

**CRM-M-35418-2018****261****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-35418-2018****Date of Decision: 29.07.2024****HARI PAL****... Petitioner****Versus****STATE OF HARYANA & OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present:** Mr. Karan Singh Sura, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

None for respondent No.2.

Ms. Anita Balyan, Advocate
for respondent No.3.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 04.06.2018 (Annexure P-7) passed by the Sessions Court, Palwal in FIR No.145 dated 24.02.2015 registered under Sections 148, 149, 323, 452, 307, 506 IPC and Section 25 of Arms Act at Police Station Hodal, District Palwal transferring the case qua accused/respondent No.2 to the Commanding Officer, Armed Forces Tribunal, Indian Army, Delhi, C/o 56 APO with a further prayer that the Regular Court i.e. the Sessions Court, Palwal be directed to try the case arising out of the aforementioned FIR.

2. The brief facts of the case are that on the statement of the petitioner/complainant, FIR No.145 dated 24.02.2015, U/s 148, 149, 323,



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452, 307, 506 IPC and Section 25 of Arms Act, Police Station Hodal, District Palwal came to be registered against respondent No.2 and his co-accused namely, Mohan, Dwarka, Karambir, Vijaypal Bolu and certain others. The translated copy of the FIR is attached as Annexure P-1 to the petition.

3. After the completion of the investigation, co-accused Karambir was challaned whereas the challan against Raju and Bholu alias Bharat Lal was presented before the Juvenile Justice Board, Palwal. Vijaypal Bolu and Dwarka sons of Mohan were declared innocent. Respondent No.2 and co-accused Mohan have not been arrested by the Investigating Agency.

4. The petitioner/complainant moved an application under Section 319 Cr.P.C. for summoning respondent No.2 and the other co-accused as additional accused. The said application was allowed by the Court of Addl. Sessions Judge, Palwal vide summoning order dated 25.10.2016. The copy of the order dated 25.10.2016 is attached as Annexure P-2.

5. Respondent No.2 who had been summoned to face Trial as an additional accused filed an application for transferring the case from the Regular Trial Court at Palwal to the Armed Forces Tribunal, Delhi/Allahabad on the grounds that he was serving in the Indian Army. The copy of the said application is attached as Annexure P-3 to the petition.

6. The petitioner/complainant filed a reply to the said application stating that there was no letter received from the Higher Authorities of the Army to transfer the case of the respondent No.2/accused.

7. The Sessions Court, Palwal before deciding the application for transferring the case sent communications to the Army dated 17.05.2018 and

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28.05.2018. The copies of the letters are attached as Annexure P-5 (colly) to the petition.

8. The field Postmaster of the Military responded vide letter dated 15.05.2018 stating that the Court was requested to approach the nearest Indian Army Authority/Station HQ for further necessary action to transfer the case. The copy of the said letter is attached as Annexure P-6 to the petition.

9. Instead of writing to the authority as mentioned in the letter (Annexure P-6), the Trial Court directed the Investigating Agency to submit a supplementary challan against respondent No.2/accused before the Commanding Officer, Armed Forces Tribunal, Indian Army, Delhi and the answering respondent No.2/accused directed to appear there on 23.07.2018. The copy of the order dated 04.06.2018 is attached as Annexure P-7 to the petition.

10. It is this order which is under challenge in the present petition.

11. The learned counsel for the petitioner contends that in the instant case, if the case of the answering respondent No.2/accused was to be sent to the Army, the Trial was to be conducted by a Court Martial and only an appeal lay to the Armed Forces Tribunal. Therefore, the direction in the impugned order that the supplementary challan was to be presented before the Armed Forces Tribunal and the prosecution evidence was to be taken before that Forum was illegal. Reliance is placed on Section 15 of the Armed Forces Tribunal Act. He further contends that the respondent No.2/accused was not competent to file the application (Annexure P-3) as Section 125 of the Army Act, 1950 mandates that the application would only be filed by the Commanding Officer and in this case there was no such application. In the



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absence of the application, the impugned order could not have been passed. He therefore, contends that the said order was liable to be set aside and the Trial was to proceed against the accused/respondent No.2 before the Court of competent jurisdiction at Palwal.

12. The learned State counsel while referring to the reply dated 26.11.2018 has only reiterated the factual position as narrated above.

13. None has put in appearance on behalf of respondent No.2.

14. The learned counsel for respondent No.3 very fairly submits that in terms of Section 15 of the Armed Forces Tribunal Act, the Trial was to be conducted by Court Martial and only an appeal lay before the Armed Forces Tribunal. She further admits that in the instant case, there was no application of the Commanding Officer of respondent No.2/accused to the effect that his case was to be instituted before a Court Martial. She therefore, concedes that the impugned order was liable to be set aside.

15. I have heard the learned counsel for the parties.

16. Before proceeding further in the matter, it would be apposite to examine Section 15 of the Armed Forces Tribunal Act and Section 125 of the Army Act, 1950 they read as under:-

“15. Jurisdiction, powers and authority in matters of appeal against Court-Martial.-

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a Court-Marital or any matter connected therewith or incidental thereto.



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(2) Any person aggrieved by an order, decision, finding or sentence passed by a Court-Martial may prefer an appeal in such form, manner and within such time as may be prescribed.

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(4) The Tribunal shall allow an appeal against conviction by a Court-Martial where.-

(a) the finding of the Court-Martial is legally not sustainable due to any reason whatsoever; or

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—

(a) substitute for the findings of the Court-Martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the Court-Martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 ([46 of 1950](#)) or the Navy Act, 1957 ([62 of 1957](#)) or the Air Force Act, 1950 ([45 of 1950](#)), as the case may be; or

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may.-



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(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be;

(c) enhance the sentence awarded by a Court-Martial:

Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a Criminal Court for the purposes of section 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code (45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

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.”

17. A perusal of the aforementioned provisions of the Armed Forces Tribunal Act and the Army Act would show that firstly, it is the officer commanding an accused person who shall decide as to whether the case

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against the said accused would be instituted before a Court Martial or the Regular Courts. Once, a case is instituted before a Court Martial then an appeal would lie to the Armed Forces Tribunal.

18. Quite apparently, firstly, there is no communication addressed by the Commanding Officer of the accused/respondent No.2 to the Regular Trial Court seeking to try the accused/respondent No.2 through a Court Martial. Secondly, the Regular Trial Court has erroneously assumed that it was the Armed Forces Tribunal which was to conduct the Court Martial against the accused/respondent No.2.

19. In view of the aforementioned discussion, it is apparent that the impugned order dated 04.06.2018 (Annexure P-7) cannot be sustained and therefore, the said order stands quashed. The Court of Sessions at Palwal is directed to proceed and conclude the Trial as expeditiously as possible but in any case not later than six months from the date of receipt of a certified copy of this order.

(JASJIT SINGH BEDI)
JUDGE

29.07.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No