

AFR
RESERVE
COURT NO. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
ORIGINAL APPLICATION No. 150 of 2012
Wednesday, this the 5th day of October, 2016

Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member.

Ex-Naik Satendra Kumar Mishra (Army No 15145688-L) of 71 Field Regiment, C/O 56 APO son of Shri Janardan Mishra, resident of village-Mathiya Mishra, post office-Ram Pur Bujurg, Tehsil-Hata, District-Kushinagar (UP)-274023

.....Applicant

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
2. General Officer Commanding-in-Chief, South Western Command, Jaipur, C/o 56 APO.
3. Commanding Officer, 71 Field Regiment, C/O 56 APO.
4. Officer-in-Charge, Artillery Records, Nasik Road Camp, APS Pin-908802.

....Respondents

Ld. Counsel appeared for the: Shri P.N. Chaturvedi, Advocate Applicant

Ld. Counsel appeared for the: Shri Bhanu Pratap Singh, Central Respondents Govt Standing Counsel assisted by Col Kamal Singh, OIC Legal Cell.

“Per Justice Devi Prasad Singh, Member J”

1. The applicant, a member of Corps of Artillery of the Indian Army rendered 11 years of service was charged for molestation of a girl. In consequence thereof, after due trial he was punished with imprisonment for one year and dismissal from service. Being aggrieved and after rejection of statutory complaint the applicant has preferred present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007.

2. We have Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Shri Bhanu Pratap Singh, Ld. Counsel for the respondents assisted by OIC Legal Cell.

3. At the very outset it is mentioned that we are not disclosing the full name of the victim so that she may not suffer from any social ill consequence and indicate her name as Miss V.

4. While posted at unit 71 Field Regiment, on 10.10.2010 the applicant was assigned the duty to look after children park SLI area of the unit. It is alleged that in the evening of 23.10.2010 at about 06.30 pm Miss V aged about 8 years (7 ½ years) was playing in the children park of the unit. It is alleged that the applicant forcibly opened the zip of her jeans and started rubbing on the private part of the girl and inserted finger in her vagina. Due to pain and shock, the girl tried to escape from the spot but the applicant forcibly asked her to hold on his penis

and asked her to suck it. It is alleged that the girl resisted and closed her eyes with her hands, but the applicant pushed his penis into her mouth. The matter was reported to mother by her who intimated the father who was away on leave. Allegations were investigated and applicant was tried by Summary Court Martial which commenced on 31.12.2010. During Summary Court Martial the applicant pleaded not guilty to charges framed under Section 69 of the Army Act, 1950 (in short, the Act). For convenience sake, Section 69 of the Act is reproduced as under:

*“69. **Civil Offences.** – Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India, commits any civil offence, shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say, -*

- (a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and*
- (b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.”*

5. After due Summary Court Martial, the applicant was convicted to one year's rigorous imprisonment and dismissal from service with effect from 25.01.2011. Applicant filed O. A. No. 57 of 2011 wherein by order dated 22.02.2011 he was directed to avail alternative remedy under Section 164 (2) of the Act. Review Application No. 08 of 2011 was preferred by the applicant which too was rejected vide order dated 14.03.2011 (Annexure A-2 and A-3 to the O. A.). Miscellaneous application filed by the applicant was also rejected (Annexure A-4 to the O.A.).

6. Subject to above, applicant preferred statutory complaint dated 07.03.2011 and additional petitions on 08.06.2011, 09.06.2011 and 18.06.2011. These petitions were rejected by General Officer, Commanding-in-Chief, South Western Command by impugned order dated 09.10.2011 and communicated to the applicant vide covering letter dated 28.10.2011 which was received by the applicant on 01.11.2011 (Annexure No A-1 (ii) and A-1 (iii)).

