosecutrix whether she identified him or not. The complete identification procedure was ad hoc and against all laid down norms. The petitioner is aggrieved by the fact that he was not permitted to produce any defence witness in the summary of evidence neither was he permitted to cross examine the prosecution witnesses. It was also contended that since the Commanding Officer had visited the house of the prosecutrix and had supposedly taken part in the investigation of the incident, he was debarred from holding the trial under Army Rule 39.

3. The first and foremost argument put forward by the petitioner was that he has not signed the plea of guilty as he was

required to do at Page B of the SCM form. He was not even asked as to whether he was guilty or not and the plea of guilt was written by his Commanding Officer, after which the Commanding Officer has himself made the certificate of compliance of Army Rule 115(2) and signed such certificate. The petitioner has neither signed the plea of guilt nor the compliance of Army Rule 115(2). It was only much later that the compliance certificate of Army Rule 115(2) was typed on a separate piece of paper and his signatures obtained in an underhand manner and this slip of paper was pasted to the SCM proceedings. To substantiate such a statement, learned counsel for the petitioner indicated that while the entire SCM proceedings have been completed in manuscript by the Commanding Officer, it is only the certificate of compliance of Army Rule 115(2) which is typed and pasted as a separate sheet to the proceedings. It is indicative of the fact that this is an afterthought and was done much after the completion of the SCM. Therefore, in all fairness, the trial was vitiated right from the beginning. The trial should have been conducted as if the petitioner had not pleaded guilty. The charge, for which the petitioner was tried, is reproduced below:

ARMY ACT

Section 69

COMMITTING A CIVIL OFFENCE THAT IS TO SAY USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE

In that he,

at Devlali, on 6 October, 97 used criminal force to Mrs. Mala Devi, W/o No.15115927A Lance Naik (Opr) Mallappa Pattad of the same Regiment by pressing her breasts intending thereby to outrage her modesty.

4. The contention of the petitioner was strongly responded to by the respondents stating that a very thorough and exhaustive summary of evidence had been conducted, only after which the SCM was held. A total of nine witnesses, including the prosecutrix, were examined and the entire evidence led to the fact that the molestation had, in actual fact, been done by the petitioner.

5. PW 1 i.e. the prosecutrix has stated that while she did not know the petitioner by name, she had clearly seen his face in the morning at 11.30 when he attempted to molest her and she was able

to identify him from the photograph shown to her and also when the petitioner was produced before her. Capt. Dawra (PW 2) was the Adjutant of the unit when the incident occurred and in whose presence the identification was carried out and before whom the so called confession was made by the petitioner. L/Nk. Mallappa Pattad (PW 3) was the husband of the prosecutrix and he has given complete details of his conversation with his wife and the methodology of carrying out the identification and how they were able to hone onto the petitioner as the person who molested his wife. PW 4 (Sub. Gurcharan Singh), PW 5 (Sub. Maj. Rajbir Singh) and PW 6 (Sub. Amar Singh) were the three witnesses to whom the complaint was supposedly made and who visited the house of the prosecutrix and were present when the identification was done. PW 7 (L/Hav. Ramayya Singh), who was the driver of the vehicle, has stated that the petitioner was in fact in close proximity of the house of the prosecutrix at 11.30 a.m when the so called incident took place. PW 8 (L/Nk. T. Chetia) is the neighbour of the prosecutrix and it was from his collection of photographs that the prosecutrix was able to identify the petitioner. PW 9 (Nk. Gajendra Kumar Rawal) was

at the entry gate of the unit and he kept the records of the vehicles that passed through the gate. It was from this information that the 'lorry' in which the petitioner was travelling could be identified.

6. Learned counsel for the respondents also clarified that while the identification procedure may have been different from that mandated by law, there was no denying the fact that the prosecutrix had on two separate occasions, clearly and unambiguously identified the petitioner. With regard to the procedural formalities and conduct of the SCM, there were no legal infirmities and the trial was conducted in accordance with the provisions of law.

