

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-7997 of 2018(O&M)
Date of Decision: 27.02.2018**

Sartaj Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Jitender Malik, Advocate
for the petitioner.

LISA GILL, J(Oral).

Petitioner is aggrieved of order dated 03.02.2018, passed by learned Chief Judicial Magistrate, Pathankot, whereby application moved by the petitioner seeking trial by the ordinary criminal court and not by the Military Court, has been dismissed.

Brief facts necessary for the adjudication of the case are that FIR No. 7 dated 06.01.2017, under Sections 354, 354(1) IPC and Sections 7/8 of the Protection of Children from Sexual Offences Act, 2012, was registered against the petitioner. He was arrested on 06.01.2017 and produced before the Court of the learned Area Magistrate, Pathankot on 07.01.2017. Final report under Section 173 Cr.P.C., (Annexure P-4) was presented on 03.04.2017.

An application was moved by respondent no.2 i.e. the Commanding Officer, 9th Battalion, Sikh Light Infantry, C/o 56 APO, Pathankot, seeking the trial of the petitioner by the Military Court as provided under Section 475 Cr.P.C. Petitioner also moved an application dated 18.12.2017 seeking the trial by the ordinary criminal Court at Pathankot. The learned trial Court dismissed the petitioner's application and

the petitioner was directed to appear before the Commanding Officer on 01.03.2018. File was directed to be sent to the Commanding Officer for Court Martial of the accused-petitioner in accordance with the provisions of Section 475 Cr.P.C. Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner argues that the Army Officials moved the application for transfer of the case at a very belated stage i.e. after eight months of the intimation to them. Therefore, the present petition should be allowed.

I have heard learned counsel for the petitioner.

Section 475 Cr.P.C., reads as under:-

Section 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 situate within the State be brought before a Court- martial for trial or to be examined touching any matter pending before the Court- martial.”

It is a settled position that when an offence is committed by a person in active service of the Armed Forces, both the ordinary Courts established under law as well as the Authorities under the Armed Forces have concurrent jurisdiction. However, the right to exercise the option is with the Armed Forces Authorities. The accused does not have a right to demand or choose trial by a particular forum. Reference in this regard can be made to the judgment of Hon'ble Supreme Court in **Balbir Singh Vs. State of Punjab 1994 SCC (Cri.) 685** as well of this Court in **Union of India Vs. State of Punjab 1999(3) R.C.R. (Criminal) 365**. There is no merit in the argument raised by learned counsel for the petitioner that there is a delay in moving the requisite application by the Army Authorities. The learned Chief Judicial Magistrate, Pathankot, has rightly held that the Army Authorities exercised their option without any undue delay.

Learned counsel for the petitioner is unable to point out any infirmity, illegality or perversity in the impugned order dated 03.02.2018, which calls for interference by this Court in exercise of its revisional jurisdiction.

Accordingly, this petition is dismissed.

It is clarified that none of the observations made hereinabove

shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

27.02.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No