

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl.REV.P. 482/2007**

% Date of reserve: 20.04.2009
Date of decision: 28.04.2009

C.O. Col. VIVEK MEHTA, 14 CORPS
OPERATING SIG. REGIMENT C/o 56 APO ...PETITIONER
Through: Mr. A.K. Bhardwaj, adv.

Versus

RITESH KUMAR VISHWAKARMA & ANR. ...RESPONDENT
Through: Mr. Navin Sharma, APP for state

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

MOOL CHAND GARG, J.

1. This revision petition has been filed on behalf of the petitioner i.e. Commanding Officer, 14 Corps, Operating Signal Regiment of the Indian Army who is aggrieved by the order of the Addl. Sessions Judge 08.05.2007 dismissing an application filed by the petitioner for transfer of respondent no. 1 from the custody of the Civil Courts to the custody of the Commanding Officer who wishes to try the said respondent through a Court-martial under Section 126 of the Army Act.

2. Briefly stating the case of the petitioner is, that after coming to know from a source information that the respondent no.1 was involved in espionage activity, a raid was conducted, when the said respondent came to Domestic Airport Palam, New Delhi on 20.10.2006 for parting

with some secret documents which were prejudicial for the safety, security and interest of the Nation (India). The said respondent was apprehended at the spot and was found in possession of incriminating documents as mentioned in paragraph 5 of the petition. The said respondent was guilty of offences under Section 3/9 of the Official Secrets Act and accordingly a report was prepared. On that basis FIR No. 77/06 dated 20.10.2006 was registered. The first respondent was then arrested by the Investigating Officer of this case S.I. Anand Swarup. A court of enquiry was also conducted by headquarters of 14 Corps (Intelligence Branch). A request was also sent by the Directorate General of Signal for sanction under Section 197 to prosecute the first respondent in connection with FIR No. 77/06. Till date no sanction was granted for the prosecution of the first respondent to the Army Authorities. Later on the Army Court approached the Court of Addl. Session Judge to seek permission for recording the statement of respondent in the procedural Court of Enquiry as told by the ASJ a proper application under Section 125 of the Army Act for transfer of the first respondent to Army Authorities and for instituting proceedings against him before a Court-martial was also filed. However, vide impugned order the Addl. Sessions Judge rejected the prayer of the petitioner for transferring the first respondent to the Court-martial. It is against the aforesaid order the present petition has been filed.

3. Before advertent to the issues involved in this case it would be appropriate to take note of the reasoning given by the Addl. Sessions Judge in having rejected the request made by the petitioner which goes to show that after taking note of the provisions contained under Section 475 of Cr.P.C. which requires delivery of an accused to the

Commanding Officer liable to be tried by a Court-martial, if asked for, the Addl. Sessions Judge has made the following observations:

7. I am in agreement with the objections raised by counsel for the accused on the point that Sec. 475 Cr.P.C. is not applicable in the facts and circumstances of the case, as stage of Sec. 125 and 126 Army Act has already crossed and the matter has been committed to the Court of Sessions. Sec. 4/5 is limited to its application before the Court of Magistrate only and cannot be attracted after the case has been committed to the Court of Sessions. Even non-mentioning of the particular constitution of the court-martial in which the accused is to be tried cannot entitle the applicant to be relieved claimed for as the prayer has to be specific.

8. The arguments that the Central Government has not deemed it fit to refer the case to Military Authorities, is only a presumption and the military authorities, however, are at liberty to have a reference from the Central Government in this regard. In the circumstances, the present application is dismissed.

4. In this case it may be observed that at the time when the application was moved for transfer of the respondent to Court-martial authorities, except for committing the case by the Magistrate to the Sessions Court no other proceedings had been taken. It is in the aforesaid light I would try to analyze the legal position in this case.