7. Considering the above and the fact that the plea of guilty has not been signed by the petitioner, it would be appropriate to refer to the observations made by the Delhi High Court in **LNK Gurdev Singh v. Union of India**, which read:

“Though the petitioner has allegedly admitted the charge by pleading guilty, his signatures

nowhere appear on the purported plea of guilt. When an accused person pleads guilty, it would be necessary to obtain his signatures to lend authenticity to such proceedings. This basic requirement was not even adhered to, the absence whereof lends credence to the allegation of the petitioner that he was not even present at the time of recording of the summary court martial proceedings and he never pleaded guilty.

In our recent judgment pronounced on 17.01.2008 in LPA No.254/2001, entitled *The Chief of Army Staff & Ors. Vs. Ex.14257273 K. Sigm Trilochan Behera*, we have concluded that such court martial proceedings would be of no consequence and would not stand the judicial scrutiny. In forming this opinion, we had referred to the judgment of the Jammu & Kashmir High court in the case of *Prithpal Singh Vs. Union of India & Ors.*, 1984 (3) SLR 675 (J&K). We had also taken note of the instructions issued by the respondents themselves in the year 1984, based on the aforesaid judgment of the Jammu & Kashmir High Court, mandating that signatures of the accused pleading guilty of charge be obtained and if there is an infraction of this procedural requirement, it would violate the mandatory procedural safeguard provided in Rule 115(2) of the

Army Rules and would also be violative of Article 14 of the Constitution of India.

Faced with this, an innovative justification was sought to be given by the respondents, namely, the said guidelines were issued by Northern Command whereas the petitioner was tried by the unit in Eastern Command. We feel that the law of the land has uniform application across the country and there cannot be one law for a particular command and different law for another command under the Army. We may note that even this Court has taken similar view in *Lachhman (Ex Rect) vs. Union of India & Ors.*, 2003 II AD (Delhi) 103 wherein it was held as under:-

“The record of the proceedings shows that the plea of guilty has not been entered into by the accused nor has it been recorded as per Rule 115 in as much neither it has been recorded as finding of court nor was the accused informed about the general effect of plea of guilt nor about the difference in procedure which is involved in plea of guilt nor did he advise the petitioner to withdraw the plea if it appeared from the summary of evidence that the accused ought to plead not guilty nor is the factum of compliance of sub-rule (2) has been recorded

by the Commanding Officer in the manner prescribed in sub rule 2(A). Thus the stand of the respondents that the petitioner had entered into the plea of guilt stands on highly feeble foundation.”

Same view was taken by the Allahabad High Court in *Uma Shanker Pathak Vs. Union of India & Ors.*, 1989 (3) SLR 405. The Jammu & Kashmir High Court has reiterated its opinion in a recent judgment in *Sukanta Mitra vs. Union of India & Ors.* 2007 (2) 197 (J&K), wherein the Court held as follows:

“This apart the fact remains that the appellant has been convicted and sentenced on the basis of his plea of guilt. The plea of guilt recorded by the Court does not bear the signatures of the appellant. The question arising for consideration, therefore, is whether obtaining of signatures was necessary. In a case *Union of India and Ors. Vs. Ex-Havildar Clerk Prithpal Singh and Ors.* KLJ 1991 page 513, a Division Bench of this Court has observed:

“The other point which has been made basis for quashing the sentence awarded to respondent-accused relates to clause (2) of rule 115. Under this mandatory provision the court is required to ascertain,

before it records plea of guilt of the accused, as to whether the accused undertakes 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 charge to which he has pleaded guilty. The Court is further required under this provision of law to advise the accused to withdraw that plea if it appears from summary of evidence or otherwise that the accused ought to plead not guilty. How to follow this procedure is the main crux of the question involved in this case. Rule 125 provides that the court shall date and sign the sentence and such signatures shall authenticate of the same. We may take it that the signature of the accused are not required even after recording plea of guilt but as a matter of caution same should have been taken.”

The legal position remains that the plea of guilt is necessarily required to be signed to give authenticity to it, which was not done in this case.

8. In view of the above, we set aside the impugned SCM proceedings. The sentence of dismissal is converted to discharge and the

petitioner shall be entitled to pension and other benefits as due. The appeal is accordingly disposed of.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER