Saroj Yadav Vs State Of Manipur And Others

Court: Manipur High Court

Date of Decision: Sept. 24, 2019

Acts Referred: Constitution Of India, 1950 â€" Article 13, 32, 33, 141, 226, 309
Code Of Criminal Procedure, 1973 â€" Section 5, 41(1)(b), 55, 91, 154, 154(1), 154(3), 155, 156(3), 157(1), 160, 172, 428
Indian Penal Code, 1860 â€" Section 326A, 326B, 354, 354A, 354B, 354C, 354D, 375D, 376, 376(A), 376(B), 376(c), 376E, 509
Police Act, 1861 â€" Section 42, 44
Army Act, 1950 â€" Section 70
Arms Act, 1959 â€" Section 25, 36, 38
Narcotic Drugs And Psychotropic Substances Act, 1985 â€" Section 18

Hon'ble Judges: Kh. Nobin Singh, J

Bench: Single Bench

Advocate: H. Kenajit, Niranjan Sanasam

Final Decision: Dismissed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri H. Kenajit, learned Advocate appearing for the petitioner and Shri Niranjan Sanasam, learned Government Advocate appearing for the

respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to

register FIR against the Assam Rifles personnel who had caused serious injuries to her husband and hatched conspiracy to prove that her husband

consumed excessive liquor on the date of the incident so as to protect other personnel who had beaten up her husband.

[3.1] Facts and circumstances as narrated in the writ petition are that on 24-03-2016 when a function was organized by the battalion in celebration of

Holi festival at football ground, Shri Nampisa and the petitionerÃ¢â‚¬â„¢s husband were given duty to organize the programme. While Rifleman Santosh

Kohli and the petitionerÃ¢â‚¬â„¢s husband were dispatching items, the JCO (Naib-Subedar), D.P. Oniyal came to the football ground in a drunken state

and after telling something to Shri Santosh Kohli, he started beating the petitionerÃ¢â‚¬â„¢s husband. After sometime they took the petitionerÃ¢â‚¬â„¢s

husband to Barrack No.3 where he was beaten up by Constable P. Phukan, Lalmoon Saaga, Roshan Jela and Milan Sunar because of which the

petitionerÃ¢â‚¬â„¢s husband received severe injuries on his head and knee and lost his consciousness. His uniform were torn and could not walk by

himself.

[3.2] As the concerned authority failed to take any action in respect thereof, the petitioner filed a writ petition being WP(C) No.798 of 2016 which

was disposed of with the direction to the Director General, Assam Rifles, South Manipur, Mantripukhri and the Commanding Officer of 31 Assam

Rifles to consider the representations submitted by her on 09-04-2016 and 12-05-2016. But since no action was taken by them, the petitioner filed a

contempt case being CC No.148 of 2017 for non-compliance of the order dated 19-10-2016 in which the Commanding Officer of 31 Assam Rifles

filed an affidavit stating that they had conducted an enquiry against the personnel who are found to have caused injuries on the petitionerÃ¢â‚¬â„¢s

husband and accordingly, a disciplinary proceeding was initiated against them for having consumed excessive liquor beyond authorization.

[3.3] On 16-11-2017, the petitioner filed a complaint to the Officer-in-Charge, Kamjong Police Station, Manipur to book the culprits for attempting to

murder and causing grievous injuries to her husband. A monthÃ¢â‚¬â„¢s later, the Officer-in-Charge of the Chasad Police Station, Ukhrul District replied

stating that they could not register a case without investigation as there was a writ petition being WP(C) No.798 of 2016 pending before this court.

The petitioner on receipt of the said letter dated 16-12-2017 gave her reply dated 25-05-2018 to the Officer-in-Charge, Chasad Police Station, Ukhrul

informing that the said writ petition being WP(C) No.798 of 2016 had already been disposed of on 19-10-2016. Despite the said letter dated 25-05-

2018 being written by her, the respondent No.4 did not register FIR which prompted her to make a complaint dated 12-10-2018 to the Superintendent

of Police, Ukhrul District for registering FIR against the said five culprits but the respondent Nos. 3 and 4 did not pay any heed towards the complaint

of the petitioner and had not taken any action against the persons who had caused injuries to her husband. As the petitioner had recently delivered a

child and was not in a position to come to the State of Manipur personally to file a complaint before the Magistrate nor was it feasible for the petitioner

to come down personally and pursue the matter by registering FIR, the instant writ petition has been filed by her.

