

(2008) 07 GAU CK 0043

Gauhati High Court (Kohima Bench)

Case No: None

Gulab Chandra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: July 18, 2008

Acts Referred:

- Army Act, 1950 - Section 164, 69
- Constitution of India, 1950 - Article 226, 227
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20
- Penal Code, 1860 (IPC) - Section 107, 109

Citation: (2009) 1 GLR 872 : (2008) 4 GLT 36

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

P.K. Musahary, J.

The indispensable brief facts are that the petitioner who has rendered more than 13 years of service for which he was awarded a meritorious certificate of gallantry act was accused of having abetted his fellow rifleman Safai Raj Kumar in smuggling 30 kgs of Ganja, while he was attached to the Transit Camp, Assam Rifles at Dimapur. Prior to framing of charge, a Staff Court of Inquiry was conducted on 2.4.99 against the petitioner with other accused person. The Inquiry Officer, in the rank of Major, found the petitioner innocent and no action was initiated against him. Thereafter, a second Staff Court of Inquiry was held and charge-sheet was framed against and communicated on 5.6.99 to the petitioner which reads as follows:

In that he, at field, on 31st March 99, abetted Number 143715 Rifleman Safai Raj Kumar of the same Unit to carry 30 Kgs of Ganja in consequence of which abetment the said offence has committed.

Thereafter, a Summary Court Martial proceeding (hereinafter referred to as SCMP in short) was held on 3.8.99 by Col. Rakesh Sharma, Commanding Officer, 14 Assam Rifles, before whom five witnesses were examined. On the same day, i.e. 3.8.99, the petitioner was called upon to plead "guilty" or "not guilty" without being supplied with copy of the proceeding of the Staff Court of Inquiry. The petitioner pleaded "guilty" but on alleged duress. On the same very day i.e. 3.8.99, the said Commanding Officer passed the impugned order dated 3.8.99 awarding punishment of one month rigorous imprisonment in Civil Jail and dismissal from service. The petitioner alleged that he was sent to jail on the very date of award i.e. on 3.8.99 and the copy of the SCMP was furnished to him only on 5.8.99. He was released from jail on 3.9.99 after completion of the term of sentence.

The petitioner filed an application under Article 227 of the Constitution of India, which was registered as WP(C) No. 167 (K) of 1999, challenging the aforesaid impugned award of punishment. The said writ petition was disposed of on 12.3.01 allowing him to file a petition before a competent authority u/s 164 of the Army Act, 1950 and directing the competent authority to dispose of the petition within 2 months from the date of receipt of the said petition from the petitioner. Accordingly, the petitioner filed a petition u/s 164 of the Army Act, 1950, on 23.3.01, followed by a supplementary petition on 27.7.01 before the Deputy Inspector General, H.Q., Nagaland Range (South), Assam Rifles, for setting aside the SCMP dated 3.8.99 and for reinstatement in service. The said petitions were rejected by the Brig. DIG, Assam Rifles without giving any reasons vide an order dated 2.8.2001.

2. It is pertinent to note that the aforesaid order dated 2.8.01 passed by the Brig., DIG Assam Rifles was set aside by the Major General, Assam Rifles vide order dated 15.9.01 as the said Brig, had no jurisdiction to pass such order u/s 164(2) of the Army Act, 1950. The Major General called for the records and on consideration of the same, passed the impugned order dated 19.9.01, upholding the impugned award of punishment and rejecting the petitioner's aforesaid petition on the ground that the petitioner unequivocally pleaded guilty and declined to make any statement at the trial and the petition lacks substance and devoid of merit.

3. The petitioner being aggrieved by the aforesaid impugned orders, filed a petition under Article 227 of the Constitution of India, which was registered as WP (C) No. 9 (K) 02 and disposed of on 7.3.05. A Writ Appeal, being W.A. No. 4 (K) 05, was preferred against the order dated 7.3.05. The said appeal was disposed of on 7.3.06 on being withdrawn on the request of the appellant.

