

(2001) 08 AHC CK 0082

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 29244 of 1999

No. 138836-K-EX. SEP DVR (MT)
Mzh Khan

APPELLANT

Vs

Chief of the Army Staff, Army
Headquarters, New Delhi and
others

RESPONDENT

Date of Decision: Aug. 29, 2001

Acts Referred:

- Army Act, 1950 - Section 116, 130, 169(1), 169(3), 169(4)
- Army Rules, 1954 - Rule 116, 129, 184

Hon'ble Judges: Ashok Bhushan, J

Final Decision: Allowed

Judgement

Ashok Bhushan, J.

Heard Colonel Ashok Kumar (Retd.), Advocate for the petitioner and Sri S. Banerji. Advocate for the respondents. Counter and rejoinder affidavits have been exchanged and with the consent of the parties the writ petition is being finally decided.

2. This writ petition has been filed by the petitioner praying for a writ, order or direction to the opposite parties to reinstate the petitioner with all consequential benefits. A further writ in the nature of certiorari has been prayed for summoning the records of entire case including the final result as contained in Annexure 15 and to quash the same. It has further been prayed that a direction be issued to Central Bureau of Investigation to investigate the matter and order respondent No. 5 to make payment of compensation to the petitioner.

3. The facts of the case as emerge from the pleadings of the parties are; that the petitioner was enrolled on 25th October, 1980 and earmarked for Army Service Corps. Petitioner was posted on 6.8.1994 at 680 (1) TK Tptr P1 whose Officer

Commanding was Col. P. Bhatnagar. Petitioner states that on 6.8.1994 he was on Sentry duty on main gate at around 2300 Hrs. a civil truck bearing registration No. MP28 E 0043 entered garage entrance gate which was across the road diagonally opposite to the main gate entrance, petitioner finding presence of a civil truck get alarmed and after checking found that vehicle had four empty barrels of FOL (Fuel Oils & Lubricant). Petitioner made enquiries and recorded statement of truck driver Jai Ram who was civilian. Petitioner states that he had informed the authorities and in the mean time Nb. Sub.lal Singh came and in his presence filled barrels were loaded and the vehicle went away. Petitioner claims that thereafter he was harassed and threatened. It was stated that a Court of enquiry was held by the Commander 18 Brigade to investigate into the allegations made by the petitioner against Officer Commanding Lt. Col. P. Bhatnagar. Petitioner made statement before the Court of enquiry reiterating his allegations. The petitioner has submitted a complaint to the higher authorities making allegations that Officer Commanding Col. P. Bhatnagar has misappropriated eleven barrels of P.O.L. and sold it to owner of civil truck. It was further stated that Col. P. Bhatnagar has threatened the petitioner and his wife and has harassed him. It was stated that the petitioner was arrested on 2.1.1995. Officer Commanding decided to hold summary Court Martial in which proceeding summary of evidence was recorded. Petitioner has further stated that in that summary Court Martial chargesheet dated 12.6.1997 was given to the petitioner on 13.6.1997 and trial commenced on 14.6.1997 at 13.15 Hrs. Petitioner stated that for defending himself in the summary Court Martial petitioner made request for being permitted to defend himself by assistance of civil lawyer. Proceeding of summary Court Martial was adjourned and again proceedings took place on 16.9.1997. In the summary Court Martial petitioner was awarded following punishment:

- (a) to suffer rigorous imprisonment for three months in civil jail.
- (b) to be dismissed from service.

4. Petitioner filed statutory petition under Section 164 (2) of Army Act, 1950 which was kept pending and not decided hence the petitioner filed a writ petition 37038 of 1998, Ex. Sep. D/R (Mr.) M.Z.H. Khan v. Chief of Army Staff, which was finally disposed of by this Court by its order dated 7.12.1998 directing the Chief of Army Staff to consider and dispose of the petitioner's statutory petition preferred under Section 164(2) of the Army Act, 1950 within a period of two months from the date of receipt of a certified copy of this order. Ultimately the Chief of Army Staff passed final order on the statutory petition on 28.5.1999. The Chief of Army Staff had set aside the finding on two charges recorded against the petitioner on technical ground. However, it was held in the order that even after dropping of first two charges on technical ground punishment is commensurate with the gravity of the offence committed by the petitioner in third charge of Army Act under Section 56(a).