7. While assailing the impugned order, the applicant has raised the following arguments viz.:-

- (i) No F.I.R. was lodged;
- (ii) No identification parade was conducted;

- (iii) Being severe punishment it could not have been tried by Summary Court Martial, hence whole trial vitiates; and
- (iv) Applicant vehemently relied upon statement of the girl and submitted that no offence has been made out.

8. Coming to the first limb of argument that no FIR was lodged, hence the trial vitiates and seems to be not sustainable. The girl Miss V aged about 8 years was alleged to have been molested and her father Subedar Mool Singh submitted a complaint in consequence thereof proceedings began. Section 69 of the Army Act (supra) empowers the Army to put for trial through Court Martial in case Army personnel commit offence anywhere or at any place in India or beyond India and may be punished. Sub Section (a) of Section 69 of the Act clearly provides that if the offence is one which would be punished under any law in force in India with death or transportation, then such punishment may be provided by the Court Martial. Accordingly even if an offence is made out under Section 354 of the Indian Penal Code, as alleged by Ld. Counsel for the applicant, the applicant could have been punished through Court Martial though it is a civil offence in terms of definition contained in Section 69 of the Act.

9. Much emphasis has been given by Ld. Counsel for the application to Section 70 of the Army Act. For convenience sake Section 70 of the Army Act is reproduced as under :-

“70. Civil offences not triable by court-martial.- *A person subject to this Act who commits an offence or murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences-*

- (a) while on active service, or*
- (b) at any place outside India, or*
- (c) at a frontier post specified by the Central Government by notification in this behalf.*

10. A plain reading of the provision contained in Section 70 shows that a person who commits an offence of murder against a person not subject to military law, naval or air force law or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person shall not deem to be guilty of an offence against the Act and shall be tried by a court-martial, unless he commits any of such offences while on active service, at any place outside India, at a frontier post specified by the Central Government by notification in this behalf. Keeping in view the aforesaid rider contained in Section 70 of the Act, there is no room of doubt that the conduct of the applicant is not covered from said provision. It is not a case of murder or of culpable homicide not amounting to murder or

rape. All three offences referred in Section 70 of the Act are not part of charges levelled against the applicant. Accordingly contention of Ld. Counsel for the applicant seems to be not correct that above offence could not have been tried by the Summary Court Martial.

11. Apart from above Section 69 of the Act does not contemplate for lodging of FIR. Applicant's serious misconduct was within the Army area in the park for which he was assigned duty to supervise. Keeping in view the gravity of offence committed by the applicant with a child of Army personnel, decision taken by the Commanding Officer for trial through Summary Court Martial does not seem to suffer from any impropriety or illegality. Attention has not been invited by applicant's counsel to any statutory mandate under the Army Act whereby lodging of FIR may be said to be mandatory before proceeding through Summary Court Martial. Hence on receipt of complaint against a member of Army, appropriate authority authorised for the purpose may proceed for appropriate action without lodging F.I.R. subject to rider (supra) under the statute.

12. Further pleading and material on record show that charges under Section 69 was framed against the applicant on 14.12.2010. Miss V daughter of Subedar Mool Singh appeared as witness and was cross examined by the applicant during course of Summary Court Martial. During course of cross examination in answer to query made by the accused as to

whether she has seen him earlier, she replied that she had seen the applicant in the park daily. She further stated that she herself is making statement that she used to see the applicant getting football to the park on many occasions. In view of the statement given by the girl, there was no need of identification parade as asserted by Ld. Counsel for the applicant. Once the accused is known to the prosecutrix or the witnesses and from the material on record it is admitted fact that the applicant was in-charge of the children park and used to visit there every day, no identification parade was required.

Otherwise also the victim (PW-1) stated that she recognized the applicant sitting in the court room in front of her who molested her. She stated that 'he (applicant) gets football to the park daily'. In spite of repeated questions asked by the applicant, the girl stuck to her statement that the accused applicant brought football to the park daily. Keeping in view the statement given by the victim (a minor girl aged about 7 ½ years) and her firm and clear statement during Summary Court Martial neither it was necessary to hold identification parade nor there appears to be any doubt with regard to the involvement of the applicant in the shameful act.

