

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

+ **WP(C) No.7632/2011**

% **Date of Decision: 01.11.2011**

Col.Neeraj Rana Petitioner

Through Mr.Avijit Bhattacharya & Ms.Debjani
Das Purkayastha, Advocates

Versus

Union of India & Anr. Respondents

Through Mr.B.V.Niren, Central Govt. Standing
Counsel, & Ms.Utkarsh Sharma,
Advocate for UOI

Mr.Satya Saharawat, Advocate for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE G.P. MITTAL

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be
reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, has challenged the order dated 13th September, 2011, passed by the Armed Forces Tribunal, Principal Bench in OA No.

253/2011 titled as 'Col. Neeraj Rana v. UOI & Ors.', disposing of the original application in view of the pendency of the W.P.(C) No.462/2007, titled as 'Arvind Kumar Sharma v. Union of India & Ors.' pending before Supreme Court, in which on the application of the petitioner he was impleaded as a party by order dated 11th July, 2011. The Tribunal held that it is not entertaining the petition at this stage, however, it would be open to the petitioner to approach the Tribunal once the above noted writ petition is disposed of by the Supreme Court.

2. Brief facts to comprehend the controversies are that in a Public Interest Litigation being W.P.(C) No.462/2007 titled as 'Arvind Kumar Sharma v. Union of India & Ors.', an enquiry had been sought to be conducted by an independent agency like CBI, to take action against the concerned officers including army personnel involved in the Arms License scandal in the District of SriGanganagar, Rajasthan and to direct the Home Ministry, State of Rajasthan, to cancel all the licenses, issued illegally issued without due verification/identification as provided under the Arms Act, 1959. Sh.Arvind Kumar Sharma in his PIL had alleged that many hardcore criminals and other undesirable persons had been granted arms licenses without verification, showing connivance between the licensing authority and the other personnel. According to the allegations made in the said writ petition the seriousness of the issue could be perceived from the fact that large number of 7.26 mm pistols, that are either issued to the army

personnel or procured by them on border areas which are of Russian/Chinese make have no manufacture's name or proof marks, and are being sold illegally to many hardcore criminals and arms dealers, for which licenses had been issued by the concerned authority without any verification. According to the said petitioner, 7.62 mm and 7.63 mm bore pistols are Non Service Pattern (NSP) weapons, issued to army personnel by the COD, Jabalpur, and it cannot be sold to arms dealers or to the general public. However, army personnel are selling the same to the public and arms dealers.

3. The Supreme Court had issued a notice on the PIL of Sh.Arvind Kumar Sharma, being Writ Petition (Civil) No.462/2007 to the respondents, Union of India through the Ministry of Defense and others. In reply to the show cause notice, a counter affidavit dated 17th September, 2010 was filed on behalf of the Ministry of Defense, respondent No.2 in W.P.(C) No.462/2007. In the said counter affidavit, a specific averment had been made against the petitioner, Col.Neeraj Rana, IC-46353Y, petitioner in the present matter, stating that he was involved in coordinating the illegal sale/purchase/disposal of 5 weapons of various army officers. The averments made against the petitioner in para 6(a) (iv) of the counter affidavit in the said writ petition is as under:-

(iv) **IC-46353 Y Col Neeraj Rana.** The officer was involved in coordinating the illegal sale/purchase/disposal of five weapons of various army officers.

4. In view of the specific averments made by the Ministry of Defence against the petitioner, Col. Neeraj Rana, an application was filed by the petitioner being I.A. No.5/2011 in the said writ petition contending, inter-alia that he is totally innocent and that the investigation and enquiry made by the authorities are not in accordance with law and also that wrong facts have been placed before the Supreme Court in the affidavit filed on behalf of respondent No.2. It was further contended that the averments made against the petitioner are wholly incorrect and concocted statements. The defense raised by the petitioner before the Supreme Court in his application for impleadment, which was allowed, and whereby the petitioner was impleaded as a respondent in the writ petition being W.P.(C) No.462/2007 is as under:-

3. That the allegations made against the applicant are wholly incorrect and are half truth and concocted statements. That the Respondent No. 2 has stated in its affidavit that IC-46353Y Col. Neeraj Rana was involved in coordinating the illegal sale/purchase/disposal of five weapons of various army officers which are totally false and fabricated which will be evident from the following facts:

(a) That one of the weapon inherited as property from the father of the applicant from his Civil Arms license to the applicant's Civil Arms license under the Arms Act, 1959, and has no markings which bring out that it is a NSP weapon and therefore, the applicant was not aware that it was a NSP weapon. The same was issued to the Applicants' father in 1978 and was on his civil Arms license

under the Arms Act 1959 on his retirement which he later gifted to the applicant on a bonafide Arms license. The applicant kept the weapon with him for three years and decided to sell it to an Arms dealer who was authorized to buy this weapon and buy another weapon. It was no crime committed by the applicant as Army Officers can hold three weapons under Arms Act, 1959. The applicant sold the weapon and the army charged him for selling the weapon. The applicant was not allotted this weapon and did not sign the application which clearly states that the Allottee will abide by the provisions of the Special Army order 1/s/96 of not selling the weapon. Since the Applicant has never been the original Allottee of any NSP weapon therefore, he has not signed also on the application to have said that he would abide by the SAO 1/s/96 the organization has charged the applicant for violating SAO 1/s/96 which otherwise also stands superseded by a new Army order 4/s/2006 which has done away with the disciplinary action aspect but has said that Resale of NSP weapons will be governed by Arms Act 1959. The Army then asked officers (original allottees) by a written communication who has one weapon to their name to retrieve and return their weapons to avoid any proceedings against them. Eight officers retrieved their weapons and have been released. The applicant requested the organization to give him also the chance to retrieve the weapon and deposit it which the organization did not reply to his request and then the applicant on his own initiative traced the weapon retrieved it and once again requested the organization to give orders to COD Jabalpur to deposit his weapon once again the army did not reply to the request and subsequently the Applicant again under his own initiative succeeded in depositing it with the COD, and the organization has still preferred two charges for the weapon which otherwise was not even allotted to the Applicant and more so was a family property and sold legally under the provisions of Arms Act 1959 which has a statutory binding rather than the Special Army order which is more of a circular and does not have any statutory binding. That in support of his aforesaid submissions the applicant annexes the following documents:

The true copy of the affidavit dated 30.7.2003 wherein the father of the applicant has stated that he had transferred his weapon 30 Springfield US Serial No. 471351 to his son the applicant herein is annexed herewith as **Annexure A-1.**

The true copy of the transfer of license dated 28.1.2004 by the father of the applicant to the applicant regarding weapon 30 Springfield US Serial No. 471351 is annexed herewith as **Annexure A-2.**

The true copy of the statement dated NIL by the father of the applicant wherein he has stated that his weapon was legal which he had transferred to his son the applicant herein on his valid civil arms license is annexed herewith as **Annexure A-3.**

The true copies of the request letters by the applicant dated 15.09.2009 and dated NIL November 2010 to deposit the weapon which he retrieved is annexed herewith as **Annexure A-4.(Colly).**

(b) That the applicant bought a weapon which he still holds with him till date a NSP weapon from another officer. That the Organization says that the applicant should have taken permission from the standing allotment committee for which the rule is that the seller has to inform the standing committee, the seller herein was not aware when he got to know he applied for the same but the organization has charged the applicant for the commission of the seller as they have already committed in their affidavit before this Hon'ble Court. The applicant herein did not sell it to any Gun dealer which otherwise is an offence but he had purchased it with proper permissions and is still held with the Applicant under the provisions of the Arms Act 1959. The true copy of the letter dated 10.11.2009 by the seller Col. R.C. Rana for obtaining sanction of the Standing Committee for transfer of the weapon in the name of the applicant is annexed herewith as **Annexure A-5.**

(c) The third weapon is a civil weapon held with the applicant till date on proper civil arms license under Arms Act, 1959 which is not a NSP weapon and bought from a civil gun dealer on a bonafide arms license. It was shown during the Court of Inquiry by the applicant but to no avail. The applicant has still been charged from it as the name of the applicant was given in the affidavit to this Hon'ble Court.

(d) That regarding the fourth weapon Lt. Col. Prashant Nakra during the Summary of Evidence very clearly has said in writing that he did not sell the weapon to the applicant but sold it through him. When the applicant went to sell the NSP gun which was given to him by his father Lt. Col. Prashant Nakra asked the applicant to sell his NSP weapon on his behalf. The respondent no. 2 says the applicant sold the weapon whereas original allottee (owner of the weapon) clearly said in his statement that he has not sold it to the applicant but the applicant went to the Arms dealer on his behalf the original Allottee that is Lt. Col Prashant Nakra who has now been attached for his offence of selling the weapon but the organization has still preferred a charge against the Applicant as they have already committed to this Hon'ble Court on an Affidavit and despite the fact having emerged in the Summary of Evidence that the applicant did not buy and then sell his weapon.

The true copy of the statement of Lt. Col. Prashant Nakra dated 8.10.2009 is annexed herewith as Annexure A-6.