5. The petitioner has come up in the writ petition challenging the aforesaid proceedings culminating in the order passed by the Chief of Army Staff in his

statutory petition Counsel for the petitioner raised following submissions in support of his case :

(i) The Summary Court Martial proceedings were conducted in violation of provisions of Section 130 of Army Act, 1950 hence the entire proceedings are vitiated.

(ii) The proceedings of Summary Court Martial are vitiated due to noncompliance of Rule 33 (7) and Rule 34 of the Army Rules, 1954.

(iii) Petitioner was denied assistance of a civil lawyer which is violation of provisions of Article 22(1) of Constitution of India and the law as laid down by this Court in 1993 AWC 983.

(iv) Petitioner was not given a copy of Court of enquiry which is clear violation of Rule 180 of Army Rules, 1954 and it was right of the petitioner under Rule 184 to have a copy of Court of enquiry. It was further contended that exhibits filed with the Court of enquiry were being relied upon but were not made available to the petitioner.

(v) The chargesheet was in English and its vernacular translation was never given to the petitioner which was a vital procedural safeguard. Vernacular translation of summary evidence was also not made available to the petitioner.

(vi) Award of three months rigorous imprisonment in Civil Jail by Lt. Colonel S.K. Mehrotra, Officer Commanding was beyond jurisdiction. There was no compliance of Rule 203 of the Army Rules, 1954.

6. The Counsel for the petitioner also cited several decisions in support of his submission which will be discussed while considering the aforesaid submission.

7. Sri S. Banerji appearing for the respondents refuting submissions made by the Counsel for the petitioner stated that the summary Court Martial was held in accordance with the Army Act and Army Rules, 1954. It was submitted by Sri Banerji that Section 130 of the Army Act is applicable only in General Court Martial and District Court Martial and does not apply to summary Court Martial. With regard to assistance of legal practitioner it was submitted that the petitioner never objected to the appointment of Buddhi Ballabh. Award of three months rigorous imprisonment in civil jail is in accordance with Section 71 and Section 122 of the Army Act. Summary of evidence was recorded in accordance with Rules. It was stated that no copy of report of Court of enquiry was required to be served on the petitioner unless asked for under Rule 184 of the Army Rules.

8. Before proceeding to examine the submissions of the Counsel for the parties it is relevant to note the charges on the basis of which punishment has been awarded to the petitioner in summary Court Martial. There were three charges levelled against the petitioner in the chargesheet dated 12.6.1997. First two charges were under

Section 63 of the Army Act and third charges was under Section 56(a) of the Army Act. In first charge it was alleged that on 13.4.1996 when the petitioner was examined as witness before the Court of enquiry he improperly made statement that on 22.2.1995 he saw that a green Sheesham tree was being cut in front of the Unit cook house and Lt. Col. P. Bhatnagar. Hovaldar clerk Mewa Singh and Havaladar Saheb Singh, Lasnayak Beni Singh were present at that time. It was further alleged that the statement was made well knowing the said statement to be false. The second charge was again to the effect that the petitioner improperly made statement before the Court of enquiry that after 7.8.1994 he was harassed by various means i.e. stopping pay for two months and his D.O. Part II orders were not published, promotion was stopped by not including his name in the promotion cadre which was being run in 556 ASC Bn. well knowing the said statement to be false. The third charge was to the effect that the petitioner on 20.3.1995 wrote a letter to the General Officer Commanding, 36 Division containing the accusation (which are extracted below) against the Lt. Col. P. Bhatnagar knowing such accusations to be false.

9. The aforesaid three charges levelled against the petitioner are being extracted as under :

"FIRST CHARGE AN ACT PREJUDICIAL TO GOOD ORDER AND

MILITARY DISCIPLINE

ARMY ACT, SECTION 63

In that he at Gwalior on 13 April, 1995, when examined as a witness before a Court of Inquiry, improperly made the following statement on 22.2.95 when I went to 680(1) TK Tptr P1, ASC to check my mail, I saw that a green "Sheesham" tree was being cut in front of the unit cook house. The following persons were present at that time which was approx 1600 h(a) Lt. Col. P. Bhatnagar, (b) Hev/Clk Mewa Singh, (c) Hav Sahib Singh, and L/NK Beni Singh" well knowing the said statement to be false.