4. This second approach is made by the present petition presented under Article 226 of the Constitution of India challenging the same impugned orders dated 3.8.99 and 19.9.01.

5. At the threshold, Mr. Jamir, learned Counsel for the respondents raised preliminary objection to the maintainability of this petition as the same, according to

him, is barred by Doctrine of Res judicata. Drawing attention of this Court to the cause title of earlier writ petition, WP (C) No. 9(K) of 2002 under Article 227 of the Constitution and the present petition under Article 226 of the Constitution of India, Mr. Jamir submits that they are verbatim same. This Court in its order dated 7.3.05, passed in WP (C) No. 9 (K) of 2002, according to Mr. Jamir, has already considered all aspects of the matter and rejected the petitioner's plea that he was unable to understand the meaning of the words "guilty" and "not guilty". In the said case, this Court came to a conclusion that the allegation that the gravity of the charge was not explained to him and the consequences of pleading guilty was not satisfactorily explained to the petitioner is belied by the records of the SCMP. Placing a copy of this Court's order dated 7.3.05, Mr. Jamir submits that this Court has already held that when the said facts are expressly recorded in the proceeding of the court martial, even though such recording may have been in the prescribed format, it must accept the same to be correct and even otherwise the assertions made by the writ petitioner and the denial thereof by the respondents would give rise to a disputed question of fact as to what had really transpired in the court martial proceeding, in which events also, this Court would not be able to determine the issue raised in favour of the writ petitioner, the present being a proceeding under Article 226 of the Constitution. Mr. Jamir submits that the said order dated 7.3.05 having not been set aside by the Division Bench in the Writ Appeal No. 4 (K) of 2005, which was in fact withdrawn has attained finality and as such the petitioner is barred by Doctrine of Res judicata to agitate the same issues and accordingly, this writ petition is liable to be dismissed.

6. Opposing the objection, Mr. Choudhury, learned Counsel for the petitioner submits that the Writ Appeal No. 4 (K) 05 was withdrawn to facilitate the petitioner to file a fresh writ petition under Article 226 of the Constitution of India because in the earlier writ petition viz; WP (C) No. 9 (K) 02, which was filed under Article 227, the petitioner could not effectively challenge the impugned orders in view of the provision under Article 227(4), which confers no power of Superintendence on the High Court over any Court or Tribunal constituted by or under any law relating to Armed Forces. According to Mr. Choudhury, the order dated 7.3.05, passed by a learned Single Bench in WP (C) No. 9 (K) of 2002 is nonest inasmuch as it exercised power of Superintendence over a Court Martial constituted under the Army Act, 1950, which is specifically barred under Article 227(4) of the Constitution of India and as such the Doctrine of Res judicata would not be applicable to this case.

7. No plea of Res judicata has been taken in the affidavit in opposition filed by the respondents. I have given my anxious consideration on this point. Admittedly, WP (C) No. 9 (K) of 2002, which was dismissed on 7.3.05 was filed under Article 227, although it was mentioned in the said order as under Article 226 of the Constitution. So it cannot be said that the present writ petition has been filed for the second time under Article 226 of the Constitution of India. The present petition being the first writ petition under Article 226, the Doctrine of Res judicata would not come into

play. Moreover, the matter was never considered and disposed of on merit under Article 226 of the Constitution of India. In my considered opinion, denial of opportunity to the petitioner to consider and dispose of this petition on merit would amount to denial of justice and hence I reject the objection raised by the respondents and propose to hear the matter on merit.

