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W.P.No.21369 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.21369 of 2024

and

W.M.P.No.23320 of 2024

Ex.Nk.Kathiresan G
No.2607582
(Presently in Trichy Central Prison)
No.1225, East Street,
Kannanthangudi West (V) & PO,
Orathanadu (Taluk), Thanjavur (District),
Tamil Nadu – 614 625.

... Petitioner

Vs.

1.Union of India,
Through Secretary,
Ministry of Defence,
New Delhi – 110 011.

2.The Chief of Army Staff,
Through Adjutant General (ADGDV),
Army Headquarter,
New Delhi – 110 011.



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3.The General Officer Commanding,
Northern Command,
PIN-908542, c/o.56 APO

4.Madras Regt Abhilekh,
Karyalaya Records The,
Madras Regiment,
PIN – 900 458.

5.The PCDA(P)
Draupadi Ghat,
Sadar Bazaar,
Prayagraj, Uttar Pradesh – 211 014.

6.The Superintendent,
Central Prison,
Vellore, Tamil Nadu.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the proceedings in O.A.(A) No.171 of 2022 dated 25.01.2024 and quash the same.

For Petitioner	:	Mr.R.Karthik
For R1	:	Mr.V.Balasubramanian Senior Panel Counsel
For R6	:	Mr.M.R.Gokul Krishnan Additional Government Pleader



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ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This writ petition is directed against the impugned proceedings in O.A.(A) No.171 of 2022, dated 25.01.2024, passed by the Armed Forces Tribunal Regional Bench, Chennai.

2. Brief facts that are necessary for the disposal of this writ petition are as follows :

The petitioner was enrolled in Indian Army Service on 31.01.2001 and states that he has rendered about 18 years and 251 days of service till 08.10.2019. While he was in service, he was charged for committing murder of Major, pursuant to a heated argument he had with another person in the Army. The Police registered a case in FIR No.52 of 2017 and arrested the petitioner arraying him as accused along with other under Section 302 and 109 of Ranbir Penal Code. After investigation, final report was filed before the Judicial Magistrate, Uri, and the petitioner was put in Army custody. A Summary General Court Martial was constituted. Charges were



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framed against the petitioner for committing a civil offence, i.e., Murder, contrary to Section 302 of Ranbir Penal Code, and he was tried by Summary General Court Martial for charges under Section 69 of Army Act for committing a civil offence. The petitioner was found guilty of committing civil offence of culpable homicide not amounting to murder contrary to Section 304 of Ranbir Penal Code. The Summary General Court Martial sentenced the petitioner (i) to be reduced to the ranks, (ii) to suffer imprisonment for life, and (iii) to be dismissed from service.

3.The petitioner preferred a Pre-Confirmation Petition against the order of the Summary General Court Martial, before the Officer concerned and the Confirming Authority of Summary General Court Martial, vide order dated 17.01.2020, rejected the Pre-Confirmation Petition and the same was communicated to the petitioner vide letter dated 29.01.2020. The petitioner's wife also preferred an Appeal dated 09.03.2021 under Section 164(2) of the Army Act, 1950, to the Chief of the Army Staff, stating that her husband preferred an Appeal to the Chief of the Army Staff through Ministry of Defence, New Delhi, on 09.01.2001, but no reply was received.



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The petitioner's wife prayed for pensionary benefits in respect of her husband and to provide copies of findings and sentence arrived at by the Summary General Court Martial convened by General Officer Commanding. The claim of the petitioner's wife for pensionary benefits was rejected.

4.The petitioner, thereafter, filed an Original Application in O.A.(A) No.171 of 2022 before the Armed Forces Tribunal Regional Bench, Chennai, to set aside the proceedings of the Summary General Court Martial mainly on the ground that the Summary General Court Martial failed to consider several factual aspects. It is to be noted that, before the Tribunal, the petitioner contended that the act of the petitioner was a rash act without intention to kill the officer, but he was charged under Section 304 of Ranbir Penal Code instead of Section 304-A. The second issue raised by the petitioner before the Tribunal was that the petitioner never had a criminal intention. Since there was no pre-meditation or intention to kill and the incident happened due to a sudden provocation, the offence under Section 304 of Ranbir Penal Code is not attracted.



WEB COPY 5.The Tribunal, after going through the records, has recorded the factual findings as follows :

“(a) The fact that the Applicant fired his Service Weapon (AK47) which caused the death of his superior officer IC 76354W Maj Shikhar Thapa has been unequivocally accepted by him as also witnessed by a number of his colleagues.

(b) The act of firing the Service Weapon by the Applicant which resulted in the death of IC 76354W Maj Shikhar Thapa was witnessed by the following Eye Witnesses as per statement in the Sub-Judge Court, Uri:

- i. Lt Col Prabhakaran A/p 8RR Madras Camp 12 Brigade Uri (Annexure A6 Page 40)*
- ii. No.MS18487F Kishan D.Taresh Mallesh (Annexure 6 Page 43)*
- iii. No.1548451M Sep Sandeep Kumar P (Annexure A6 Page 48)*
- iv. No.220083F Sep Karthikeyan (Annexure A6 Page 49)*
- v. No.2606255A Hav Prakash (Annexure A6 Page 50)*
- vi. No.2615099H Sep Vinod V (Annexure A6 Page 52)*
- vii.No.2614046 Sep Dwakaran (Annexure A6 Page 53)*



viii.No.15501063K Sep Mallesh Dodomani (Annexure A6

Page 54)

ix. No.2617550H Sep Thiruppathi (Annexure A6 Page 55)

(c) No physical act of violence nor any gesture indicating physical assault were made by the deceased Officer (IC 76354W Maj Shikhar Thapa) nor the JCO Sub Avtar Singh who were the other main protagonists in this unfortunate incident.”

6. Thereafter, the Tribunal examined whether the case falls under Section 304 of Ranbir Penal Code or under Section 304-A of Ranbir Penal Code. Taking note of the events admitted, statement of witnesses, sequence of events and the actual conduct of the petitioner at the time of commission of offence, the Tribunal specifically held that the petitioner had deliberately changed the Safety Lever of his service weapon to Fire Position, which is a pre-requisite safety precaution to prevent accidental fire. Firing of shots using service weapon has been proved as a matter of fact and hence, the Tribunal came to the conclusion that the incident cannot be brought under rash or negligent act.



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7.The soldiers in operational areas are required to deal with extremely challenging situations and also to deal with agitated civilians in insurgency conditions and verbal provocation of any form cannot be an excuse to open indiscriminate fire. In this case, the petitioner has used his service rifle to open fire on his superior and he knows the possible consequence of using his service rifle which is capable of killing anyone at a distance. It is to be noted that the petitioner has no excuse for using the weapon targeting his superior. There is no mitigating circumstance which could be pointed out by the petitioner. In such circumstances, this Court is not inclined to interfere with the findings of the Tribunal which is supported by strong materials and evidence.

8.For the reasons stated above, this writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (N.S., J.)
29.07.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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New Delhi – 110 011.
- 2.The Chief of Army Staff,
Through Adjutant General (ADGDV),
Army Headquarter,
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