SECOND CHARGE AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE.

ARMY ACT, SECTION 63

In that he at Gwalior on 13th April, 95, when examined as a witness before a Court of Inquiry, improperly made the following statement "After 7.8.84. I was harassed by various means my pay was stopped for two months and my DO Part II orders were not published. My promotion was stopped by not including my name in the promotion cadre which was being run in 536 ASC Bn. "well knowing the said statement to be false.

THIRD CHARGE MAKING A FALSE ACCUSATION AGAINST A .PERSON SUBJECT TO THE ARMY ACT, KNOWING SUCH ACCUSATION TO BE FALSE.

ARMY ACT, SECTION 56(A)

In that he at Gwalior on 20th March, 1995, wrote a letter to the General Officer Commanding 36 Division containing the accusation to the following effect against INDOMITABLE COURAGE32556K LT. Col. P. Bhatnagar then Officer Commanding 680 (I) TK Ipitr P1 ASC knowing such accusation to be false :

(a) that between 5th and 6th August, 1994 the said officer has misappropriated Government property by permitting unauthorised lifting of 11 barrels of FOL from 680(1) TK Tptr P1 ASC by Civil truck Regd. No. MP 20E0043 driven by Sri Jai Ram.

(b) That the said officer had threatened to kill the accused and his write.

(c) That on 2nd January, 1995, the accused's wife was arrested and taken to the unit office area where the said Officer Commanding abused her."

10. A bare look on the charges show that it was after incident of 6.8.1994 that whole things triggered of. The incident of 6.8.1994 as claimed by the petitioner is only to the effect that on that date in night at 23 hours he saw a civil truck No. MP 20E0043 entering into garage entrance gate which was checked by the petitioner and it was found that it has four empty barrels. Petitioner claims that he got alarmed and informed the authorities concerned. Naib Subedar Lal Singh came as the duty JDO. Petitioner in the mean time has got the statement of the driver Jai Ram of the truck recorded in the duty book duly signed by Jai Ram driver. Petitioner himself has also wrote in the duty book about the reply given by the driver to him. According to the petitioner driver informed that he has been brought by five persons namely Sri Lt. Col. P. Bhatnagar Hav. Lal Singh, Havaladar Ram Singh, Om Prakash and Nayak Amre. Petitioner on the duty book has written that enquiry be made of the aforesaid incident. The statement of the driver was recorded in the duty book to the effect that he brought four empty barrels and he is taking away seven filled barrels which contained two barrels of engine oil, one petrol and four barrels of diesel. Petitioner has made assertion in the writ petition that Nayak Subedar, Hav. Lal Singh who was called came and permitted the barrels to be loaded and the vehicle to go. Petitioner has stated in the writ petition that after the aforesaid incident he was harassed, thereafter that he sought interview of the Brigade Commandant and thereafter submitted a written representation on 2.1.1995 and 23.2.1995. After that Court of Enquiry was held to investigate the allegations made by the petitioner against Lt. Col. P. Bhatnagar in which statement of petitioner and other persons were recorded. Court of Enquiry found the allegations made by the petitioner to be false and wrote for taking disciplinary action against the petitioner. In view of the above, Officer Commanding initiated Summary Court Martial proceedings against the petitioner in which the petitioner was punished.

11. The first submission of the Counsel for the petitioner is noncompliance of the provision of Section 130 of the Army Act. Section 130 of the Army Act contained the provision enabling the accused to raise his objection against the Presiding Officer of the Court and the provision further provides procedure for deciding those objection.

Section 130 contains the salutary principle that trial be not conducted by a person against whom accused does not have faith. Subclause (1) of Section 130 of the Army Act provides :

"Section 130, Challenges.(1) At all trials by general, district or summary General Court Martial, as soon as the Court is assembled, the names of the Presiding Officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the Court."

12. From the above provision it is clear that Section 130 refers to trial by general, district or summary General Court Martial, Counsel for the respondents is right in his submission that the aforesaid provision is not attracted for Summary Court Martial. Section 116 of the Act provides that a Summary Court Martial may be held by the Commanding Officer of any Corps., and he shall alone constitute the Court, Section 130, therefore, is restricted in its application to trial by general, district or summary General Court Martial. In view of the above, I am of the view that Section 130 of the Act is not applicable with regard to Summary Court Martial. The first submission of the Counsel for the petitioner has no force.

