

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1499 OF 2015

Mr. Raghubir Singh S/o Niuaram Atariya
Age: 46 years, Occu.: Service (Washer
man, Border Security Force)
R/o & Occupation : No.920089637 CT/WM
STC BSF Chakur, Maharashtra
(22 years' service in Border Security Force)
Permanent Resident of, New Basti Kiri,
Old City, Dholpur, Dist. Dholpur,
Rajasthan - 328001
Now in Jail lodged at,
At Nashik Road, Nashik, Dist. Nashik,
Maharashtra.

**...PETITIONER
(Original Accused)**

VERSUS

1. The Union of India
Through the Secretary,
Ministry of Home Affairs,
Government of India
New Delhi - 110003.
2. The Director General,
Government of India
(Ministry of Home Affairs)
Directorate General Border Security Force,
B.S.F.(D&L) Branch, New Delhi,
2nd Floor, Block No.10, CGO
Complex, Lodhi Road,
New Delhi - 110003
3. The DIG & COMMANDANT
STC BSF Chakur, A/P.- Chakur,
District: Latur, Maharashtra

4. The State of Maharashtra,
Through, the Secretary,
Ministry of Home Affairs,
Mantralaya, Mumbai -32
(Maharashtra)

...RESPONDENTS

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Mr.Abhay Ostwal, Advocate h/f Mr.Kiran D.Jadhav,
Advocate for Petitioner;
Mr. Sanjeev B. Deshpande, ASG for Respondent Nos.
1 to 3;
Mr.S.Y. Mahajan, Public Prosecutor for Respondent
No.4 / State.

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CORAM: R.M.BORDE & P.R.BORA, JJ.

DATE: April 28th, 2016

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JUDGMENT: (Per P.R.Bora, J.)

1. Petitioner has filed the present petition seeking quashment of order dated 26th October, 2015, passed by the Director General, Border Security force, under Section 117 (2) of the Border Security Force Act whereby the statutory petition filed by the petitioner against the order passed by DIG and Commandant, STC BSF on 8th of June, 2015, has been rejected. Petitioner has also sought quashment of the said order dated 8th of June, 2015. The order dated 25th of May, 2015, passed by the

Additional D.G. (West), BSF, Chandigarh, while disposing of the Pre-confirmation petition is also sought to be quashed.

2. The facts involved in the present petition, in brief, are thus:

Petitioner was Constable / Washerman in STC BSF, Chakur. Petitioner was alleged to have committed aggravated sexual assault punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012, and he being a member of Armed Force, was tried by the General Security Force Court for an offense under Section 46 of the B.S.F.Act, 1968. The charge against the petitioner was that on 30th of June, 2014, at about 7.40 a.m., at Kendriya Vidyalaya, BSF, Chakur, petitioner sexually assaulted the prosecutrix, aged about nine and half years, a daughter of an Inspector of STC BSF, Chakur. In the trial held against the petitioner, he was found guilty of the charge levelled against him and has been, therefore, convicted and sentenced to suffer imprisonment for five years and has also been dismissed from the services w.e.f. 29.12.2014. The finding recorded and the sentence

imposed by the General Security Force Court (for short, 'GSFC') has been confirmed by A.D.G. (WC BSF), Chandigarh, on 25th/26th of May, 2015. The statutory petition preferred by the petitioner, challenging the order passed by the GSFC and confirmed by ADG has also been dismissed by the Director General, BSF. The petitioner has, therefore, invoked the writ jurisdiction of this Court seeking quashment of the aforesaid orders passed against him and has consequently, sought his acquittal from the criminal prosecution conducted against him.

3. The petitioner has assailed the impugned orders on various grounds. Shri Abhay Ostwal, learned Counsel appearing for the petitioner, submitted that the order dated 26th October, 2015, passed by the Director General, BSF (respondent no.2) is a non reasoned and cryptic order. Learned Counsel further submitted that respondent no.2 has not recorded any finding or reasoning on the grounds of appeal raised by the petitioner. According to the learned Counsel, since respondent no.2 has passed the impugned order without application of mind, the same deserves to be quashed and set aside. Learned Counsel

further submitted that the General Security Force Court has not properly appreciated the evidence on record and also did not provide due opportunity of hearing to the petitioner. Learned Counsel further submitted that GSFC as well as the appellate Court have recorded erroneous conclusions based on irrelevant material which has resulted in gross miscarriage of justice. Learned Counsel submitted that no evidence has come on record against the petitioner to prove the commission of offense under Section 10 of the Protection of Children from Sexual Offenses Act, 2012. Learned Counsel submitted that the trial Court as well as the appellate Court both have failed in appreciating that since the petitioner had denied to wash the clothes of the parents of the prosecutrix, false and fabricated allegations were made against the petitioner and the petitioner was thus implicated in a false case. Learned Counsel further submitted that the Pre-Confirmation Authority did not apply its mind and passed a non speaking order confirming the finding of the G.S.F.C. Learned Counsel further submitted that the Courts / authorities below have utterly failed in appreciating the contradictions and omissions in the evidence of the

prosecution witnesses. Learned Counsel further submitted that when the alleged incident was stated to have been committed in the school, it was incumbent on the part of the prosecution to adduce the evidence of Principal and / or the school teacher. Since no such evidence has been adduced, according to the learned Counsel, no charge can be said to have been proved against the petitioner. Learned Counsel further submitted that the authorities / Courts below, have not observed the principles of natural justice. Learned Counsel submitted that without there being any cogent and sufficient evidence, the petitioner has been convicted and has also been dismissed from the service. Learned Counsel further submitted that during the course of trial before G.S.F.C., the petitioner was not permitted to ask certain questions to the prosecutrix and, thus, the trial conducted against the petitioner is in violation of principles of fair trial. Learned Counsel, therefore, prayed for setting aside the aforesaid impugned orders and acquit the petitioner from the charges levelled against him.