[4] An affidavit-in-opposition on behalf of the respondent Nos. 3 and 4 had been filed raising the issue as regards the maintainability of the writ petition

in terms of the decisions of the HonÃ¢â‚¬â„¢ble Supreme Court rendered in Sakiri Vasu Vs. State of Uttar Pradesh, (2008) 2 SCC 409 and Sudhir

Bhaskarrao Tambe Vs. Hemant Yashwant Dhage, (2016) 6 SCC 277. In addition thereto, it has been stated that on 16-12-2017, the Chassad Police

Station, Kamjong District, Manipur received a complaint addressed to the Officer-in-Charge, Kamjong Police Station by the petitioner alleging that on

24-03-2016 while Holi Milan was being celebrated at the football ground, her husband was beaten causing serious injuries on him. On perusal of the

above complaint, it was found that the case was being tried in the High Court of Manipur by filing a writ petition being WP(C) No.798 of 2016 and the

contempt case being CC No. 148 of 2017. Since it was sub-judice, the Officer-in-Charge of the Police Station replied to the petitioner on 16-12-2017

that it could not register FIR and investigate into it. The clarification letter dated 25-05-2018 was not received by the Chasad Police Station and only

on 12-04-2018, the Superintendent of Police received a complaint date 12-10-2018 from her.

[5] Relying upon the decisions of the HonÃ¢â‚¬â„¢ble Supreme Court rendered in Sakiri Vasu case (supra) and Sudhir Bhaskarrao Tambe case (supra), it

has been submitted by Shri Niranjan Sanasam, learned Government Advocate that this Court shall not entertain such petition and if the petitioner is

aggrieved by the inaction on the part of the police, she ought to have approached the concerned Magistrate for redressal of her grievance. Combating

this submission, Shri H. Kenajit, learned Counsel appearing for the petitioner has submitted that in terms of the law laid down by the HonÃ¢â‚¬â„¢ble

Supreme Court in State of West Bengal & ors. Vs. Committee for Protection of Democratic Rights, West Bengal & ors., (2010) 3 SCC 57,1 this

Court has ample power to issue a direction or directions for registration of FIR in a cognizable offence.

[6] In order to appreciate their contentions, this Court deems it appropriate to consider the decisions relied upon by them. In Sakiri Vasu case wherein

the appellantÃ¢â‚¬â„¢s son who was an army officer, was found dead at Mathura Railway Station and being suspicious about the nature of his death, the

appellant approached the High Court praying that the matter be ordered to be investigated by the Central Bureau of Investigation. The HonÃ¢â‚¬â„¢ble

Supreme Court held that the material on record did not disclose a prima facie case calling for an investigation by the CBI and accordingly, the appeal

was dismissed by it. While dismissing the appeal, the HonÃ¢â‚¬â„¢ble Supreme Court held:

Ã¢â‚¬Å“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154

CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any

satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the

aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section

156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case

where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the

investigation to ensure a proper investigation.Ã¢â‚¬â€‹

Reiterating the said the law, the HonÃ¢â‚¬â„¢ble Supreme Court in Sudhir Bhaskarrao Tambe case, held:

Ã¢â‚¬Å“3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able

to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach

the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the

first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The

Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he

can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also

monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish

before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.Ã¢â‚¬â€‹

In State of West Bengal Vs. Committee for Protection of Democratic Rights case (supra), the issue was whether the High Court, in exercise of its

jurisdiction under Article 226 of the Constitution of India, can direct the Central Bureau of Investigation, established under the Delhi Special Police

Establishment Act, 1946, to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State, without

the consent of the State Government. The answer given by the HonÃ¢â‚¬â„¢ble Supreme Court is in the affirmative and while doing so, a Constitution

Bench of the HonÃ¢â‚¬â„¢ble Supreme Court examined the scope of judicial review and held:

Ã¢â‚¬Å“51. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Articles 32 and 226

respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of the ConstitutionÃ¢â‚¬"the very heart of itÃ¢â‚¬"the most important article. By

now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said articles of the Constitution, is

an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and

this Court to test the constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only

declares the pre-Constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from

making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the

Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution.