13. Father of the girl Subedar Mool Singh (PW-2) stated that he received telephonic call on 23.09.2010 when he was out. Statement of PW-2 corroborates the statement given by victim

(PW-1) without any contradiction. Relevant portion of statement of PW-1 is reproduced as under :-

“On the evening of 23 October 2010 at about 1830 hr. I was playing in the children park which is located near my house. This uncle who is sitting in front of me, who gets football daily to the park called me and asked me about my name and father’s name. There was another small girl who was also in the park at that time. He told her to hide behind some tree and told her they are playing hide and seek. He asked me to sit on the wall of fountain facing towards the centre of the fountain. After this he slowly pushed me inside the fountain. Simultaneously when he was talking to me he forcible opened zip of my jeans and started rubbing his hand on my genitals and inserted his fingers in my vagina. Due to pain and shock, I tried to escape but he stopped. He opened his pants and asked me to hold his penis and also shake it with my hands then told me to get my tongue near his penis and suck which I resisted. When I refused he closed my eyes with his hands and pushed his penis in my mouth. He then urinated in the fountain and left.

I came out of the fountain, went home and narrated the incident to my mother.”

In his statement Subedar Mool Singh (PW-2) in his statement further stated that the matter was reported to Divisional Headquarter and before Lt Col Ravindra Joshi. The victim identified the applicant in the park where he was on duty before so many persons. He further stated that the victim was medically examined by Lieutenant Colonel Lalitesh, the

Gynaecologist at Military Hospital, who confirmed molestation. On 25.12.2010 this witness and the victim were called to 24 Infantry Division Provost Unit to identify the accused where she again identified the accused-applicant, who was standing amongst other persons. In his statement, Subedar Mool Singh (PW-2) stated that he never met the accused earlier.

14. JC-186405F Subedar KV Nagekar of 24 Infantry Division Postal Unit supported statement made by Subedar Mool Singh (PW-2) who lodged the complaint. No. 15113942W Havildar (Operator Radio) Vinod Kumar Sharma confirmed that the accused-applicant was assigned duty for maintenance of the children park which is near Sadul Lines where he resides. Emphasis has been given by Ld. Counsel for the applicant that Havildar Vinod Kumar Sharma (PW-4) did not recognize the victim keeping in view the statement given during course of Summary Court Martial. In this regard, it may be noted that PW-4 stated that he did not recognize any children as he was new and posted only in recent past in the children park. Accordingly, even if PW-4 did not recognize the children, it would make no difference.

15. No 15113381M Battery Havildar Major Yugal Kishore (PW-5) in his statement stated that the accused was present on the date and time in the park when the occurrence took place. IC-15018P Lieutenant Colonel Ravindra Joshi of Headquarter 24 Infantry Division stated in a statement that PW-2 Subedar

Mool Singh approached him to lodge the complaint with regard to molestation of his daughter, aged about 7 ½ years, against the accused who was assigned duty in the children park. After receipt of information from Subedar Mool Singh (PW-2) he reported the matter to Colonel PC Vyas, Colonel Q of Headquarter 24 Infantry Division. Lieutenant Colonel Lalitesh of 187 Military Hospital was examined as PW-7 during course of Summary Court Martial. Lieutenant Colonel Lalitesh is the Gynaecologist who confirmed that the victim was molested having pain in his private parts. The relevant portion of statement of PW-7 is reproduced as under:-

“Mr-7500A Lieutenant Colonel Lalitesh of 187 Military Hospital duly affirmed is examined by the court.

I, Mr-7500A Lieutenant Colonel Lalitesh am posted as Gynaecologist at 187 Military Hospital, Bikaner with effect from 01 August 2010. On 25 October 2010 at around 1230 hr Miss Vasundhara aged seven and half years who was accompanied by her father Subedar Mool Singh was medically examined by me in my department at 187 Military Hospital. I had received prior information from ADMS 24 Infantry Division on telephone about expecting this patient.