13. The next submission of the Counsel for the petitioner is based on Rule 33(7) and Rule 34 of the Army Rules, 1954. In paragraph 6(b) of the writ petition it has been stated that chargesheet has been shown to have signed on 12.6.1997 but the copy of the same was given to the petitioner on 13.6.1997 and trial commenced at 13.15 Hrs. on 14.6.1997. In paragraph 6(c) of the writ petition it has been stated that the Officer Commanding was duty bound to ensure compliance of Rule 34(1) of Army Rules. Rule 34(1) Army Rules runs as under :

"34. Warning of accused for trial.(1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than ninety six hours or where the accused person is on active service less twenty four hours.

(2) The officer at the time of so informing the accused shall give him a copy of the chargesheet and shall, if necessary, read and explain to him the charge brought against him. If the accused desires to have it in a language which he understand, a translation thereof shall also be given to him."

14. From the facts of the case it is clear that the petitioner was not in active service as defined in Section 3(4) of Army Act, 1950, hence the chargesheet was required to be given to him at least before 96 hours of his arraignment. Copy of the chargesheet has been filed along with the writ petition at page 108 of the paper

book. From page 102 of the paper book it appears that the chargesheet is dated 12.6.1997 and proceeding of Summary Court Martial was held on 14.6.1997, proceedings at page 100 proves that the Court Martial proceedings were commenced at 13.15 Hrs. on 14.6.1997. With regard to charges No. 1 and 2 petitioner pleaded guilty and with regard to charge No. 3 he pleaded not guilty. On 14.6.1997 the Court was adjourned at 13.45 Hrs. since die due to exigency of service and due to nonavailability of few essential witnesses. From the above, it is clear that Court Martial proceedings commenced much before 96 hours of even issue of charge sheet. In paragraph 16 of the counteraffidavit reply of Paragraphs 6(b) and 6(c) of the writ petition has been given. It has been stated that the charge sheet was read over to the petitioner on 1.6.1997 itself, thereafter he took leave from 3.6.1997 to 12.6.1997. The contents of Paragraph 16 of the counteraffidavit also states that the petitioner was granted ten days casual leave from 3.6.1997 to 12.6.1997 and was also informed that after rejoining from leave he will be chargesheeted and tried for the disciplinary case pending against him. Copy of leave application has also been annexed as annexure C.A. 1 to the counteraffidavit. Copy of the leave application does not refer to any chargesheet or fact that the charges were read over to the petitioner. Petitioner in the rejoinder affidavit has denied these allegation. Furthermore, even the allegation of the counteraffidavit do not suggest that copy of chargesheet was given to the petitioner on 1.6.1997. Page 102 of the paperbook of the writ petition shows that the chargesheet is dated 12.6.1997. Rule 34, subrule (2) of the Army Rules, 1954 provides that officer at the time of so informing the accused shall give him a copy of the chargesheet. Thus informing the charges is linked with the giving of copy of chargesheet, the period of 96 hours have to be counted after the chargesheet is served; Chargesheet itself being dated 12.6.1997, there is no occasion for service of chargesheet prior to that. The petitioner's Counsel has placed reliance on the Division Bench's judgment of this Court reported in (1988) 1 UPLBEC 783, Ram Pravesh Rai v. Union of India and others. While considering Rule 34 of Army Rules, 1954 Division Bench held in paragraphs 8 and 9 as under :

8. Under Rule 34 after the accused is arraigned he is to be informed by an officer of every charge for which he is to be tried. The Rule further contemplates that interval between his being informed of the charge and his arraignment shall not be less than ninety six hours or where the accused person is on active service less than twenty four hours.

9. Admittedly the requirements of giving a copy of the chargesheet and the summary of evidence before ninety six hours of the actual trial, and allowing a gap of ninety six hours between the petitioner being informed and his actual trial were not complied with. In the absence of dispensation under Rule 36 compliance of the requirements of Rules 33 and 34 is a must and noncompliance would vitiate the proceedings."

15. The aforesaid decision does support the argument of the petitioner. In view of the noncompliance of Rule 34 the summary Court Martial proceedings are vitiated.