8. First of all, Mr. Choudhury learned Counsel for the petitioner submits that prior to framing of charge, a Court of Inquiry was conducted on 2.4.99 followed by another Court of Inquiry in May, 1999 and in those inquiry proceedings, not a single witness gave any evidence against the petitioner and it confirmed the innocence of the petitioner but inspite of his innocence being proved, the charge was framed against him in an illegal and arbitrary manner. Next, he submits that the petitioner was not served with a copy of the evidence/proceedings recorded in the said Court of Inquiry and thereby he was deprived of the chance to prepare his defence and he was simply called out to plead "guilty" or "not guilty" and he was in fact, forced to plead guilty under duress inasmuch as the petitioner, who is merely a sepoy in the lower rank of the Assam Rifles, could not properly comprehend the meaning and consequence of pleading guilty. The petitioner, according to Mr. Choudhury, was not given any opportunity to withdraw the plea of guilt although Rule 115(2) of the Army Rules, 1954 (hereinafter called the Rules only) permits such opportunity in cases where the plea of guilt does not conform to the summary evidence and therefore, the trial was vitiated for violation of principle of natural justice. The further submission of Mr. Choudhury is that the Commanding Officer of the 14th Assam Rifles obtained the signature of the petitioner without complying the provisions under Rule 52(2)(2A), 54(3)(5), 115(1)(2)(2A) and 116(2) of the Army Rules and therefore, he not only failed to record the circumstances under which the petitioner was said to have abetted the main accused Safai Raj Kumar in smuggling Ganjabut also failed to record in the form of proceeding of the Court Martial dated 3.8.99 that he had given an opportunity to the petitioner to withdraw the plea of guilt on account of the summary evidence not being consistent with the plea of guilty pleaded by the petitioner. Moreover, according to Mr. Choudhury, the friend of the accused, who was appointed under Rule 129 and supposed to assist the petitioner during the trial, rather insisted him to accept whatever order passed by the respondent No. 6.

9. Furthermore, Mr. Choudhury, learned Counsel for the petitioner submits that the ingredients of offence of abetment u/s 109 IPC are not available in the present case and the respondent authorities have committed gross error of law for not having applied their minds to the fact that the petitioner had no knowledge that a crime was going to be committed by certain person and in furtherance of it he abetted the prime accused and there being no evidence, except the uncorroborated evidence of the prime accused persons, of any independent witness against the petitioner, the impugned order of conviction and dismissal from service should not have been awarded and the same being passed in gross violation of law is liable to be quashed.

10. Mr. Choudhury, learned Counsel for the petitioner has taken me laboriously through the evidence recorded during the trial and submits that none of the witnesses deposed against the petitioner implicating him in the offence of abetment and inspite of having been proved innocent, the petitioner has been convicted illegally solely relying on the statement of the co-accused without being corroborated by any witness which is repugnant to the principle of criminal jurisprudence and the conviction so recorded on the basis of such uncorroborated evidence, is not at all sustainable in law.

11. Based on the averments made in the affidavit in opposition, Mr. Jamir, learned Counsel for the respondents submits that in the Court of Inquiry conducted on 20.4.99, that is prior to framing of charge, nexus with Ganja smuggling, abetting Rifleman Safai Raj Kumar in smuggling of Ganja was established and accordingly, the petitioner was handed over to the Battalion Headquarters of 14 Assam Rifles vide letter No. A/3715/RK/99, dated 3.8.99 in which the petitioner was informed that he may represent to the Central Government, the Chief of the Army or any Officer superior in command to the officer who hold the powers of Summary Court Martial provided such superior officer has power of not less than Brigade Commander. But the petitioner did not make any such representation, rather he pleaded guilty and as such, according to Mr. Jamir, the question of saying anything about the merit of the case or for that matter the requirement of summoning witnesses does not arise. Denying the allegation of non-supply of proceeding of the Court of Inquiry to the petitioner, it is submitted by Mr. Jamir that the petitioner was supplied with a copy of charge-sheet, which he received on 24.7.99 and given opportunity to plead or not to plead guilty in accordance with the existing Army Act and the Rules and on being explained and having fully understood the charge against him and also the meaning and legal consequence of pleading guilty and not guilty, the petitioner voluntarily pleaded guilty and signed the arraignment attached to the impugned Form of Proceeding of Summary Court Martial (Annexure-IIA to the writ petition).

