

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216)

CRWP No. 1276 of 2024 (O&M)
Date of Decision : 16.10.2025

Vivek Kumar Sharma

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL**

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

Mr. Parvesh K. Saini, Senior Panel Counsel
for the respondent-UOI.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the order dated 16.12.2020 (Annexure P-3) passed by the learned Armed Forces Tribunal, Chandigarh Bench, Chandigarh by which, the punishment awarded to the petitioner by the General Court Martial and confirmed by confirming authority to the effect that he will be dismissed from service and will suffer a life imprisonment on ground of murder of Sub. Shiju Alex and BHM Brij Bihari of same Unit, has been upheld.

2. Briefly stated, the facts of the case are that on 10.11.2007 at 15.15 hours, a written First Information Report No. 196/07 was lodged at Police Station Bhaderwah, District Doda (Jammu and Kashmir) by Lt. Col. S.C. Prasad, Camp Commandant, Corps Battle School, Bhalra, District Bhaderwah (J&K). It was stated therein that on 10.11.2007 at about 11.25



hours, the accused fired upon Sub. Shiju Alex and BHM Brij Bihari of 105 Air Defence Regiment from his service weapon at Dugga Training Camp within the jurisdiction of the said police station, resulting in their death.

3. On the basis of the said FIR, a case under Section 302 IPC and Section 125 of the Army Act was registered against the accused/petitioner. He was apprehended on the spot along with his service weapon and ammunition and was handed over to the police. The accused was produced before the learned Magistrate, Bhaderwah, who, vide order dated 14.02.2008, referred the matter to the Army authorities under Section 125 of the Army Act.

4. After completion of pre-trial formalities, the accused/petitioner was separately charged under Section 69 of the Army Act read with Section 302 of the Ranbir Penal Code for each murder. The petitioner denied the charges and claimed trial.

5. The prosecution, in order to establish its case, examined 21 witnesses. However, he did not produce any evidence in his defense, though prosecution witnesses were cross-examined.

6. Thereafter, statement of accused/petitioner under Section 164 Cr.P.C. was recorded. Thereafter, petitioner was held guilty of the allegations in the court martial proceedings and as per the sentence/punishment, petitioner was dismissed from service and was awarded life imprisonment, which punishment was challenged before Tribunal.



7. After hearing learned counsel for the parties, the Tribunal dismissed the OA (Appeal) No. 839 of 2015 filed by the petitioner vide judgment dated 16.12.2020, which judgment is under challenge in the present criminal writ petition.

8. Learned counsel appearing on behalf of the petitioner argues that one of the ground taken by the General Court Martial to convict the petitioner is that the petitioner got his confession recorded by the Sub Divisional Magistrate wherein he conceded this fact that in fact, he had murdered his two colleagues because he was mentally and physically tortured by them. Learned counsel submits that the Sub Divisional Magistrate was not a competent authority to record a confessional statement under Section 164 of the CR.P.C., which fact has not been dealt with correctly by the Tribunal as, the said argument has been rejected on the ground that the provisions of Cr.P.C. are not applicable to the State of Jammu & Kashmir where the said incident took place. Learned counsel for the petitioner argues that even as per Section 164 Cr.P.C. applicable in Jammu and Kashmir, the power to record a confessional statement is with any Judicial Magistrate of Ist Class or any Judicial Magistrate of IInd Class, who may have been specially empowered in that behalf by the High Court. Hence, the reason given by Tribunal to reject the said contention and to take into consideration the confessional statement of the petitioner, vitiate the ultimate holding of the petitioner guilty of the allegation alleged against him as well as the awarding of the punishment to him.



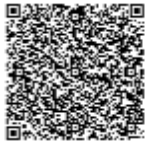
9. Learned counsel appearing on behalf of the respondents submits that even if it is assumed for the sake of argument that the confessional statement was not recorded as per the process envisaged by law, even then there were 21 witnesses whose statements were brought on record to prove the allegations alleged against the petitioner. Learned counsel submits that the allegation alleged against the petitioner was proved by the statement given by the witnesses apart from the confessional statement, which is being disputed.

10. We have heard learned counsel for the parties and have gone through the record with their able assistance.

11. Once, enough evidence has been brought on record to prove the allegation alleged against the petitioner that he had murdered two colleagues, which fact has been taken into consideration by the General Court Martial while recording the finding of guilt, the dispute qua the confessional statement, even if it is not taken into consideration, there is enough evidence on record to prove the allegation of murder of his two colleagues alleged against the petitioner.

12. Learned counsel for the petitioner has not been able to dispute the fact that no evidence was even brought on record by the petitioner in his defense, to prove his innocence. Thus, the evidence on record was sufficient enough to prove the allegation alleged against petitioner and on the basis of aforementioned, a finding of 'guilt', was recorded by the General Court Martial.

13. That being so, the recording of confession by an incompetent Authority will not make much different qua the ultimate findings recorded



by the General Court Martial as well as the punishment imposed upon the petitioner, is upon total evidence brought on record and conviction is not based solely upon the confession of the petitioner.

- 14. No other argument raised.
- 15. Keeping in view the above, no ground is made out for any interference by this Court in the present petition.
- 16. Dismissed.
- 17. At this stage, learned counsel for the petitioner submits that the petitioner has already undergone more than 14 years of sentence and he is entitled for pre-mature release. To enforce his said entitlement, petitioner can avail appropriate remedy before appropriate forum.

(HARSIMRAN SINGH SETHI)
JUDGE

(AMARINDER SINGH GREWAL)
JUDGE

October 16, 2025
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Whether speaking/reasoned : Yes
Whether reportable : No