5. The question which arises for consideration has been gone into by a full bench of Punjab and Haryana High Court in the case of Ajit Singh Vs. State of Punjab AIR 1970 P&H 351 equivalent to 1970 Cr.L.J 1119. The issue involved was as to whether an Army personnel who allegedly commits an offence triable by a Civil Court also can also be tried by a Court Martial whether it is Military, Navy or Airforce, if required to be transferred to the Army Authorities at the request of the Commanding Officer, can the Civil Court i.e. Court of Metropolitan Magistrate or the Session Judge can insist that the said person would not be transferred to the Commanding Officer despite a request made in this regard.

6. It is also of importance to take note of certain Rules which have been framed under the Army Act & which imposes upon the Magistrate an obligation as and when an accused also an Army personnel is brought before him to face the trial with respect to offences which within the meaning of Section 125/126 of the Army Act and equivalent provisions of the Airforce Act or Navy Act are also triable by a Court Martial to follow the following procedure, i.e.

4. Before proceeding under Clause (a) of Rule 3, the Magistrate shall give a written notice to the Commanding Officer of the accused and until the expiry of a period of -

(i) three weeks, in the case of a notice given to a Commanding Officer in command of a unit or detachment located in any of the following areas of the hill districts of the State of Assam, that is to say -

(1) Mizo,

(2) Naga Hills,

(3) Garo Hills,

(4) Khasi and Jaintia Hills, and

(5) North Cachar Hills;

(ii) seven days in the case of a notice given to any other Commanding Officer in command of a unit or detachment located elsewhere in India, from the date of service of such notice, he shall not

(a) convict or acquit the accused under Section 243, 245, 247 or 248 of the Code of Criminal Procedure 1898 (Act 5 of 1898), or hear him in his defence under Sec. 244 of the said Code; or

(b) frame in writing a charge against the accused under Sec. 254 of the said Code; or

(c) make an order committing the accused to trial by the High Court or the Court of Session under S.213 of the said Code; or

(d) transfer the case for inquiry or trial under Sec. 192 of the said Code.

5. Where within the period of seven days mentioned in Rule 4, or at any time thereafter before the Magistrate has done any act or made any order referred to in that rule, the Commanding Officer of the accused or

competent military, naval or air force authority, as the case may be, gives notice to the Magistrate that in the opinion of such authority, the accused should be tried by a Court-Martial, the Magistrate shall stay proceedings and if the accused is in his power or under his control, shall deliver him, with the statement prescribed in Sub-Section (1) of Sec. 549 of the said Code to the authority specified in the said Sub-Section.

6. Where a Magistrate has been moved by competent military, naval or air force authority, as the case may be, under Cl.(b) of Rule 3, and the Commanding Officer of the accused or competent military, naval or air force authority, as the case may be, subsequently gives notice to such Magistrate that, in the opinion of such authority, the accused should be tried by a Court-Martial, such Magistrate, if he has not before receiving such notice done any act or made any order referred to in Rule 4, shall stay proceedings and, if the accused is in his power or under his control, shall in the like manner deliver him, with the statement prescribed in Sub-Section (1) of Sec. 549 of the said Code to the authority specified in the said Sub-Section."

7. In the same judgment it was further observed:

Section 124 of the Air Force Act, 1950, provides that when a Criminal Court and a Court-Martial have each jurisdiction in respect of an offence, it shall be in the discretion of the Chief of the Air Staff, the officer commanding any group, wing or station in which the accused prisoner is serving or such other officer as may be prescribed to decide before which Court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a Court-Martial to direct that the accused person shall be detained in Air Force custody. Sec. 125 of Air Force Act is in the following terms :-

"(1) When a criminal Court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it, may, by written notice, require the officer referred to in Section 124 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the Court before

which the proceedings are to be instituted for the determination, of the Central Government whose order upon such reference shall be final."

8. This matter went to the full bench as there was difference of opinion between the two single Judges of the Punjab & Haryana High Court on this point. The full bench has held:

22. The next question calling for decision arises from the non-observance of the provisions of Section 549 of the Code of Criminal Procedure and the rules framed thereunder. It is urged on behalf of the appellant that his committal and the trial held in pursuance thereof must be held to be without jurisdiction. According to his learned counsel, the Magistrate had no jurisdiction to begin, with, and that he could acquire jurisdiction only after a decision in his favour had been given by the Central Government in the case of a conflict between the army authorities and the Magistrate. Reliance for the contention is placed on the authorities cited in that behalf in the order of reference. In my view, however, none of those authorities can be said to have been correctly decided in view of the following observations of their Lordships of the Supreme Court in AIR 1961 SC 1762, in relation to the provisions of the Army Act, 1950 :

"The scheme of the Act therefore is self-evident. It applies to offences committed by army personnel described in Section 2 of the Act; it creates new offences with specified punishments, imposes higher punishments to pre-existing offences, and enables civil offences by a fiction to be treated as offences under the Act; it provides a satisfactory machinery for resolving the conflict of jurisdiction. Further it enables, (subject to certain conditions, an accused to be tried successively both by court-martial and by a criminal court. It does not expressly bar the jurisdiction of criminal courts in respect of acts or omissions punishable under the Act, if they are also punishable under any other law in force in India; nor is it possible to infer any prohibition by necessary implication. Sections 125, 126 and 127 exclude any such inference, for they in express terms provide not only for resolving conflict of jurisdiction between a criminal court and a court-martial in respect of the same offence, but also provide for successive trials of an accused in respect of the same offence.

Though the offence of conspiracy does not fall under Section 52 of the Act, it, being a civil offence, shall be deemed to be an offence against the Act by the force of Section 69 of the Act. With the result that the offences are triable both by an ordinary criminal court having jurisdiction to try the said offences and a court-martial. To such a situation Sections 125 and 126 are clearly intended to apply. But the designated officer in Section 125 has not chosen to exercise his discretion to decide before which court the proceedings shall be instituted. As he has not exercised the discretion, there is no occasion for the criminal court to invoke the provisions of Section 126 of the Act, for the second part of S.126(1), which enables the criminal court to issue a notice to the officer designated in Section 125 of the Act to deliver over the offender to the nearest Magistrate or to postpone the proceedings pending a reference to the Central Government, indicates that the said Sub-Section presupposes that the designated officer has decided that the proceedings shall be instituted before a court-martial and directed that the accused person shall be detained in military custody. If no such decision was arrived at, the Army Act could not obviously be in the way of a criminal court exercising its ordinary jurisdiction in the manner provided by law."

It may be noted here that Sections 125, 126 and 127 of the Army Act make provisions for army personnel exactly similar to those which Sections 124, 125 and 126 of the Act make in respect of members of the Air Force so that the observations just quoted are applicable *mutatis mutandis* to the latter set of sections and it must be held that when Section 549 of the Code of Criminal Procedure comes into play in the case of a member of the Air Force, it cannot be said that a Magistrate before whom he is produced would not have jurisdiction to take cognizance till the procedure laid down in the rule framed under the section has been gone through and the necessary order of the Central Government obtained in the case of a conflict between the Magistrate and the Air Force authorities. In view of the observations just above quoted, it must be held that the Air Force Act does not stand in the way of the Magistrate "exercising his ordinary jurisdiction in the manner provided by law". The result is that Section 549 above-mentioned and the rules framed thereunder must be looked upon as provisions which merely regulate the exercise by the Magistrate of that jurisdiction which already vests in him and cannot be treated as directional which must be followed by the Magistrate before he can "acquire" jurisdiction. This was also the view taken by a majority

(Dua C.J. and Tatachari J.) in 1969-71 Pun LR (Delhi Section) 61 (FB) on a detailed consideration of various provisions of the Army Act and the above quoted observations of their Lordships of the Supreme Court.

In *Som Datt Datta v. Union of India*, AIR 1969 SC 414, the above view of the provisions of Sections 125 and 126 of the Army Act was reiterated in the following words :

"The legal position therefore is that, when an offence is for the first time created by the Army Act, such as those created by Sections 34, 35, 36, 37, etc., it would be exclusively triable by a court-martial, but where a civil offence is also an offence under the Act or deemed to be an offence under the Act, both an ordinary criminal court as well as a court-martial would have jurisdiction to try the person committing the offence. Such a situation is visualized and provision is made for resolving the conflict under Sections 125 and 126 of the Army Act, * * * * Section 125 presupposes that in respect of an offence both a criminal court as well as a court-martial have each concurrent jurisdiction. Such a situation can arise in a case of an act or omission punishable both under the Army Act as well as under any law in force in India. It may also arise in the case of an offence deemed to be an offence under the Army Act. Under the scheme of the two sections, in the first instance, it is left to the discretion of the officer mentioned in Section 125 to decide before which court the proceedings shall be instituted, and, if the officer decides that they should be instituted before a court-martial, the accused person is to be detained in military custody; but if a criminal court is of opinion that the said offence shall be tried before itself, it may issue the requisite notice under Section 126 either to deliver over the offender to the nearest Magistrate or to postpone the proceedings pending a reference to the Central Government. On receipt of the said requisition, the officer may either deliver over the offender to the said court or refer the question of proper court for the determination of the Central Government whose order shall be final. These two sections of the Army Act provide a satisfactory machinery to resolve the conflict of jurisdiction, having regard to the exigencies of the situation in any particular case."

No room is left for doubt about the legal position being that the inherent jurisdiction which a Magistrate has to take cognizance of civil offences under the Code of Criminal Procedure is not taken away by any provisions of the Army Act (and, therefore, of the Air Force Act), and of Section 549 of the Code of Criminal Procedure and the rules made thereunder. What those provisions, envisage is concurrent jurisdiction in the criminal Courts

and the courts-martial and an arrangement for the proper exercise of such jurisdiction including, when necessary, a way of resolving a conflict of jurisdiction.

9. The petitioners in their written synopsis have also submitted that
- i) on 08.04.2007, the petitioner made a request to the Court of ASJ, Delhi to deliver the respondent to Army Authorities for being tried by Court Martial. However, by order dated 08.05.2007, the Court of Sh. Neeraj Gupta, ASJ, Delhi rejected the application moved by the Army Authorities for transferring the trial of the respondent to Court Martial.
 - ii) That in the impugned order dated 08.05.2007, the learned Court below could except the objection raised by the counsel for the accused on the point that Section 475, Cr.P.C is not applicable in the facts and circumstances of the case and the stage of Section 125 and 126 of the Army Act was already over and the matter was committed to the Court of Sessions. The learned Court below could take a view that Section 475 is limited to its application before the Court of Magistrate only and could not be attracted after the case had been committed to the court of Session. The learned Court below could also reject the application on the ground that in the application it was not specifically mentioned that by which particular court martial, the respondent was to be tried.
 - iii) That section 125 of the Army Act nowhere stipulate that the Officer Commanding had the discretion to decide the Court before which the proceedings should be instituted only in such cases which are triable by Magistrate. In fact, the term referred in Section 125 of the Army Act is "Criminal Court" and not Magistrate. Similarly, in Section 126 of the Army Act the term used is criminal Court having jurisdiction over the matter and not Magistrate alone. The term criminal Court had been defined in Section 3(viii) of the Army Act, 1950. The said definition reads as under:

“3(viii) “criminal court” means a court of ordinary criminal justice in any part of India.’

- iv) That furthermore, Section 104 of the Army Act, clearly proved that wherever any person subject to Army Act, who is accused of any offence under the Army Act is within the jurisdiction of any Magistrate or police officer, such Magistrate or Police Officer shall aid in the apprehension and delivery in military custody of such person upon receipt of a written application to that effect signed by his commanding officer. Thus, in terms of the provision of Section 104 of the Army Act, the Police Officer/Magistrate have no discretion to retain any person subject to Army Act, who is accused of any offence under Army Act and it is mandatory for them to deliver the accused to Commanding Officer of the Army. In said Section there is no stipulation that the accused cannot be delivered to military custody after committal of the case to sessions Court.
- v) Further even in Section 175 of the Code of Criminal Procedure it is clearly provided that it is only when a person subject to military law is charged with an offence for which he is liable to be tried either by Court to which criminal procedure code applies or by a Court Martial, the Criminal Court shall in proper cases deliver the accused together with statement of the offence of which he is accused to the Commanding Officer of the unit to which he belongs only when he is charged with an offence for which he is liable to be tried. Thus, when in a case to be tried by Sessions Court, the charges can be framed only by Session Court, a decision to deliver the accused together with statement of offence can be taken by Session Court only, i.e., after framing the charge. Therefore, the Id. Court below is not correct in its view that after committal of accused to Sessions Court, the stage of decision to deliver the accused to commanding officer had passed.