16. The next submission made by the Counsel for the petitioner is that Rule 129 of the Army Rules have been violated since the petitioner was denied assistance of a civil lawyer to defend him in the proceedings of summary CourtMartial. In Paragraph 6(e)(iv) of the writ petition it has been stated that the petitioner was refused permission to engage a Counsel vide letter dated 20.8.1997. Petitioner has further stated that the Officer Commanding thrust upon one Subedar Buddhi Ballabh on the petitioner as friend of the accused. Later on Lt. Colonel Mahendra Kumar Sharma replaced as friend of accused as new friend of the accused.

17. Section 3 of Army Rules, 1954, Rule 106 to Rule 133 contains procedure to be followed in Summary Court Martial. Rule 129 is being extracted below :

"129. Friend of accused. In any Summary Court Martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the Court."

18. Petitioner has referred to from the record of the proceedings at page 133 of the writ petition from which it is clear that the petitioner made an application for giving permission to take assistance of a civil lawyer to defend himself. The aforesaid prayer of the petitioner was rejected by the letter dated 20.8.1997 of Officer Commanding Lt. Colonel S.K. Mehrotra. The aforesaid letter is at page 133 of the writ petition which is part of the proceedings. Paragraph 2 of the aforesaid letter stated that "as per the existing Rules, you are not authorised to bring the civil lawyer to assist you during the Summary Court Martial proceedings." The aforesaid view taken in the order dated 20.8.1997 is contrary to intendment of Rule 129. Rule 129 gives right to an accused to take assistance of friend or legal adviser. The aforesaid prayer was refused by the respondent without looking into the Rule 129 and by the said letter Lt. Colonel Mahendra Kumar Sharma was appointed as friend of the accused. It is clear that the petitioner had prayed for a civil lawyer and had never requested for Lt. Colonel Mahendra Kumar Sharma. Replying the aforesaid averments in Paragraph 18 of the counteraffidavit it has been stated that Subedar Buddhi Ballabh was detailed as friend of the accused and the petitioner never asked for any other person to be the friend of the accused nor he objected Subedar Buddhi Ballabh's detailment. It has further been stated that the petitioner was interviewed and he did not object to friend of the accused; and Lt. Colonel Mahendra Kumar Sharma was made friend of the accused. Reference to Army Rule 129 has also been given. In the counteraffidavit there is no averment that the petitioner was permitted to engage a civil Counsel rather it has been alleged that the petitioner has been contacting his lawyer from time to time ever since May, 1995. Reference of Annexure CA2 has also been made in paragraph under reply and

Annexure CA2 is a letter dated 26.8.1997 written by the Officer Commanding at the residential address of the petitioner at Hardoi, Uttar Pradesh that the petitioner may engage his civil lawyer at his own expenses to assist him during the trial. The aforesaid letter is not referred to in the proceedings which has been the proceeding of Summary Court Martial rather the letter dated 20.8.1997 is part of the proceedings by which the prayer of the petitioner for engaging a civil lawyer has been rejected. Further, Lt. Colonel Mahendra Kumar Sharma has been referred to as friend of the accused who was appointed by the same letter dated 20.8.1997 rejecting the petitioner's prayer for engaging a civil lawyer. Further, in the proceedings at page 104 which is a Summary Court Martial proceeding reassembled at 12 Hrs. on 15.10.1997 reference is made of the same letter dated 20.8.1997 (at page 133 of the writ petition) by which Lt. Colonel Mahendra Kumar Sharma was referred as friend of the accused and the copy of the said order was handed over to him. It is to be noted that by the same order dated 20.8.1997 the request of the petitioner to engage a civil lawyer was rejected. Then the Summary Court Martial proceedings proceeded on the basis of the order dated 20.8.1997 rejecting the prayer of the petitioner to engage a civil lawyer.