12. The provisions under Rule 115 of the Rules having been complied, submits Mr. Jamir, and having found the petitioner fully understood the contents of the charge brought against him and also the meaning and consequence of pleading guilty and not guilty, the Summary Court Martial had no scope to advise the petitioner to withdraw his plea of guilty under Rule 115(2) of the Rules and it rightly proceeded with to record the evidence of the witnesses and awarded appropriate sentence supported by the evidence adduced in the summary proceedings. The petitioner was tried for a civil offence u/s 69 of the Act read with Section 109 IPC for abetting illegal carriage of 30 Kgs of Ganja in contravention of the NDPS Act, 1985 and the Summary Court Martial awarded the impugned punishment taking into consideration the seriousness of the offence and to maintain order and discipline in the force.

13. Mr. Jamir, learned Counsel for the respondents further submits that the petitioner has taken contradictory stand inasmuch as at one stage he stated that he could not properly understand the meaning and implication of pleading guilty and not pleading guilty and at another stage he stated that there was no evidence against him at the stage of inquiry made prior to framing of charges. This, according to Mr. Jamir, is enough to come to a conclusion that the petitioner, who has been in active service in the Assam Rifles for more than 13 years, did really understand the meaning and consequence of pleading guilty and not pleading guilty before the Summary Court Martial proceedings.

14. Indisputably, the petitioner has been tried for committing civil offence u/s 69 of the Army Act, 1950 for abetment u/s 109 IPC read with Section 20(b) of the NDPS Act, 1983. The offence against the petitioner is abetment of his colleague in procuring and transporting 30 Kgs of Ganja. The offence abetment has been defined u/s 107 of the IPC thus:

107. Abetment of a thing.--A person abets the doing of a thing, who-

First.--Instigates any person to do that thing; or

Secondly.--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 2 in the illustration, relevant for the purpose of this case, runs as follows:

Whoever, either prior to or at the time of the commission of an act does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is to aid the doing of that act.

Appreciation of the evidence on record is necessary to find out whether the petitioner did any act either prior to or at the time of procurement and/or transportation of the said Ganja or did he do something to facilitate the commission of the said act by the main accused. The statements of the main accused Rifleman Safai Raj Kumar were recorded in the SCMP. He deposed that he was proceeding for earned leave and reported at the Transit Camp at Dimapur. He stayed in civilian line with the help of the petitioner. During his stay in civilian line, petitioner came with one civilian, nicknamed "Chacha". To quote from the deposition of accused Safai Raj Kumar:

....

....

5. After this we dressed up in civil clothes and at around 0830 hours left Rfn GD Gulab Chander's residence on foot, to meet Chacha, who stays nearby in the adjoining locality. On meeting Chacha, Rfn GD Gulab Chander spoke to Chacha and asked him to get the items ready, as his man is leaving from Dimapur.

6. Then we both parted. I came back to Rfn GD Gulab Chander's residence and he left for Transit Camp. Next, at around 1200 hours Rfn GD Gulab Chander came back. We both had brandy, which I was carrying along with me, then lunch, after which Rfn GD Gulab Chander left for Transit Camp. I told him to come back early as I had to exchange my warrant from the railway station.

7. Rfn GD Gulab Chander came back at around 1630 hours from the Transit Camp, I was all set to leave for railway station, Dimapur. He told me that Chacha will also be coming along and so he requested me to take him.

8. At around 1830 hours, when it got dark Rfn GD Gulab Chander got an autorickshaw. We loaded all my luggage and went in the autorickshaw to Chacha's place. We met a Naga person, called as "Achutale" at Chacha's place. Rfn GD Gulab Chander asked me to have meals there itself and then we would move to the railway station.