57. As regards the powers of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are

authorised under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any Government to enforce

fundamental rights and, â€•for any other purposeÇ■. It is manifest from the difference in the phraseology of Articles 32 and 226 of the Constitution that

there is a marked difference in the nature and purpose of the right conferred by these two articles. Whereas the right guaranteed by Article 32 can be

exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised

not only for the enforcement of fundamental rights, but â€•for any other purposeÇ■ as well i.e. for enforcement of any legal right conferred by a statute,

etc.Ã¢â‚¬â€‹

[7] On perusal of the aforesaid decisions, it is seen that in State of West Bengal case, the HonÃ¢â‚¬â„¢ble Supreme Court has laid down the law as

regards the scope of Article 32 and 226 of the Constitution of India and it has been held therein that the power of judicial review, vested in the

HonÃ¢â‚¬â„¢ble Supreme Court and the High Courts, is an integral part and essential feature of the Constitution of India, constituting part of its basic

structure. But in Sakiri Vasu and Sudhir Bhaskarrao cases, since the scope of Article 32 and 226 of the Constitution was not the subject matter in

issue, it had not been gone into by it. All that the HonÃ¢â‚¬â„¢ble Supreme Court has held, is that no one should approach the High Court under Article

226 praying for direction to register FIR before he exhausted his alternate remedy of approaching the concerned Superintendent of police and then

thereafter, the Magistrate concerned under Section 156(3) of the Code of Criminal Procedure. The reason for holding it, is that if the High Courts

entertain such writ petitions, they will be flooded with such petitions and will not be able to do any other work. But it may be noted that the remedy as

regards registration of FIR under Section 156 (3) is available, only when the police has failed to register FIR under Section 154 of the Code of

Procedure. Section 154 of the Code of Criminal Procedure which deals with the registration of FIR, reads as under:

Ã¢â‚¬Å“154. Information in cognizable cases.- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in

charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the information; and every such information,

whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book

to be kept by such officer in such form as the State Government may prescribe in this behalf.

[Provided that if the information is given by the woman against whom an offence under section 326-A, section 326-B, section 354, section 354-A,

section 354-B, section 354-C, section 354-D, section 376, section 376-A, section 376-B, section 376-C, section 375-D, section 376-E or section 509 of

the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police

officer or any woman officer:

Provided further that Ã¢â‚¬

(a) In the event that the person against whom an offence under section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 376,

section 376-A, section 376-B, section 376-C, section 376-D, section 376-E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have

been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer,

at the residence of the person seeing to report such offence or at a convenient place of such personÃ¢â‚¬â„¢s choice, in the presence of an interpreter or

a special educator, as the case may be;

(b) The recording of such information shall be videographed;

(c) The police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5-A) of section 164 as

soon as possible.]

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1)

may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information

discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer

subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in

relation to that offence.Ã¢â‚¬â€¹

Be it noted that various decisions have been rendered by the HonÃ¢â‚¬â„¢ble Supreme Court on the issue relating to non-registration of a case by the

police on the complaint of a cognizable offence. In Ramesh kumara Vs. State (NCT of Delhi), (2006) 2 SCC 67,7 the issue relates to the non-

registration of a case by the police pursuant to the complaints filed by the appellant therein. The HonÃ¢â‚¬â„¢ble Supreme Court, relying upon its earlier

decision rendered in Haryana Vs. Bhajan Lal, 1992 Supp. (1) SCC 335, held:

Ã¢â‚¬Å“5. The views expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the

Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence.Ã¢â‚¬â€‹

In Lalita Kumari Vs. Government of Uttar Pradesh & ors., (2014) 2 SCC ,1 the Constitution Bench of the HonÃ¢â‚¬â„¢ble Supreme Court held that the

provisions contained in Section 154 of the Code of Criminal Procedure are mandatory; the contents of cognizable offence must be recorded and non-

compliance thereof amounts to violation of the procedure established by law. Paras 83 to 86 of the aforesaid judgment and order of Lalita Kumari

case are reproduced as under:

83. The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into

motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable

offence is recorded so that there cannot be any embellishment etc., later

84. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such

powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police etc. are provided to be written and documented.

For example, in case of arrest under Section 41(1)(b) of the Code, arrest memo along with the grounds has to be in writing mandatorily; under Section

55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence etc., for which the

person is to be arrested; under Section 91 of the Code, a written order has to be passed by the concerned officer to seek documents; under Section

160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/ panchnama

has to be drawn for every article seized etc

85. The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided

under Section 44 of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the police officers

so that their activities can be documented. Moreover, every information received relating to commission of a cognizable offence also has to be

registered under Section 155 of the Code.

86. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure

Ã¢â‚¬Ëœjudicial oversightÃ¢â‚¬â„¢. Section I57(1) deploys the word Ã¢â‚¬Ëœforthwith Ã¢â‚¬â„¢. Thus, any information received under Section 154(1) or otherwise has to

be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the

investigating agency but also to the subordinate judiciary.

[8] In terms of the law laid down by the HonÃ¢â‚¬â„¢ble Supreme Court in Lalita Kumari case, it is incumbent upon the police to register a case on

receipt of information relating to cognizable offence. If the police discharge its duties in accordance with law towards registering a case, the question

of any person going to the Superintendent of police or for that matter, the concerned Magistrate complaining about non-registration of FIR will not

arise at all. A lapse on the part of the police shall not give unnecessary trouble to the public forcing them to move from one place to another for a

mere registration of FIR which the police can do in no time. If the police fail to register a case, a disciplinary proceedings ought to follow it against the

irresponsible and erring police personnel. But in a case being Lt. Col. Dharamvir Singh Vs. State of Manipur, WP(C) No.151 of 2018 which has been

decided by this Court recently, it has been submitted that in view of Section 5 of the Code of Criminal Procedure, Section 154 thereof will have no

application to the offences committed by the Armed Forces.

Section 5 provides that in the absence of a special provision to the contrary, nothing contained in it shall affect any special or local law for the time

being in force and any special form of procedure prescribed by any other law. In other words, the question of registering FIR under Section 154 Code

of Criminal Procedure will not arise in respect of the civil offence, the commission of which shall be deemed to be guilty of an offence against the

Army Act and shall be liable to be tried by Court-Martial. The law on the above is well settled as seen from the decision of the HonÃ¢â‚¬â„¢ble Supreme

Court in Ajmer Singh Vs. Union of India, AIR 1987 SC 164 6wherein the HonÃ¢â‚¬â„¢ble Supreme Court had the occasion to consider the divergence of

views amongst the High Courts on the issue relating to applicability of Section 428 of the Code Criminal Procedure to person sentenced to undergo

imprisonment by the General Court-Martial under the Army Act. After discussing the details, the HonÃ¢â‚¬â„¢ble Supreme Court upheld the view taken

by the High Court of Punjab & Haryana as correct and also approved the decisions of the High Court of Madras and Delhi wherein the view has

been taken that the benefit of Section 428 of Code of Criminal Procedure cannot be claimed by persons tried and sentenced by the Court-Martial. In

Chandra Prakash Tiwari Vs. Shakuntala Shukla, (2002) 6 SCC 12,7 the issue was as to whether the selection as effected, was to be made under the

specific police-related order or the basis of seniority under the General UP Government Servants (Criterion for Recruitment by Promotion) Rules,

1994 framed under Article 309 of the Constitution. While setting aside the judgment and order of the learned Single Judge as also that of the Division

Bench, the HonÃ¢â‚¬â„¢ble Supreme Court held:

Ã¢â‚¬Å“37. Police force, admittedly, has a special significance in the administration of the State and the intent of the framers of our Constitution to

empower the State Government to make rules therefor has its due significance rather than being governed under a general omnibus rule framed under

the provisions under Article 309. When there is a specific provision unless there is a specific repeal of the existing law, question of an implied repeal

would not arise. In any event, the General Rules are only prospective in nature and as such could not have affected the selection process which

commenced in the year 1993 and it is on this score the parties advanced quite lengthy submissions but in our view question of further consideration

thereof would not arise by reason of the commencement of the selection process in 1993.Ã¢â‚¬â€‹

[9] In respect of the offences committed by the Armed Forces, an exception has been carved out as is evident from the provisions of Section 70 of

the Army Act which provides that a person subject to this Act commits an offence of murder or of culpable homicide not amounting to murder or of

rape, shall not be deemed to be guilty of offence against this Act and shall not be tried by the Court-Martial and so far as any other civil offence is

concerned, the commission thereof shall be deemed to be guilty of an offence against this Act and shall be liable to be tried by Court-Martial. In other

words, if an Armed Force is found to have allegedly committed an offence of murder or of culpable homicide not amounting to murder or of rape, a

case is required to be registered under Section 154 and the trial thereof has to proceed accordingly. On top of that, there is one aspect which has been