19. Counsel for the petitioner has relied on two decisions in support of his submission that in summary Court Martial proceedings the petitioner is entitled to have assistance of a civil lawyer. Division Bench's judgment in 1993 Allahabad Weekly Cases 883. Union of India and others v. Sepoy/Driver, Rameshwar Mohato, considered the provisions of Rule 129 of the Army Rules. The Division Bench laid down in Paragraph 3 which is being extracted below :

"3. Having considered the record of the trial in the light of the provisions of Rule 129 we find no merit in the contention raised on behalf of the appellants. From a plain reading of Rule 129 it is ineffectively clear that an accused who is being tried in a Court Martial is entitled to be assisted by a legal advisor or any other person, of his choice for the purpose mentioned therein. In Paragraph 25 of the writ petition, the respondent has categorically stated that on 7.3.1984 (the date on which the trial commenced) he asked for the service of a legal practitioner to assist him during his trial by Summary Court Martial and was prepared to bear the expenses for the same, but even though it was his legal right under the provisions of Rule 129, the appellant No. 4 (Commanding Officer, 504 ASC, Battalion) did not allow his prayer for reasons best known to him. In their counteraffidavit the appellants (respondents in the writ petition), while dealing with the complaint made in Paragraph 25 of the writ petition stated as under :

"That the contents of Paragraph 25 of the writ petition are incorrect and are denied. As per the Army Act and the Rules Captain A.R. Bhardwaj was detailed as friend of the accused."

From the above pleadings of the parties on the question of compliance of Rule 129 we find that the appellants did not specifically deny the fact that the respondent had

asked for a legal advisor. On the contrary they stated that they had appointed a person as friend of the accused. The right to be defended by a lawyer of one's choice is expressly provided for in Rule 129 and, therefore, it was incumbent upon the appellants to provide the respondent with a lawyer of his choice. In case the respondent had not exercised such right the appellants might have appointed a person to assist him as his friend, but as in the instant case the record clearly shows that the respondent had asked for the assistance of a legal advisor and such right was denied, it must be said that the respondent was prejudiced in his defence and the principles of natural justice were violated."

20. In the present case the pleadings and the record clearly show that the petitioner made a demand of giving assistance of a civil lawyer which was rejected. The petitioner was alleged that the friend of accused which were appointed by the Officer Commanding were thrust upon him. In view of the above it is clearly proved that the petitioner was prejudiced by not having been given assistance of legal practitioner and the respondents denied the said request in violation of Rule 129. In view of this Summary Court Martial proceedings are vitiated.

21. The next submission of the Counsel for the petitioner is regarding nongiving of report of Court of Enquiry. Petitioner has placed reliance on Rule 184 of Army Rules for the above submission. Rule 184 of the Rules is being quoted below :

"184. Right of certain persons to copies of proceedings. The following persons shall be entitled to a copy of the proceedings of a Court of Enquiry including any report made by the Court on payment for the same of a sum not exceeding fifty paise for every two hundred words :

(a) any person subject to the Act who is tried by a Court Martial in respect of any matter or thing which has been reported on by a Court of Enquiry, or

(b) any person subject to the Act whose character or military reputation is, in the opinion of the (Chief of the Army Staff) affected by any finding in the evidence before or in the report of a Court of Enquiry, unless the (Chief of the Army Staff) sees reasons to order otherwise."

22. Rule 184 is a Rule which gives a right to a person to demand copies of proceedings. Counsel for the respondents has submitted that the petitioner has never demanded copies of Court of Enquiry proceedings nor has applied for the same as contemplated by Rule 184. In view of the above I am satisfied that there was no violation of Rule 184 in the present case.

23. With regard to next submission of the Counsel for the petitioner that the petitioner was not supplied vernacular translation of the chargesheet and summary of evidence. It is to be noted that the chargesheet itself contains an averment : "this chargesheet is read over, translated and explained to the accused" marked (iii). 2.2. signed by the Court and attached in proceedings. The respondents in the

counteraffidavit have also stated that the chargesheet was read over to the petitioner in Hindi which he very well understood. From the record it is also does not transpire that at any point of time, petitioner had made a request that he should be given chargesheet in vernacular. Petitioner has also crossexamined the witnesses which clearly proves that he understood the statements of the witnesses in view of the above no prejudice can be said to have been caused by nonsupply of the chargesheet and summary of evidence in vernacular. On this submission of the Counsel for the petitioner Summary Court Martial proceedings are not vitiated.

24. Counsel for the petitioner has made such emphasis on the fact that the punishment of three months rigorous imprisonment in civil prison was beyond jurisdiction of Officer Commanding. The petitioner has also attacked the order of Chief of Army Staff dated 28.5.1999 a rejecting the statutory petition dated 4.4.1998. The Counsel for the petitioner has complained violation of Section 169(3) of Army Act, 1950 and Rule 203 of the Army Rules, 1954, Section 169 of the Act provides :

"169. Execution of sentence of imprisonment.(1) Whenever any sentence of imprisonment is passed under this Act by a CourtMartial or whenever any sentence of death or transportation is commuted to imprisonment, the confirming officer in case of a Summary CourtMartial the officer holding the Court or such other officer as may be prescribed, shall, save as otherwise provided in subsections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under subsection (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a CourtMartial, the appropriate officer under subsection (1) may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint."