9. We kept the luggage in one room. Then I was made to sit in the adjoining room. I was again served with drinks. Achutale was accompanying me with drink and Rfn GD Gulab Chander and Chacha were in the other room. After some time, I got up and called for Rfn GD Gulab Chander. When I went inside I saw Achutale and Chacha packing Ganja packets in the Burmese KQ Blanket plastic bag wrapped with the blanket. I asked them as to what is going on, to which Rfn GD Gulab Chander replied that it is none of our business and they are themselves responsible for it. Then I told them that it is okay, and there is no problem. While this activity was going on, the autorickshaw was standing in front of the gate, and at that time, two coolies were also present.

10. At around 2000-2030 hours, when it got very dark (I do not know the exact timings), Rfn GD Gulab Chander took some money from Chacha of in front of me when we were about to leave for the railway station, Dimapur. Achutale and Chacha were carrying plastic bags, stuffed with personal clothes which was also required to be taken/carried. Then we left for railway station and Rfn GD Gulab Chander left for his residence. On reaching the railway station we loaded the entire luggage in the train with the help of coolies.

11. We left Dimapur at around 2100-2130 hours in the Calcutta bound Kamrup Express Train. I slept on-the seat itself. Chacha was also sitting next to me. Achutale was in the adjoining boggie of the train.

12. Next day, on 01 April'99, at around 0430 hours I woke up, when the train stopped at a station prior to Guwahati. I checked my luggage and saw that my bed

holder was torn, the KQ Blanket plastic packet was also torn. I asked Chacha as to what all is packed for which Chacha replied that some items are kept and Ganja is also there. I asked him whether all the packages contained/carried Ganja, to which he replied that only 3 baggages contained Ganja.

15. On perusal of the evidence on record, it is found that the above evidence/statements of the main accused person are not supported or corroborated by any of the witnesses examined during the SCMP and as such it could easily be said to have carried no weight so as to base the conviction of the petitioner as an abettor in this case. But the statements of the petitioner recorded in the SCMP, have completely changed the said position and testified the veracity of the statement of the main accused against the petitioner as an abettor. It would be appropriate to quote the relevant portion from the deposition of the petitioner:

4. On the way, as we were approaching\\Eros picture hall Rfn Safai Raj Kumar requested me to arrange 100-150 grams of "Ganja". I inquired about it, for which he replied that, it is required for his personal consumption and he is proceeding on leave for his brothers marriage. I told him to have bath and as I did not have time, I will contact "Chacha" and if he has, he'll give some quantity and he agreed to it and did not talk anything else enroute.

5. We reached my place and unloaded the baggage. Rfn Safai Raj Kumar had his ablutions and I washed myself in the kitchen itself. He again took out his liquor bottle and asked me to take liquor again. I declined as I had to go to the transit camp. He then consumed liquor himself and stayed there. Further, he asked as to where would he spend the night as no space was available in my residence. I arranged this at a house nearby only. It was Chacha's residence. He inquired about the meals and showed interest in having fish. He told that he would go to the market to buy fish and asked me if I would accompany him to the fish market. I told him that after the work in the transit camp is over if the rear-in-charge gives permission I can come out or else not. I told him that I usually sleep in the transit camp as I have no orders to go out during night time. He wanted to see Chacha's residence and we came out of our place. We went there and introduced him to Chacha. His real name is Mr. Mohan Saha, we also know him as "Algu" and Mr. "Gupta". After a little chat we left Chacha's place and on the way back we parted. He went to buy fish and I went to the transit camp.

7. On reaching home I saw that Mr. Mohan Saha and Rfh Safai Raj Kumar were sitting in the verandah and having drinks and fried fish. Rfn Safai Raj Kumar invited me to join them for drinks but I declined. I told them that after they have finished I'll take it. Later, when they had finished off with their drinks, Rfn Safai Raj Kumar was pitch drunk and not in his senses. I took him to a neighbours place and made him sleep. In the meanwhile Mr. Mohan Saha also left.

