

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

**TA/449/09
IN W.P.C. No. 7413/2009**

**EX SEP R.S.N.RAJANA
NO.13994331
C/O.E APPALA NAIDU
TELEPHONE EXCHANGE
PADAPALI ROAD, RAM NAGAR
YELLMANCHLI
DISTT. VSAKHAPATNAM
A.P.**

THROUGH : SH. S.R.KALKAL, ADVOCATE

...PETITIONER

VERSUS

- 1. THE UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF DEFENCE
SOUTH BLOCK, DHQ
NEW DELHI-110 011.**
- 2. THE CHIEF OF ARMY STAFF
THROUGH ADDITIONAL ADJUTANT GENERAL (DV)
SENA BHAWAN, DHQ
NEW DELHI-110 011.**
- 3. OFFICER-IN-CHARGE
RECORD OFFICE
ARMY MEDICAL CORPS
LUCKNOW-2 (U.P.)**

**THROUGH : SH. ANKUR CHHIBER, ADVOCATE
LT COL NAVEEN SHARMA**

...RESPONDENTS

CORAM :

HON'BLE SH. S.S.KULSHRESTHA, MEMBER

HON'BLE SH. S.S.DHILLON, MEMBER

J U D G M E N T

DATE : 08.01.2010

1. This petition is brought for quashing the order dated 09.04.2008 passed by Summary Court Martial (SCM) whereby the petitioner was convicted for the offence u/s.52(b) of the Army Act 1950 for committing theft of medicines from Army Hospital (R & R) Delhi Cantt. and also for the offence u/s.63 of the Army Act for his acts which were prejudicial to good order and military discipline. He was sentenced to undergo 28 days imprisonment in military custody and also dismissal from service. The findings of SCM was challenged by the accused/appellant by contending that the inquiry as contemplated under Army Rule 180 was not conducted by the respondents before initiating criminal proceedings against him. Further whatever inquiry has been asserted by the respondents in view of Army Rule 22 was itself deficient as the Commanding Officer arbitrarily dispensed with calling of the witnesses. In the absence of the witnesses the conduct of enquiry under Army Rule 22 would itself vitiate as there was no opportunity to the accused/appellant to cross examine the witnesses. It is submitted by the

Learned Counsel for the petitioner that after recording of the evidence under Army Rule 23 no warning was given to the accused/appellant before 96 hours for his trial by SCM. In that way there is also breach of Army Rule 33 and 34 which would invalidate the entire proceedings, moreover the sanctity of the “plea of guilt” so recorded by SCM would also be shrouded with suspicion as the compliance of the provisions as contained under Army Rule 115 (2) was not ensured.

2. The petition was resisted on behalf of respondents contending that the accused/appellant was afforded fair opportunity to cross examine the witnesses or to bring evidence in support of his defence while proceeding for hearing of charges under Army Rule 22 and recording of Summary of Evidence under Army Rule 23. Finally the order for convening the Summary Court Martial was passed. There was no need for separately drawing the proceedings under Army Rule 180. Hearing of the charges at the stage under Army Rule 22 was made in the presence of Sub Maj Lala Ram and Nb Sub Manwar Singh. The signature of the petitioner was also taken at that time. The petitioner also declined to make his statement. The petitioner was informed with regard to the commencement of proceedings before SCM through letter dated

02.04.2008 and proceedings virtually commenced on 09.04.2008. There was complete nine days time available to the appellant to prepare his defence. Hence the allegations are contrary to the records. There was due compliance of Army Rule 115(2) as the accused/appellant was also made to understand that his plea of guilt would be read against him. The certificate to that effect was also given in the Summary Court Martial proceedings.

3. In order to facilitate the disposal of this petition and to answer the rival contentions of the parties it shall be useful to make a brief narration of the facts. Sh. R.S.N.Rajana who is herein the petitioner was posted to Army Hospital (R&R) on 23.10.2005. As per the charter of duties the assistants were also deployed in the wards/departments or at any other place where the patients need assistance. The petitioner was detailed to work in medical store/dispensary for assisting the Pharmacists for dispensing of the medicines. Hav. A.D.Chaugale who was NCO IC of Haematology Department was caught on 18.01.2008 for illegally possessing medicines and also making false and forged entries in the treatment books and prescriptions issued by Head of Department of Haematology and other officers. On interrogation, Hav. A.D.Chaugale admitted his guilt for pilfering medicines and making forged entries in the

treatment books and prescription slips. He further revealed the name of the petitioner with whose active assistance he was getting the medicines issued on forged documents from medical stores of the hospital. Thereafter he and the petitioner used to sell those medicines in the market and share the profit from such transaction. On such disclosure statement of Hav. A.D.Chaugale, the petitioner was interrogated and he also admitted his participation in pilfering the medicines and forging documents and he also got the box containing medicines recovered from the roof top of his house i.e. Qtr.No.65/03, Sanjay Vihar, Delhi Cantt. He however, stated that this was handed over to him by the wife of Hav. A.D.Chaugale as she was suspecting some search of her house.

4. The petitioner was charged for the offences u/s.52 (a) of Army Act 1950 for committing theft of the Government property/ medicine and also u/s.63 of the Army Act for an act prejudicial to good order and military discipline. The charges were framed in the presence of the accused and the witnesses namely JC6948644 Sub A.K.Kanwar Singh, No.13965316W Hav/AA. S.Dasan and two independent witnesses Sub Maj Lala Ram and Nb Sub Manwar Singh who recovered medicines on pointing out of the petitioner from Qtr.No.65/03, Sanjay Vihar, Delhi Cantt. and prepared the memo and further recorded the statement of

Hav/AA. S.Dasan in whose presence the confession was made by the petitioner voluntarily with regard to his involvement in the aforesaid theft and Hav.R.P.Singh was also heard before whom Hav./NA A.D.Chaugley confesses his guilt. On being satisfied by such materials and evidence appearing at the stage under Army Rule 22 Commanding Officer ordered for recording of the evidence in compliance with Army Rule 23(1) to (5) and Col M.K.Mukherjee was deputed for recording of Summary of Evidence.