(e) That as regards to the fifth weapon Lt. Gen. has signed on the directions and endorsed that Col. RIS Mehta for violation of Special Army Order in which he took NSP weapon from Col. Sumer Sobti without having sought prior approval of Standing Allotment Committee and sold the weapon in the name of Col. Sumer Sobti. Col. Sumer Sobti sold his NSP weapon to M/s. Harisharan Vyaparik Prathisthan without having sought prior approval of Standing Allotment Committee and did not inform the District Magistrate/Officer-in-Charge of the nearest police station with regard to the said sale. When this is clear then also the organization has charged the Applicant for the offence of Col. RIS Mehta. It is submitted that RIS Mehta, Commanding Officer of the applicant wanted to buy a pistol from the COD and when he purchased the Rifle from Col. S. Sobti, and was not entitled to hold more than one weapon he on stamp paper got endorsement by the applicant that the weapon has been sold to the applicant but not endorsed on the license of the applicant therefore, it is clear that the said weapon has not been sold to the applicant. That Col. Sumer Sobti has also very categorically given in writing in the summary of evidence of

the applicant that he sold his weapon to Col. RIS Mehta and not to the applicant.

The true copy of the sale and the endorsement got by the applicant dated 16.5.2006 is annexed herewith as **Annexure A-7.**

4. That the applicant has not sold any NSP weapon except the one gifted to him by his father which he had sold but later retrieved and deposited. The applicant is not an original allottee of any NSP weapon.

5. That it is stated that the media, both print and electronic, has been fed with one sided story given by the respondent No. 2 and the name of the applicant has already been tarnished in the media because of the false, baseless and concocted story on the basis of the affidavit filed by respondent No. 2 which is highly malicious wrong and fabricated.

6. That on the basis of all these false allegations the Army has initiated disciplinary proceedings/Court Martial proceedings against the applicant with the sole ill intention of showing this Hon'ble Court that they are initiating honest actions for punishment of the wrong doers and to plug the loop holes in the system. It is submitted that court martial proceedings has been ordered against applicant innocent officers leaving aside the actual culprits who are indulging in more serious offences.

5. The petitioner had filed various documents in support of his pleas and contentions to demonstrate that pursuant to allegations made against him, the charge sheet and the Court Marshal proceedings initiated against cannot be sustained. From the counter affidavit filed by the Ministry of Defence, in the Public Interest Litigation and the application filed by the petitioner for impleadment, which was allowed

by order dated 11th July, 2011, it is apparent that the Supreme is seized of the matter, as well as the allegations made against the petitioner and the defense set up by the petitioner.

6. The petitioner, however, despite raising the abovementioned issues pertaining to his defense, against the allegations of the Ministry of Defence that the petitioner was involved in coordinating the illegal sale/purchase/disposal of 5 weapons of various army officers before the Supreme Court, also filed an original application being OA No.253/2011 before the Armed Forces Tribunal, Principal Bench, titled as 'Col.Neeraj Rana v. Union of India & Ors.', seeking directions for quashing the charge sheet dated 9th June, 2011 and the convening order of General Court Martial dated 19th June, 2011 and to exonerate the petitioner of all the charges. While impleading the petitioner in the writ petition being W.P.(C) No.462/2007 pending in the Supreme Court, the following order was passed.

I.A No.5 of 2011, has been filed by Col.Neeraj Rana in the pending writ petition, being W.P(C) No.462 of 2007, for his impleadment in the proceedings.

The petitioner appears to have been named in the affidavit filed by the Ministry of Defence and it is submitted by Mr.Vivek Tankha, learned A.S.G. that General Court Marshal has also been initiated against him.

Having regard to the above, the applicant, in our view, is a necessary party in these proceedings and, accordingly, his application for impleadment is allowed.

Let Col.Neeraj Rana, be added as a respondent in these proceedings. He will be entitled to file his affidavit to

the proceedings and to the affidavit filed on behalf of the Ministry of Defence, within three weeks from date.

Rejoinder, if any, may be filed within two weeks thereafter.

Put up after five weeks (23rd August, 2011).

7. The original application of the petitioner was taken up for consideration by the Armed Forces Tribunal, Principal Bench. However, as the issue in the original application, whether the petitioner was involved in coordinating illegal sale/purchase/disposal of 5 weapons of various army officers, was also pending adjudication before the Supreme Court, the Tribunal had held that since the Supreme Court is seized of the matter, therefore, it would not be proper for the Armed Forces Tribunal to entertain the petition at this stage. The Tribunal had, however, held that if the matter is disposed of by the Supreme Court, it would be open for the petitioner to approach the Tribunal.