8. I came back to my place and had my dinner. Then I went to look up Rfn Safai Raj Kumar and asked him if he had any discussion with Mr. Mohan Saha. He replied, yes. I also asked him as to when was he proceeding from Dimapur. He told that since Mr. Mohan Saha wanted to meet him the next day he would be leaving by the 31st March train in the evening. After this, as he was not able to talk properly I left him to sleep and came back to my place to sleep.

9. After bath, my wife told me to get kerosene Oil. I took a canastar and money from my wife and went to Mr. Mohan Saha's shop. He runs a grocery shop and also sells Kerosene Oil. Mr. Mohan Saha's wife was present in the shop. I bought 5 litres of Kerosene Oil and paid Rs. 50/- at the rate of Rs 10/- per litre. I asked her about Mr. Mohan Saha. She told that her husband is sitting in the adjoining room along with a military person. I asked his wife to call for Mr. Mohan Saha. Mr. Mohan Saha came out and I inquired about Rfn Safai Raj Kumar. He was inside and was heavily drunk. It was about 1715-1730 hours. I did not have a watch. I came back to my place and handed over the kerosene oil to my wife and left for transit camp." The petitioner was cross-examined by the main accused. The following questions put by the main accused and answered given by the petitioner are found to be relevant and same are quoted hereunder:

Q. 11. When you took me to Chacha's place at the first instance, did you introduce me to him?

A. 11. We were not able to meet Chacha as he was not there. We met his wife and I told her to inform Chacha to meet you and that you are putting up at my place. You were also present at that time.

Q. 12. When did Chacha meet me?

A. 12. I do not know. When I came back from the transit camp on 30 March" 99 after the roll-call, I saw you and Chacha sitting together and having drinks in the verandah.

Q.13. When I had not met and not introduced myself to Chacha and had only met his wife, along with you, how do you think, I would have offered drinks to him in the first meeting and that too, to a stranger?

Q. 13. His wife would have told him about your arrival. I had informed her regarding your arrival along with you. This is how you would have met him. I do not know why or how you offered drinks to him.

16. From the above evidence it has become clear that the main accused Safai Raj Kumar desired to procure some Ganja and the petitioner disclosed the source, namely, the drug peddler "Chacha", who was not known to said Safai Raj Kumar, and assured him to contact "Chacha". The petitioner, as there was no space in his residence, arranged accommodation for Safai Raj Kumar in the residence of Chacha where they were introduced. As arranged by the petitioner, Safai Raj Kumar stayed

in the residence of Chacha, whose real name is Mr. Mohan Saha. Later on he enquired from Safai Raj Kumar if he had any discussion with the said Mohan Saha. It is evident that the main accused Safai Raj Kumar could procure the Ganj a only though said "Chacha", the man who was contacted by petitioner on request of Safai Raj Kumar for arranging some Ganj a. By disclosing the source, contacting "Chacha" and arranging accommodation in the house of said "Chacha" for Safai Raj Kumar, the petitioner, in my considered opinion, facilitated and intentionally aided the commission of the offence u/s 20(b) of the NDPS Act, 1985 and the petitioner abetted the commission of said offence u/s 109 IPC. The abetment may be by instigation, conspiracy or intentional aid as provided in the three clauses of Section 107 IPC. This has been held so by the Hon"ble Supreme Court in the case of [Goura Venkata Reddy Vs. State of Andhra Pradesh](#), .

17. Section 3 of the Army Rules, 1954 provides detailed procedure for holding the Summary Court Martial. They are self contained. Rule 111(1) provides for arraignment of the accused. The charges on which the accused is arraigned should be read and, if necessary, translated to the accused and he shall be required to plead separately to each charge as provided under Rule 111(2) of the said Rules. Again Rule 112 provides a chance to the accused to object the charge if it does not disclose an offence under the Act, or is not in accordance with the rules. On being arraigned, the petitioner, in this case, never raised any objection as to non-disclosure of offence in the charge brought against him and he simply objected that the charge was framed although there was no evidence against him in the preliminary inquiry conducted before framing of the charge and that he was not furnished with a copy of the proceeding of the said preliminary inquiry. The limited purpose, as it could be understood, for holding preliminary inquiry is to ascertain the relevant facts so as to enable the authorities concerned to take decision to proceed or not to proceed with the Summary Court Martial against the petitioner.