10. Counsel for the petitioner has relied upon the following judgments:-

(i) *Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Usha Ranjan Roy Choudhury & Anr.*, 1986(2) SC 339.

(ii) *Union of India through Major General H.C.Pathak Vs. Major S.K.Sharma*, 1987 (2) SC 331.

11. The matter also came up for consideration before the Apex Court in the case of *Balbir Singh and Anr. Vs. State of Punjab (1995) 1 SCC 90* wherein it has been held:

15. The next question that arises for our consideration is as to what the ordinary criminal court is required to do when a person on “active service” of the Air Force is brought, before it for trial for any of the offences listed in Section 72 of the Act (*supra*). It is here that Section 475 CrPC, the 1952 Rules and Sections 124 and 125 of the Air Force Act come into operation. Section 475 CrPC reads as follows:

“475. Delivery to Commanding Officers of persons liable to be tried by court-martial.— (1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950) and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a court to which this Code applies or by a court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the Commanding Officer of the unit to which he belongs, or to the Commanding Officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by a court-martial.

Explanation.— In this section—

(a) ‘unit’ includes a regiment, corps, ship, detachment, group, battalion or company,

(b) ‘court-martial’ includes any tribunal with the powers similar to those of a court-martial constituted under the relevant law applicable to the Armed Forces of

the Union.

(2) Every Magistrate shall, on receiving a written application for that purpose by the Commanding Officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situated within the State be brought before a court-martial for trial or to be examined touching any matter pending before the court-martial.”

Sections 124 and 125 of the Air Force Act provide:

“124. *Choice between criminal court and court-martial.*— When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of (the Chief of the Air Staff), the officer commanding any group, wing or station in which the accused prisoner is serving or such other officer as may be prescribed to decide before which Court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in air force custody.

125. *Power of criminal court to require delivery of offender.*— (1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in Section 124 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded against according to law or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the Central Government whose order upon such reference shall be final.”

17. A conjoint reading of the above provisions shows that when a criminal court and court-martial each have jurisdiction in respect of the trial of the offence, it shall be in the discretion of the officer commanding the group, wing or station in which the accused is serving or such other officer as may be prescribed, in the first instance, to decide before which court the proceedings shall be instituted and if that officer decides that they should be instituted before a “court-martial”, to direct that the accused persons shall be detained in air force custody. Thus, the option to try a person subject to the Air Force Act who commits an offence while on “active service” is in the first instance with the Air Force Authorities. The

criminal court, when such an accused is brought before it shall not proceed to try such a person or to inquire with a view to his commitment for trial and shall give a notice to the Commanding Officer of the accused, to decide whether they would like to try the accused by a court-martial or allow the criminal court to proceed with the trial. In case, the Air Force Authorities decide either not to try such a person by a court-martial or fail to exercise the option when intimated by the criminal court within the period prescribed by Rule 4 of the 1952 Rules (*supra*), the accused can be tried by the ordinary criminal court in accordance with the Code of Criminal Procedure. On the other hand if the Authorities under the Act opt to try the accused by the 'court-martial', the criminal court shall direct delivery of the custody of the accused to the Authorities under the Act and to forward to the Authorities a statement of the offence of which he is accused. It is explicit that the option to try the accused subject to the Act by a court-martial is with the Air Force Authorities and the accused person has *no option or right to claim trial by a particular forum*. The option appears to have been left with the Air Force Authorities for good and proper reasons. There may be a variety of circumstances which may influence the decision of the Air Force Authorities as to whether the accused be tried by a court-martial or by a criminal court. This Court in *Ram Sarup v. Union of India* opined:

“In short, it is clear that there could be a variety of circumstances which may influence the decision as to whether the offender be tried by a court-martial or by an ordinary criminal court, and therefore it becomes inevitable that the discretion to make the choice as to which Court should try the accused be left to responsible military officers under whom the accused be serving. Those officers are to be guided by considerations of the exigencies of the service, maintenance of discipline in the army, speedier trial, the nature of the offence and the person against whom the offence is committed.”