5. Reliance was placed on the cases of *Veer Bhan(Sepoy) Vs.Chief of Army Staff & Anr. 2005 (2) SCT pg.223 and Chief of Army Staff, Delhi & Ors. Vs M.Z.H.Khan 2007 (3) SCT Pg.378 wherein it is said that the provisions of Army Rule 33 and 34 were violated by the SCM which would vitiate the trial of the petitioner.* In that regard even the guidelines which were issued by Additional Directorate General, Discipline and Vigilance Adjutant General's Branch dated 10.04.1995 were referred. It may be quoted here under:

Non compliance of Army Rule 115(2) : As per Army Rule 115(2) before recording the plea of guilty 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 the plea and in particular of

the meaning of the charge to which he has pleaded and of the difference in procedure which will be made by the plea of guilty.

As per sub-rule 2A of Rule 115 where the accused pleads guilty such a plea and the factum of compliance of sub-rule 2 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 charges to which he had pleaded guilty and ascertained that the accused had understood the nature of the charge to which he has pleaded guilty. The court also informed the general effect of the plea and difference in procedure which will be followed consequent to the said plea. The court having satisfied that the accused understands the charge and the effect of the plea of guilty accepts and records the same. The provisions of Rule 115(2) are thus complied with.”

It is observed that this provision is not being followed and the plea of guilty is not being recorded as stated above.

6. The copy of the charge sheet and photocopy of Summary of Evidence were furnished to the petitioner on 02.04.2008 along with Army Hospital (R&R), Delhi Cantt. Letter no.13994331N /PC/RSNR/Coy/2008 providing opportunity to the petitioner under Army Rule 33 and 34 to

exercise the option to appoint the defence counsel of his choice and that choice should also be intimated in response to that letter. The compliance of the provisions of Army Rule 33 and 34 has been properly ensured by SCM. Further the proceedings before SCM commenced after seven days and sufficient time was given to the petitioner thus the provisions of Army Rule 33 and 34 were strictly adhered to.

7. Prosecution in support of its case has examined the witnesses namely Sub/AA Kanwar Singh who recovered the box of the medicines from Qtr.No.65/03, Sanjay Vihar, Delhi Cantt., on pointing of the petitioner. Further Hav/AA. S.Dasan was also examined before whom the petitioner gave his confessional statement. There was no cross examination from the side of the petitioner. The testimony of the witness remained intact and substantiated the allegations against the petitioner.

8. It has been contended by the Learned Counsel for the petitioner that no fair opportunity was afforded to him to cross examine these witnesses and his plea of guilt was mechanically recorded by SCM. From the record it is clear that the petitioner pleaded guilty for the charges levied against him. He was also explained the consequences of

his pleading guilty. The certificate as required under Army Rule 115(2) was also given by the SCM at the time of recording of plea of guilt. That plea of guilt was recorded in accordance with the provisions of rules and no infirmity in the recording of that plea of guilt was pointed out. However much thrust was laid on the point that the certificate so issued by the SCM ought to have been in handwriting, a bald certificate by the SCM itself is not sufficient. Reliance has been placed on *Uma Shanker Pathak Vs. Union of India & others* 1989(3) SLR Pg.405. The facts of this case are distinguishable with that case of Uma Shanker (Supra). In that case certificate was given by the Commanding Officer only to the effect that “provisions under Army Act 115(2) are here complied with”. Such certificate in that case was not enough. The certificate with regard to the compliance of Army Rule 115(2) which has been given specifically conveys that the SCM explained to the petitioner the meaning of charge to which he pleaded guilty and also ascertained that the petitioner understood the nature of charge to which he had pleaded guilty. It was also conveyed to the petitioner that in the event of his pleading guilty that procedure would be different. This certificate also bears the signatures of the petitioner. It is quite ascertainable from this certificate that petitioner fully understood the consequences of his plea of guilt. Reliance has also been placed by the Learned Counsel for the petitioner in the cases of *Union of India & Ors. Vs. Ex. Hav Clerk Prithpal Singh & Others*. In

that case it was held on the premises that even the signatures of the petitioner were not taken which would convey his non-participation or not pleading guilty. Here in this case the signature of the petitioner finds place.

9. There is ample evidence on record to fasten the culpability of the accused for the aforesaid offences coupled with his plea of guilt. Such plea of guilt and other evidence remained uncontroverted. Judgment can also be based on such plea of guilt when it is found to be deliberate and voluntarily and when this was made by the petitioner understanding of its implications as referred under certificate under Army Rule 115 (2). It was also appearing to be voluntarily in nature. There was nothing on record to show that it was obtained by threat, inducement and its truth is also judged on the basis of other evidence produced by the prosecution. As has already been referred Army Rule 115(2) is provision which laid out certain precautionary measures to be followed by the Court Martial recording the guilt so as to ensure the voluntariness of the confession of the guilt. There is ample evidence on record which remained unchallenged coupled with plea of guilt of the petitioner and no legal infirmity is found in the conduct of the proceedings. There was ample and

fair opportunity to cross examine the witnesses or to produce evidence in defence but the petitioner refrained in doing so.

10. We do not find any justified ground to interfere in the impugned order. Petition dismissed.

S.S.DHILLON
(Member)

S.S.KULSHRESHTA
(Member)

PRONOUNCED IN THE OPEN COURT
TODAY ON DATE 08.01.2010