

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2019

CORAM:

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.P.No.21489 of 2019

1. The Presiding Officer,
Members of DCM,
conducted at Military Hospital,
Chennai.
 2. The General Officer,
Commanding, Dhakshin Bharat Area,
Island Grounds,
Chennai 600 009. Petitioners
- vs.
1. NK (PTA) J.Prakash
No.15418727N, aged 35 years,
S/o.Late Jesuraj,
Military Hospital, Chennai-32
Presently residing at
No.7/58, North Street,
Nallamanaickenpatti,
Dindigul - 624 003.
 2. The Superintendent,
Central Prison,
Puzhal, Chennai.
 3. The Registrar,
Armed Forces Tribunal,
Rudhra Road, St. Thomas Mount,
Chennai 600 016. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorari, to call for the records in M.A.No.33 of 2019 in O.A. Appeal No.175 of 2018 on the file of the 3rd Respondent/Tribunal, dated 18.01.2019 and quash the same, insofar it is against the Petitioners.

For Petitioners	:	Mr.V.Balasubramanian
For 1st Respondent	:	Col.Dr.Edwind Jesudoss (Retd.)
For 2nd Respondent	:	Mr.Akhil Akbar Ali, Government Advocate

O R D E R
(Order of the Court made by M.M.SUNDRESH, J.)

The Petitioner has come forward to challenge the order dated 18.01.2019 passed by the 3rd Respondent in M.A.No.33 of 2019 in O.A. Appeal No.175 of 2018.

2. In the aforesaid order, pending Appeal, against the conviction rendered, the 1st Respondent has got the sentence suspended. It is this order, which is sought to be challenged.

3. Learned counsel for the Petitioner submitted that the Appellate Authority has made certain unwarranted remarks against the victim. Considering the nature of the offence in which, the 1st Respondent is involved coupled with the findings rendered by the Appellate Authority, the suspension ought not to have been granted. Hence, according to the learned counsel, the Writ Petition will have to be allowed.

4. Learned counsel appearing for the 1st Respondent, while raising the question of maintainability, has submitted that the impugned order has been passed after considering the relevant materials. According to him, this Writ Petition is also not maintainable on the ground that as per Section 13 of the Arms Act, no Appeal would lie against an interim order.

5. It is further submitted by the learned counsel appearing for the 1st Respondent that, what has to be done by the 3rd Respondent is to hear the Appeal on merits and therefore, the Writ Petition will have to be dismissed.

6. We are not inclined to go into the issue of maintainability, as we do not find any reason to go into the same. Admittedly, much water has flown under the bridge. The impugned order has been passed on 18.01.2019. The 1st Respondent was under incarceration for nearly 30 days, already.

7. The findings rendered in M.A.No.33 of 2019 are only for the purpose of deciding the said Application alone. It is trite that any observation or finding in an Application is only prima facie in nature and certainly, it will not have a bearing on the final adjudication.

8. In such view of the matter, we are of the view that there is no need to interfere with the order dated 18.01.2019 passed in M.A.No.33 of 2019 in O.A. Appeal No.175 of 2018, at this stage, by invoking the discretionary power under Article 226 of the Constitution of India.

9. The 3rd Respondent/Registrar, Armed Forces Tribunal,

Chennai, is expected to decide the Appeal on merits, without being influenced by the observation made in M.A.No.33 of 2019.

10. We also note that the authority who passed the impugned order in M.A.No.33 of 2019, is no longer holding the said post. Therefore, there is no basis for the apprehension, even otherwise.

The Writ Petition is closed with the above observation. No costs.

Consequently, connected W.M.P.No.20694 of 2019 is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Superintendent,
Central Prison, Puzhal, Chennai.
2. The Registrar,
Armed Forces Tribunal,
Rudhra Road,
St. Thomas Mount,
Chennai 600 016.

+1cc to Mr.Col.Dr.Edwind Jesudoss (Retd.), Advocate, S.R.No. 90340

+1cc to Mr.V.Balasubramanian, Advocate, S.R.No. 90051

+1cc to the Government Pleader, S.R.No. 90411

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