8. The petitioner challenged this order dated 13th September, 2011 of the Armed Forces Tribunal by filing the Special Leave Petition No.27737/2011, titled as 'Col.Neeraj Rana v. Union of India & Ors.'. The Special Leave petition was, however, dismissed by the Hon'ble Supreme Court, holding that the petition is barred under Article 136 (2) of the Constitution of India. While dismissing the Special Leave Petition,

the Supreme Court, however, observed that this would not prevent the petitioner from seeking his remedy before the appropriate forum.

9. The petitioner thereafter has filed the present writ petition seeking quashing of the order dated 13th September, 2011 whereby the Armed Forces Tribunal had declined to interfere, as the pleas and contentions of the petitioner in support of his defense that he was not involved in illegal sale/purchase/disposal of 5 weapons of various army officers is also pending adjudication before the Supreme Court.

10. Learned counsel for the petitioner has contended that the Hon'ble Supreme Court will not consider his defence against the charge sheet dated 9th June, 2011 and General Court Martial order dated 19th June, 2011 in the W.P.(C) No.462/2007. The learned counsel for the petitioner is however, unable to show any observation or order passed by the Supreme Court, that the pleas raised by the petitioner that he was not involved in illegal sale/purchase/disposal of 5 weapons of various army officers would not be considered by it. Also no cogent reason has been given by the petitioner, indicating as to why the defence raised by him will not be considered by the Supreme Court. On the basis of the detailed facts raised and the documents produced in support of his pleas and contentions, the petitioner was impleaded as a party in the writ petition pending before the Supreme Court. No precedent or law has been cited by the learned counsel for the petitioner to substantiate

his contention that his pleas and contention will not be considered or cannot be considered by the Supreme Court in the facts and circumstances. Impleadment of the petitioner in the Public Interest Litigation on the basis of the detailed facts and documents produced by the petitioner in his defense is not an empty formality.

11. In any case, if the pleas raised by the petitioner are not considered by the Supreme Court or the matter is disposed of by the Supreme Court in W.P.(C) No.462/2007, titled as 'Arvind Kumar Sharma v. Union of India & Ors.', the Tribunal has already given liberty to the petitioner to approach the Tribunal.

12. While dismissing the Special Leave Petition filed by the petitioner against the impugned order dated 13th September, 2011, which is also impugned in the present Writ petition, the Hon'ble Supreme Court has held that the dismissal of Special Leave Petition will not prevent the petitioner from seeking his remedy before the appropriate forum. In the facts and circumstances, the appropriate forum appears to be the writ petition being W.P.(C) No.462/2007 that is pending before the Supreme Court, where all the pleas and contentions along with the relevant documents have been produced by the petitioner. The matter which is pending before the Supreme Court is not to be adjudicated by the Tribunal in the present facts and circumstances, unless the Hon'ble Supreme Court directs it to consider the pleas and contentions of the petitioner

raised in the writ petition being W.P.(C) No.462/2007. The Tribunal by order dated 13th September, 2011 has not rejected the defence or grounds raised by the petitioner for quashing the charge sheet dated 9th June, 2011 and General Court Martial order dated 19th June, 2011, but has held that it is not appropriate to entertain the petition at this stage and has given liberty to the petitioner to approach the Tribunal in case the matter before the Supreme Court is disposed of. The directions given by the Tribunal by order dated 13th September, 2011 are as under:-

3. We would have certainly gone into the arguments raised by learned counsel for the petitioner with regard to Court Martial pending against the petitioner but it has been brought to our notice that in the case of Arvind Kumar Sharma Vs. Union of India & Ors. (W.P(C) No.462 of 2007), the petitioner in the present case has already been impleaded as a party by the Hon'ble Supreme Court by the order dated 11th July, 2011. A statement was made by Mr.Vivek Tankla, learned ASG that the Court Martial has been initiated against the petitioner. Since the Hon'ble Supreme Court has allowed the impleadement of the petitioner as a party in these proceedings and the Hon'ble Supreme Court is seized of the matter, therefore, it will not be proper for us to interfere in the matter as the matter is receiving due consideration by the Hon'ble Supreme Court. Therefore, at this stage we do not want to entertain this petition. However, it is open for the petitioner to approach this Tribunal once the matter is disposed of by the Hon'ble Supreme Court.

4. The petition is disposed of with no order as to costs.

13. In the facts and circumstances, this Court does not find any illegality, irregularity or any such perversity or patent illegality in the order of the Tribunal which would necessitate interference by this Court

against the order dated 13th September, 2011 in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is therefore, dismissed. All the pending applications are also disposed of.

Dasti.

ANIL KUMAR, J.

G.P. MITTAL, J.

NOVEMBER 1, 2011.

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