4. Shri Sanjiv Deshpande, learned ASGI,

appearing for respondent nos. 1 to 3, opposed the submissions advanced on behalf of the petitioner. Learned ASGI, taking us through the record of the case, submitted that the petitioner was provided due opportunities to defend him and, in no case, an allegation can lie against the respondents that the trial conducted against the petitioner was not a fair trial.

5. After having considered the arguments advanced on behalf of the petitioner and respondent nos. 1 to 3, and on perusal of the material on record, apparently, we do not find any substance in the objections raised on behalf of the petitioner. The material on record reveals that in order to prove the charges levelled against the petitioner, total six witnesses were examined and the petitioner was given due opportunity to cross examine each of the said witness. The record further reveals that though some of the questions were not allowed to be asked to the prosecutrix in her cross examination, the trial Court has recorded the reasons therefor. We find that the reasons recorded by the trial Court, while disallowing the request of the petitioner to put the said questions to

prosecutrix in her cross examination, are appropriate and proper. The trial Court had rightly disallowed the said questions. It has to be stated that the questions which were sought to be asked to the prosecutrix in her cross examination could not have been asked to a tender aged prosecutrix. The following questions were sought to be asked by the petitioner to the prosecutrix in her cross examination:

- "i) Do you understand the meaning of word 'sexual'?
- ii) Do you understand the meaning of private parts of the body?
- iii) Did accused try to touch your anus and vagina?
- iv) Do you understand the meaning of word "chati achi ho jaigi"?
- v) Can you understand the meaning of sexual harassment of sexual intent, which called sexual assault. Do you understand the meaning of sexual assault?
- vi) Did you feel that accused had sexually assaulted you and he want to do any forceful act with you?
- vii) As you stated that you was so scared due to the act of accused. What you felt or presume that accused was going to do wrong with you?

Considering the nature of the questions, we are of the firm opinion that the trial Court was right in rejecting the request of the petitioner to put such type of questions to the tender aged prosecutrix in her cross examination. The record further reveals that at every stage of the proceedings, the procedural part was explained to the petitioner and every opportunity was provided to the petitioner to defend himself. We do not see any infirmity or procedural lapse in the trial conducted against the petitioner.

Further, having regard to the evidence on record, it does not appear to us that the trial Court has committed any error in holding the petitioner guilty for the offense charged against him. The facts which have come on record through the evidence of the prosecutrix and her mother appear us to be sufficient for holding the petitioner guilty for an offense under Section 10 of the Protection of Children From Sexual Offenses Act, 2012. There seems no reason to disbelieve the evidence of the prosecutrix as well as her mother. Though the petitioner has raised a

plea of false implication, he has failed to substantiate the same. Further, there appears no substance in the objection raised by the petitioner that the order passed by the appellate authority on 26th October, 2015, is a non speaking and cryptic order. Perusal of the said order dated 26th October, 2015, reveals that the appellate authority has considered every objection raised before it on behalf of the petitioner and has recorded its finding on each of the said objection by giving elaborate reasons. All such objections raised by the petitioner in the present petition were raised by him before the appellate authority and each of the said objection has been appropriately dealt with by the appellate authority. The order passed by the appellate authority reveals that it has duly considered the evidence on record while recording its findings. In no manner the said order can be said to be a non speaking, or cryptic order. On the contrary, according to us, it is well reasoned order and does not require any interference.

6. In so far as the other contentions raised by the learned Counsel for the petitioner that no personal hearing was given by the appellate authority before deciding the

petition filed by the petitioner and that it amounts to violation of principles of natural justice is concerned, the same is also liable to be rejected in view of the law laid down by the Honourable Apex Court in the matter of **Union of India v. Ex Constable Amrik Singh (AIR 1991 (SC) 564)**. In the aforesaid case, the Honourable Apex Court has held as under:

" Principles of natural justice are not attracted in certain special enactments such as Army Act, B.S.F.Act etc. -- under Section 117(2) of B.S.F.Act, which is in pari materia to Section 134(2) of Army Act, and the person aggrieved is only entitled to file a petition but disposal of such petition does not attract principles of natural justice -- Even in Chapter XIII of B.S.F. Rules which deals with the petitions filed under Section 117, there is nothing to indicate that a hearing has to be given before disposal of the petition. "

7. After having considered the entire material on record, we do not see that any case is made out by the petitioner so as to cause interference in any of the impugned orders.

8. The writ petition is devoid of any substance and deserves to be rejected and is accordingly rejected without any order as to costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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