25. In the present case the punishment awarded to the petitioner was "to suffer for three months rigorous imprisonment in civil jail". Subsection (3) of Section 169 uses words "may". The use of word "may" in subsection (3) makes it clear that it is not obligatory on officer holding the Court to direct for carrying out the sentence only in military custody. Subsection (3) gives a power to the officer holding the Court to direct for carrying out the sentence is military custody. Subsection (3) and subsection (4) are enabling provisions which may be invoked by the authority while

awarding sentence of imprisonment but normal rule is to direct that sentence shall be carried out by confinement in military prison or a civil prison. The Chief of Army Staff in his order dated 28.5.1999 has stated that the said provision of Section 169 merely vest a discretion with the Court to choose between civil jail or military custody when the imprisonment is up to three months. I am inclined to accept the meaning given to provision by the Chief of Army Staff. Section 169(3) only vests discretion in the officer holding a Court to direct that sentence shall be carried out by confinement in military custody. Whether the provision of subsection (3) be invoked in a particular case depends on facts of that case. Had intention of the Legislature was the provide carrying out sentence of imprisonment of less than three months period in military custody. Subsection (1) could have been worded in that manner. Thus this submission of the Counsel for the petitioner has no force. It was open to the officer holding the Court to award three months" sentence of imprisonment in civil prison.

26. There is one more reason due to which I am inclined to interfere in the matter. In view of the order passed by the Chief of Army Staff on 28.5.1999 Annexure 15 to the writ petition charges 1 and 2 have been set aside. In view of charges 1 and 2 having been set aside on the statutory petition of the petitioner only charge which remained was charge No. 3. Charge No. 3 was regarding (making a false accusation against any person subject to the Army Act, knowing such accusation to be false) Section 56 (a) of Army Act. Section 56 of the Army Act provides :

"56. False Occupations. Any person subject to his Act who commits any of the following offences, that is to say,

(a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or

(b) in making a complaint under Section 26 or Section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and wilfully suppresses any material facts;

shall, on conviction by Court Martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned."

27. The condition precedent for making out of an offence under Section 56(a) is that person making false accusation knows or has reason to believe such accusation to be false. Section thus does not make false accusation which a person bona fide or under some mistake believe to be true an offence. Unless accusation made by a person are known to that person to be false or he has reason to believe it to be false no offence is made out. Page 136 of the writ petition contains memorandum giving reasons for awarding punishments i.e. to be dismissed from service and to suffer three months rigorous imprisonment "in civil jail. Thus the reason awarding punishment are contained in the aforesaid memorandum which is annexed at page

136 of the writ petition. The reasons only state that allegations were found to be false and baseless by staff Court Enquiry. There is no such reason given in the memorandum that the petitioner knew the allegations to be false or had reason to believe the allegations to be false. From the facts which have come on the record it transpires that petitioner have some suspicion in his mind that the Officer Commanding is also involved in taking out filled barrels from the military area. The fact that in the Court of Enquiry it was found that allegations were false, will not make the offence under Section 56(a) unless it is supported by further finding that the petitioner knew the aforesaid allegation to be false or has reason to believe the said allegation to be false, in the Summary Court Martial proceedings and the memorandum of reasons as mentioned above, there is no such finding that the petitioner knew that allegation to be false or he has reason to believe the allegation to be false. In view of the above offence under Section 56(a) of the Army Act is not made out and the punishment awarded to the petitioner is vitiated on this ground also.

28. In view of the above discussion, the writ petition is allowed and the punishment awarded to the petitioner by Summary Court Married dated 16.9.1997 is quashed including the order dated 28.5.1999 in so far as it upheld the punishment awarded on the petitioner under Section 56(a) of the Army Act. In view of quashing of the Summary Court Martial proceedings the petitioner is entitled for consequential benefits permissible to him in accordance with the Army Act and Rules.

29. Costs on parties.