

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

CRM-M No.3842 of 2019
Date of decision: 4th July, 2022

Manoj Kumar

... Petitioner

Versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Arun Singla, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana
for respondent No.1.

Mr. Udit Garg, Advocate for respondent Nos.2 and 3.

Mr. Neeraj Yadav, Advocate for respondent No.4.

FATEH DEEP SINGH, J.

This order shall dispose off a petition under Section 482 Cr.P.C. moved by Manoj Kumar, GNR No.15192297L attached with 125 SATA Regiment c/o 56 APO, who happens to be a permanent resident of village Kuni Daultabad, Gurugram (Haryana). The petitioner in this invocation has sought quashment of an order dated 06.12.2018 (Annexure P6) of the Court of learned Additional Sessions Judge, Gurugram passed in criminal revision of respondent No.4 Sonu complainant against order dated 21.08.2018 of the Court of learned SDJM Pataudi whereby the Commanding Officer of the Regiment was ordered to hand over custody of the petitioner to the investigating officer.

Heard Mr. Arun Singla, Advocate for the petitioner;

Mr. Gaurav Jindal, Addl. Advocate General, Haryana for respondent

No.1; Mr. Udit Garg, Advocate representing respondents No.2 and 3; Mr. Neeraj Yadav, Advocate on behalf of respondent No.4 and perused the records of the case.

A criminal case by way of FIR No.151 dated 15.04.2017 under Sections 328, 304-B, 498-A, 406 IPC was registered at Police Station Pataudi, Gurugram against the petitioner. It is during the course of proceedings vide orders dated 21.08.2018 (Annexure P4), the application moved by the Commanding Officer of the Unit for handing over criminal case pertaining to the petitioner to the Army Authorities was disposed off by SDJM Pataudi. The order was subsequently challenged by the complainant side through revision before the learned Additional District Judge, Gurugram who vide impugned order dated 06.12.2018 while disposing off the revision, directed the Commanding Officer to hand over custody of the petitioner to the Investigating Officer within one month. The same is subject matter of challenge before this Court.

Appreciating the submissions, Section 125 of the Army Act, 1950 is reproduced as below to lay emphasis:-

“125. 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.”

A plain reading of this statutory provision shows that prerogative lies with the Commanding Officer of the Unit where the accused Army personnel is serving, to take a decision but it is well settled preposition of law as has been laid down in the case of **‘General Officer Commanding vs. CBI and another’ 2012 AIR (SC) 1890**, whereby it was laid down by the Supreme Court that the stage of making option to try an accused by a Court martial and not by the criminal Court is after filing of the charge-sheet and before taking cognizance or framing of the charges.

Reverting back to the instant case, it is not displaced by any means that upon registration of the criminal case for one reason or the other citing exigencies of military duties the accused has not been produced before the investigating agency much less before the concerned Judicial Magistrate and therefore apparently has put to knots the investigations. What one can decipher from such a conduct of the Army authorities in not producing the accused petitioner before the Court/ investigating agency is nothing but a camouflage to save him from being tried as per the law. There appears to be an insincere effort by the Army authorities in trying to protect their own man and thereby throwing off to the winds all cannons of criminal justice system. The Rules regarding Adjustment of Jurisdiction of Civil and Military Courts over Military Personnel accused of Civil Offences, whereby a notification has been

issued by the Central Government, Ministry of Home Affairs and which Rules popularly known as Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978 (in short, 'the Rules') so framed ensures that the first and the foremost step in that direction is that any person subject to military law as is in the present case is to be produced before a Magistrate and the Magistrate shall proceed to try such person or to commit the case to the Court of Sessions only if he is moved by competent military authority or in his opinion for reasons to be recorded, shall hold to proceed or to commit such a person without being moved by any such authority. Under Rule 4 of these rules, before proceedings under Rule 3(b), the Magistrate is under bounden duty to give a written notice of the accused to the Commanding Officer or the competent military authority, as the case may be, and it is thereafter the process enshrined under Section 475 Cr.P.C. shall come into play. Since the accused has never been produced before the investigating officer or the Magistrate therefore, apparently there is a feigned subversion by the authorities taking undue advantage that accused is in military uniform. It is only when the Magistrate sets the process into motion, then only further action can be initiated under Section 475 Cr.P.C. Reliance is sought to be placed on **'State of Sikkim vs. Jasbir Singh & another'** 2022 (2) Scale 688. In another view of the Supreme Court in the case of **'S.K. Jha Commodore vs. State of Kerala and another'** 2012(3) RCR (Criminal) 838, while relying on a Constitution Bench view laid down in **'Som Dutt Datta vs. Union of India and others'** AIR 1969 SC 414, interpreting the

provisions of the Rules as well as Section 475 Cr.P.C. the Supreme Court has clearly laid down that resort to provisions of Section 475 (then before amendment Section 549) Cr.P.C. it is only when the police had completed the investigations and submitted the charge-sheet that provisions of the Rules can be invoked and not at the stage when investigations have set into motion. The same is the position in the present case. It is immediately after registration of the FIR on commission of the offence, the authorities have tried to hoodwink one way or the other to get over such an imbroglio fully aware of this legal position and thus, brings about a confident conclusion by this Court as to the very purpose of such frivolous petitions coming about at the very initial stage when the investigation has just begun. The learned Additional Sessions Judge, in the impugned order dated 06.12.2018 has rightly directed handing over custody of the accused petitioner to the investigating officer so as to ensure completion of the investigation and thereafter having compliance of the provisions of law detailed above. This Court does not feel any illegality or perversity in the findings under challenge. The petition being wholly without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 4, 2022

rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No