considered by this Court in Lt. Col Dharamvir case. There are certain cases where the Army Personnel/ Armed Forces are alleged to have

committed offences under the IPC as well as that of the offences under the provisions of various Special Acts like Arms Act, NDPS Act etc. Such a

case being committed under the special Acts, can be treated at par with the case covered by the exception carved out in Section 70 of the Army Act,

in the sense that in such case too, a registration of FIR is a must and is indispensable. In Union of India Vs. L.D. Balam Singh, Crl. Appeal No.1368

of 1999, the HonÃ¢â‚¬â„¢ble Supreme Court vide its judgment and order dated 24-04-2002 had the occasion to consider various issues relating to the

interpretation of the provisions of Article 33 of the Constitution of India. The facts, in short, thereof are that the petitioner therein was serving the

Indian Army and while he was being posted at Patiala Cant. with his family in a Government accommodation, a search of his residence was

conducted by the Army Officials and opium weighing about 4 kg was recovered from his quarter, for which a trail was convened by the General

Court-Martial. After the trial was over, he was convicted and sentenced by it. The issue was as to whether, by reason of the respondent being a

member of the Armed Forces, would stand denuded of certain safeguards as prescribed in the NDPS act, in the event the General Court-Martial

takes note of an offence under a specific statute. The HonÃ¢â‚¬â„¢ble Supreme Court held:

Ã¢â‚¬Å“Turning attention on to the procedural aspect, be it noticed that Section 18 is an offence which cannot but be ascribed to be civil in nature in terms

of the provisions of Army Act if Section 18 is to be taken recourse to then and in that event the provisions of the statute come into play in its entirety

rather than piecemeal. The charge levelled against the respondent is not one of misdeeds or wrongful conduct in terms of the provisions of the Army

Act but under the NDPS Act. in the event, we clarify, a particular statute is taken recourse to, question of trial under another statute without taking

recourse to the statutory safeguards would be void and the entire trial would stand vitiated unless, of course, there are existing specific provisions

therefor in the particular statute. Needless to record that there were two other civilian accused who were tried by the Court at Patiala but were

acquitted of the offence for non-compliance of the mandatory requirements of the NDPS Act. once the petitioner was put on trial for an offence

under the NDPS Act, the General Court Martial and the Army authorities cannot reasonably be heard to state that though the petitioner would be tried

for an offence under Section 18 of the NDPS Act, yet the procedural safeguards as contained in the statutory provision would not be applicable to him

being a member of the Armed Forces. The Act applies in its entirety irrespective of the jurisdiction of the General Court Martial or other Courts and

since the Army authorities did not take into consideration the procedural safeguards as is embodied under the Statute, the question of offering any

credence to the submissions of Union of India in support of the appeal does not and cannot arise. There is no material on record to show that the

authorities who conducted the search and seizure at the house of the respondent herein has in fact done so in due compliance with Section 42 of the

statute which admittedly stand fatal for the prosecution as noticed above as a matter of fact, two of the civilians stand acquitted therefor.Ã¢â‚¬â€¹

Over and above, a judgment and order dated 05-01-2018 of the Armed Forces Tribunal, Lucknow, rendered in Smt. Durgawati Singh Vs. Union of

India, O.A No.123 of 2010 is relevant. The applicant therein is the mother of late Capt Vivek Anand Singh who is alleged to have been caught red-

handed with a suit case from which an illegal weapon, i.e., a pistol was recovered by the Army. A Court of Inquiry was convened from 20-05-2007 to

07-09-2007 and on 02-03-2009, a charge-sheet was served upon him. During the pendency of the application, Capt Vivek Anand Singh died in a

purported accident. It was admitted by the respondents that no FIR was lodged with regard to the recovery of weapons in question from the

possession of Capt Vivek Anand Singh nor was it recovered in the presence of any civilian or any independent witness. No seizure memo was

prepared nor was the weapon sealed at the time of recovery. The learned Tribunal considered various issues relating to FIR, Seizure, Confession,

Recovered Items, Witness, Accident, Invalidment etc. and after hearing the counsel appearing for the parties, the application was allowed by the

learned Tribunal with the direction that since recovery of pistol and cartridges makes out a cognizable offence under Sections 25 and 36 of the Arms