18. After the charge is framed, the accused person is given a chance to plead guilty or plead not guilty under Rule 115(1) of the Rules. When an accused pleads guilty, the Court must ascertain under Rule 115 (2), whether he could understand the nature of the Charge to which he pleaded guilty and the Court should inform the accused of the general effect of that plea. The Court should also advise the accused to withdraw the plea of guilty if it appears from the summary of evidence, if any, or otherwise that the accused. ought to plead not guilty. From Annexure-II A to the writ petition, it is seen that Col. Rakesh Sharma, the Commanding Officer, 14 Assam Rifles presided over the Summary Court Martial on 3.8.99 and acted as an interpreter in presence of Maj. Ashutosh Shukla, SM-14 Assam Rifles as friend of the accused and two other officers namely Capt. Virender Singh and Sub/ GD MB, 14 Assam Rifles. The charge-sheet was read, (translated) and explained to the accused (petitioner) and on being arraigned he pleaded guilty. The Presiding Officer recorded a finding to the following effect:

Before recording the plea of guilty offered by the accused, the Court explained to the accused the meaning of the charge (s) to which he had pleaded guilty and ascertained that the accused had understood the nature of charge (s) to which he had pleaded guilty. The Court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The Court having satisfied itself that the accused understands the charge (s) and the effect of his plea of guilty accepts and records the same. The provisions of Army Rule 52(2) of 115(2) are thus complied with.

19. In this petition, the petitioner's specific grievance is that the charge was not explained to him and he could not understand the meaning and consequence of pleading guilty and pleading not guilty and he was under continued pressure from the higher authorities to plead guilty and he was forced to plead guilty under duress. Thus, the petitioner, as alleged in the petition, had to sign on the impugned Form of Proceeding of the Court Martial, which was recorded by Col. Rakesh Sharma, without complying with Rules 52(2)(2A), 54(3)(5), 115(1)(2)(2A), 116(2) of the Army Rules, 1954. Provisions under Rule 52(2)(2A) and 54(3)(5) relate to procedures to be followed in the General and District Court Martial Proceeding and therefore, in my considered view, they are not applicable to the present case which was conducted under Summary Court Martial. Regarding complaint of non-observance of procedure under Rule 115(1)(2)(2A) and 116(2), there is no cogent material or evidence to show that the Presiding Officer failed to follow the said Rules and accordingly, in my considered view, the said allegation is unfounded on the face of detailed proceedings recorded by the Presiding Officer of the Summary Court Martial.

20. There is yet another reason for discarding the aforesaid allegation. The petitioner filed a petition dated 23.3.01, followed by a supplementary petition dated 27.7.01 before the Deputy Inspector General HQ, Nagaland Range (South), Assam Rifles, Kohima u/s 164 of the Army Act, 1950 against the impugned Summary Court Martial Proceedings dated 3.8.1999. In those two petitions, the petitioner made no allegation, not even a whisper about not explaining the meaning and consequence of pleading guilty and pleading not guilty, not being able to understand the meaning and consequence of the same, putting him pressure by higher officers to admit guilt or plead guilty and he had to plead guilty under duress and that the Friend of the accused who was supposed to assist the petitioner during trial rather acted in a hostile manner and insisted to accept whatever order passed by the respondent No. 6 and he was forced to sign the Summary Court Martial Proceedings recorded by Presiding Officer, Col. Rakesh Sharma and thus there was violation of aforesaid Rules. These allegations have been made in this writ petition only and it is not comprehensible what made or prevented the petitioner from not incorporating those allegations in his statutory application presented before the higher authority for review of the Court Martial Proceedings and the punishment imposed on him. These allegations, in my considered view, are nothing but an afterthought attempt

to get over the entire Summary Court Martial Proceedings and get them nullified as being vitiated due to alleged non-compliance of the Rules. I refer and rely, in this regard, on the decision of the Apex Court rendered in the case of High Court of Judicature at [High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another,](#) wherein it is held that an allegation against an Enquiry Officer, if not made at the inception of the enquiry but made for the first time in the reply to show cause notice is to be treated as an afterthought attempt to get over the report of the Enquiry Officer.

