



2025:UHC:9676

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

3RD NOVEMBER, 2025

CRIMINAL MISCELLANEOUS APPLICATION NO. 1752 OF 2025

Union of India
Through General Officer Commanding
14 Infantry Division, PIN 908414 c/o 56 APO
..... Applicant

Versus

State of Uttarakhand and Another Respondents

Counsel for the Applicant : Mr. Lalit Sharma, Deputy
Solicitor General.

Counsel for the Respondent : Mr. Akshay Latwal,
No.1 Assistant Government Advocate.

Hon'ble Alok Kumar Verma, J.

This Application has been filed by the Union of India through General Officer Commanding 14 Infantry Division under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 challenging the impugned order dated 11.08.2025, passed by learned Special Judge (POCSO) / Additional District and Sessions Judge, Dehradun in Special Sessions Trial No. 107 of 2025, "State Vs. Havildar A. Thaha", by which the learned Special Judge has dismissed the application of the applicant for transferring the accused to the military authorities for the purpose of trial of the accused under



the Army Act, 1950.

2. According to the First Information Report dated 09.05.2025, on 09.05.2025 at around 9:30 a.m. to 10:00 a.m., the accused forcefully entered in the house of the informant on the pretext of collecting RWA monthly fee and molested and sexually harassed his daughter (aged about 13 years) who was alone in the house due to which the informant became devastated and his daughter is in trauma and is scared.

3. Charge-sheet has been filed against the accused for the offence punishable under Section 75 of the Bharatiya Nyaya Sanhita, 2023 and Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in short, "Act, 2012").

4. Heard Mr. Lalit Sharma, learned Deputy Solicitor General of India and Mr. Akshay Latwal, learned Assistant Government Advocate for the respondent no.1.

5. Mr. Lalit Sharma, Deputy Solicitor General, appearing for the applicant, has contended that the accused was serving in the Indian Army when he was named as an accused in the FIR and was arrested in the said offence. The said offence was committed in the premises of the Defence Officer's Colony. The impugned order dated 11.08.2025 has been passed on the ground that the offences under the Act, 2012 can only be tried by a Special Court, established for the purpose of providing a speedy



2025:UHC:9676

trial under Section 28 of the Act, 2012. The applicant is competent authority by virtue of power vested under Section 125 of the Army Act, 1950 read in conjunction with the Army Rules and Rule 5 of the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978, made in exercise of the powers conferred by sub-section (1) of Section 475 of the Code of Criminal Procedure, 1973.

6. Mr. Lalit Sharma, Advocate, has relied on a judgment of the Hon'ble High Court of Jammu, Kashmir and Ladakh at Jammu in **Naik Bibhu Prasad Vs. Union of India and Others.**

7. In WP(C) No.947 of 2022, "**Naik Bibhu Prasad Vs. Union of India and Others**", the Hon'ble High Court of Jammu, Kashmir and Ladakh at Jammu held on 02.06.2022 that there is no bar upon a Court-martial to try the offences under the Act, 2012.

8. The Court No.3, Armed Forces Tribunal, Principal Bench, New Delhi dismissed the challenge to the jurisdiction of the Court-martial to try the offences punishable under the Act, 2012 on 22.12.2014. The order dated 22.12.2024 was challenged before the Hon'ble Supreme Court in CRLMP No.1196 of 2016 in Criminal Appeal No. D 22766 of 2015, "**NK Kolekar Dhanagi Hindu Vs. Union of India and Ors.**". The Hon'ble Supreme Court declined the prayer for leave to appeal and the application for leave to appeal was dismissed on 05.02.2016.



9. It is not disputed by the respondent-State that the accused is subject to the military law under Section 125 of the Army Act, 1950.

10. Section 125 of the Army Act, 1950 says, “**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 officer commanding the army, army corps, division or independent brigade in which the accused person 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 military custody”.

11. Section 125 of the Army Act, 1950 gives primacy of jurisdiction to the Army authorities to try a person, who is subject to Army Act and accused of an offence, which is triable by a Court-martial and also by a criminal court.

12. In “**Som Datt Datta Vs. Union of India**”, AIR **1969 SC 414**, it was held that under the Scheme of the two Sections 125 and 126 of the Army Act, 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 is to be detained in military custody.



2025:UHC:9676

13. The applicant has already exercised the discretion of selecting the forum of trial. Since the applicant (Commanding Officer) has exercised its discretion and decided that the proceedings should be instituted before the Court-martial, it was obligatory on the part of the learned Special Judge to deliver the accused to the military authorities for his trial by a Court-martial.

14. Resultantly, the impugned order is liable to be quashed.

15. Consequently, the Application, filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is allowed. The impugned order dated 11.08.2025 is quashed. The learned Special Judge (POCSO) / Additional District and Sessions Judge, Dehradun is directed to deliver the accused to the Commanding Officer, together with a statement of the offence of which he is accused, for his trial by a Court-martial.

16. The Court-martial must protect the identity and dignity of the victim child.

ALOK KUMAR VERMA, J.

Date: 03.11.2025
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