Act to lodge an FIR followed by investigation, it is the duty even of a common citizen aware of the commission of any offence under law to give

information of the same to the officer in charge of the nearest police station or the magistrate having jurisdiction. Hence, the learned Tribunal directed

the respondents/ authorities concerned therein to lodge an FIR at Meerut or Delhi Cantt with regard to recovery of arm in question and investigation

into the matter may be done by an appropriate independent forum in accordance to law. The observations made by the learned Tribunal which are

relevant for the present case, read as under:

Ã¢â‚¬Å“25. A perusal of aforesaid Section 154 Cr. P.C indicates that for all cognizable offences, FIRS should be lodged. The provision is mandatory, as

held by the Hon'ble Supreme Court in catena of decisions. In a case reported in (2014) 2 SCC I Lalita Kumari vs. Government of Uttar Pradesh and

others, the Constitution Bench of HonÃ¢â‚¬â„¢ble Supreme Court held that the provisions contained in Section 154 of Cr.PC are mandatory and the

contents of cognizable offence must be recorded. Non-compliance of Section 154 Cr.P.C amounts to violation of procedure established by law. For

convenience,

28. Keeping in view the provisions contained in Sections 25 and 36 of the Arms Act (supra), the condition precedent to proceed with a crime under

the Arms Act is to lodge an FIR. The judgments of the Hon'ble Supreme Court including the Constitution Bench decision in the case of Lalita Kumari

(supra) are binding on all courts within the territory of India under Article 141 of the Constitution and they being the law of the land, it is incumbent

upon the Government including the Armed Forces to follow the same and they have no authority to violate them. In this view of the matter, the

respondents should have lodged an FIR with regard to recovery of weapon, if any, from late Capt Vivek Anand Singh, but that was not done.

29. Lodging of F.I.R in the present case was also necessary for the reason that under Section 38 of the Arms Act, every offence committed therein is

a cognizable offence. For convenience, Section 38 of the Arms Act is reproduced as under:

Ã¢â‚¬Å“38. Offences to be cognizable.-Every offence under this Act shall be cognizable within the meaning Procedure, 1973 (2 of 1974) the Code of

Criminal Procedure, 1973 (2 of 1974).Ã¢â‚¬â€‹

30. A plain reading of the aforesaid provision indicates that the offence committed under the Arms Act is a cognizable one under the Code of Criminal

Procedure. The Arms Act is a special law and it refers to the Code of Criminal Procedure, 1973. Since charge against the applicant's son under was

also framed under Section 25 of the Arms Act, it was incumbent upon the respondents to lodge an FIR keeping in view the provisions contained in

Section 154 of the Cr.P.C read with Section 38 of the Arms Act. Keeping in view the facts and circumstances of the present case, an adverse

inference may be drawn against the respondents since no FIR was registered against the applicant's son late Capt Vivek Anand Singh.

32. In view of above, once late Capt Vivek Anand Singh had been tried under Section 25 of the Arms Act through GCM, then it was incumbent upon

the respondents to follow the provisions contained in the Arms Act during the course of trial, but the same was not done. In the present case, as

discussed hereinabove, even the article seized in pursuance to recovery was not produced during the proceedings of GCM. In this view of the matter,

an inference may be drawn that the recovery made from late Capt Vivek Anand Singh was a sham and a farce.

[10] It is thus absolutely clear that the registration of FIR under Section 154 of Code of Criminal Procedure is mandatory in respect of a cognizable

offence but in view of Section 5 of the Code of Criminal Procedure, an exception has been carved out in respect of the civil offence, the commission

of which shall be deemed to be guilty of an offence against the Army Act and shall be liable to be tried by the Court-Martial. But this exception shall

have no application in a case where an Armed Force is alleged to have committed an offence of murder or of culpable homicide not amounting to

murder or of rape or any other offence under the provisions of the Special Acts like NDPS Act, Arms Act, Unlawful Activities Act etc. and the Code

of Criminal Procedure will apply to them. The offence alleged to have been committed by the Army Personnel in the instant case does not fall under

any of the above offences, rather it falls under the category of offence, the commission of which shall be deemed to be guilty of an offence against

the Army Act and shall be liable to be tried by the Court-Martial, as provided under Section 70 of the Army Act. Therefore, since the question of

registration of FIR does not arise, no relief can be granted by this Court in the present case. The appropriate actions are to be taken under the

provisions of the Army Act.

[11] In view of the above, the instant writ petition is devoid of any merit and is, accordingly, dismissed with no order as to costs.