21. The higher authority, while disposing of the aforesaid statutory petitions had no occasion to discuss or consider the aforesaid allegations made by the petitioner as the same were not mentioned in them. This Court is now not in a position to enter into such disputed questions of fact because there is nothing on record to substantiate the said allegation and to comprehend as to what actually happened during the Summary Court Martial Proceedings. Thus, this Court is prompted to reject the petitioner's submission to quash the entire SCMP on that score.

22. The only but most important question on which this case hinges, is whether non-supply of the proceedings of the Court of Inquiry under Rule 177, deprived the petitioner of his right to prepare effective defence and thereby violated the principle of natural justice and on that ground the impugned SCMP and the punishment order are vitiated and liable to be quashed. It is correct that under Rule 184 of the Rules, any person subject to the Act, who is tried by a Court-Martial is entitled to get copies of such statements and documents contained in the proceedings of a Court of Inquiry as are relevant to his prosecution or defence at his trial. It is at the same time correct that the petitioner was not furnished with the said statements and documents before the charge was framed and trial commenced. There is neither any statement/evidence on record that the petitioner made any objection before the Presiding Officer to the trial being commenced without furnishing of the said statements and documents nor did the petitioner make any complaint that he was prejudiced as he could not prepare his defence to the charge. He remained present throughout the Court Martial proceedings and besides examining himself as witness, he cross-examined at least 3 out of 5 prosecution witnesses. The petitioner, as it is found from record, thoroughly cross-examined the main accused Safai Raj Kumar whom according to the charge, he abetted in committing the alleged offence. In his petitions dated 23.3.01 and 27.7.01 made u/s 164 of the Act, as stated earlier, the petitioner brought no allegation in regard to prejudice caused to him in preparation of defence due to non-supply of copy of proceedings of the Court of Inquiry. The petitioner should have made the objection before the Presiding Officer of the Summary Court Martial at the very commencement of the trial or during the trial. He opted to participate in the trial by examining himself and also cross-examining some prosecution witnesses. He opted to make the allegation of prejudice in the writ proceeding only after his aforesaid statutory petitions were rejected by the higher authority. The Apex Court had an occasion to deal with a similar

case in [Vidya Parkash Vs. Union of India \(UOI\) and Others,](#) in which the appellant was tried by Summary Court Martial, who raised objection to competency of the Commanding Officer to preside over the Court Martial for the first time before the Hon"ble Supreme Court without ever raising such objection before the trial court. In that case, the Apex Court held that the objection was an afterthought and it cannot be permitted to be made after Court Martial proceedings were completed and the order of dismissal from service was made, more so when the delinquent in fact, cross-examined the prosecution witnesses. Having actively participated in the trial without objecting to the alleged irregularity committed by the Presiding Officer, the petitioner has forgone his right to take the plea of non-compliance of provision under Rule 33(7) and 184 of the Rules and violation of principle of natural justice.

23. This Court has no jurisdiction to sit in judgment on the findings of the Summary Court Martial and as such it has not examined and decided the correctness or otherwise of the impugned award of punishment and rejection of the petition u/s 164 of the Act.

24. From the discussions made and for the reasons given as above, I find no valid ground to interfere with the proceedings of the Summary Court Martial in question and the impugned award of punishment dated 3.8.99 passed by it and the impugned order dated 19.9.01 passed by the Major General, Assam Rifles rejecting the petitioner's statutory petitions.

25. In the result, this petition stands dismissed without any order as to costs.