There appears to be sound logic to give the first option to the Authorities under the Act to decide whether the accused should be tried by the court-martial or the criminal court. The defence of the country being of paramount importance, the Air Force Authorities would know best as to whether the accused should be tried by the court-martial or by the ordinary criminal court because the trial by the ordinary criminal court would necessarily involve a member of the force being taken away for trial by the ordinary criminal court and not being available to the Authorities and the like considerations. However, in the event the criminal court is of the opinion, for reasons to be recorded, that instead of giving option to the Authorities under the Act, the said court should proceed with the trial of the accused,

without being moved by the competent authority under the Act and the Authorities under the Act decide to the contrary, the conflict of jurisdiction shall be resolved by the Central Government under Section 125(2) of the Act and the decision as to the forum of trial by the Central Government in that eventuality shall be final.

18. In our opinion, on a construction of the various provisions referred to above the criminal courts are not deprived of their inherent jurisdiction to take cognizance of civil offences under the Code. Before the Full Bench of the Punjab & Haryana High Court in *Ajit Singh v. State of Punjab*² it was argued on behalf of the appellant therein, who was in “active service” of the Air Force, that on account of the non-compliance with the provisions of Section 125 of the Act and Section 549 CrPC (corresponding to Section 475 of the Code), the committal of the appellant and his trial held in pursuance thereof must be held to be without jurisdiction. The Full Bench repelled the argument and opined:

“No room is left for doubt about the legal position being that the inherent jurisdiction which a Magistrate has to take cognizance of civil offences under the Code of Criminal Procedure is not taken away by any provisions of the Army Act (and, therefore, of the Air Force Act), and of Section 549 of the Code of Criminal Procedure and the rules made thereunder. What those provisions, envisage is concurrent jurisdiction in the criminal courts and the court-martial and an arrangement for the proper exercise of such jurisdiction including, when necessary a way of resolving a conflict of jurisdiction.”

and went on to hold:

“[T]hat the contention raised on behalf of the appellant that the trial was vitiated by lack of jurisdiction in the Magistrate and the learned Additional Sessions Judge must be rejected as untenable.”

19. In our opinion, the view of the Full Bench is correct and we agree with it and hold that the inherent jurisdiction under which the criminal courts have to take cognizance of civil offences is not taken away by any of the provisions of the Act or Section 475 CrPC and the rules framed thereunder.

12. In view of the observation made in paragraph 18 of the judgment delivered in *Balbir Singh’s* case, it is apparent that a conflict has arisen regarding jurisdiction of the Civil Court and the Court-martial about the trial of the first respondent in the case of espionage and as per Section 549 (now Section 475) of Cr.P.C. and the rules framed thereunder, the said conflict can be resolved by the Central Govt. who has also granted

sanction for the prosecution of the first respondent by a Civil Court. It is thus ordered that the matter be referred by the petitioner along with copy of the order passed by this Court and the order passed by the Addl. Sessions Judge dated 08.05.2007 along with a brief of the case to the competent authority in the Central Govt. within one month from today. It is further ordered that the Central Govt. would then decide as to where the further trial of the first respondent should take place either before the Civil Court or before the Court-martial as both the Courts have concurrent jurisdiction to try the matter. In the meanwhile, the Additional Sessions Judge may hear arguments on the question of framing of the charge but would not proceed with the trial thereafter.

13. The revision petition is DISPOSED of with the aforesaid directions. Copy of the order may be given to both the parties. The petitioners would take steps in terms of directions given.

MOOL CHAND GARG, J.

April 28, 2009

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