I, initially asked her about her complaint and she said she has pain. I then proceeded with the medical examination. The investigation revealed sexual assault on that child. ie. Miss Vasundhara. Then I enquired about the complete incident. She narrated the incident and said that she was

molested by the person who maintains Children Park.”

16. It may be noted that from the record it is borne out that Army Rule 141 (2), (3) and (4) were complied with and statements were read over to all the witnesses.

17. Applicant was given opportunity to lead defence witnesses keeping in view the provisions contained in Army Rule 118 and explained his right to defend himself. It appears that no defence witness was produced by the applicant to defend himself. However the applicant himself appeared and made statement and was questioned by court. From the statement made by the applicant it is evident that on the fateful date and time he was on duty assigned to work in children park (supra). However he stated that he was not present in the park at 0630 pm and someone misguided the child.

18. Subject to aforesaid evidence the Commanding Officer vide order dated 05.01.2011 awarded punishment to the applicant of reduction in the rank with rigorous imprisonment for one year and dismissal from service. While awarding sentence on 05.01.2011 the applicant was duly informed with his right to represent his case in case he is aggrieved by the finding and sentence of the Summary Court Martial. Applicant was informed that he may address his complaint to General Officer Commanding-in-Chief, Southern Command or any superior authority. While rejecting applicant's petition the General Officer Commanding-in-Chief, Southern Command by a detailed

and reasoned order held that the applicant used criminal force to Miss V aged about 7 ½ years. In the order, considering the gravity of the offence and the nascent age of victim, sentence awarded by the Summary Court Martial was found to be just and appropriate.

19. It is vehemently argued by Ld. Counsel for the applicant that the provision contained in Code of Criminal Procedure should have been applied with and the trial should have been remitted to the civil/criminal court. The Army Act is a special law meant to deal with persons serving in the Army keeping in view the special circumstances they face and certain privileges conferred on them. Unless the Army Act itself deals with a situation under which a case should be transferred to civil/criminal court, it is not necessary to do so. The Army is conferred with the option to proceed with trial keeping in view the facts of each case.

20. *Generalia Specialibus Non Derogant* is the maxim which is well applicable in the present case which means special law shall prevail over the general law in the event of conflict.

21. In view of the above the principles of interpretation are stated in the following cases:

In ***Bengal immunity Co. Ltd vs State of Bihar*** AIR 1955 SC 661 the court held (per Venkatarama Ayyar, J.) :

“One of the applications of the rule of harmonious construction is that a law generally dealing with a subject

and another dealing particularly with one of the topics comprised therein, the general law is to be construed as yielding to the special in respect of the matters comprised therein.”

(Per majority)

“The principle that particular or special rule must control or cut down the general rule is inapplicable where the two provisions do not relate to the same subject.”

22. In **J.K. Cotton Spg & Wvg Milla Co. Ltd vs State of Uttar Pradesh**, AIR 1961 SC 117, the Court held:

“In cases of conflict between special provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision.

*The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large numbers of matters in general and another to only some of them, his intention is that these latter directions should prevail as regards these, while, as regards all the rests, the earlier decisions should have affect. In **Pretty V. Solly** (1859) 53 ER 1032: quoted in Craies on Statute Law (6th Edition) at p. 206 Romilly, M.R., mentioned the rule thus:*

“The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the

general enactment must be taken to effect the other parts of the statute to which it may properly applies.”

23. In ***CIT vs. Shahazada Nand and sons*** AIR 1966 SC 1324 the Court held:

“The maxim generalia specialibus non derogant, means that when there is a conflict between a general and special provision, the latter shall prevail.”

But this rule of conception is not of universal application. It is subject to the condition that there is nothing in the general provision, expressed or implied, indicating and intention to the contrary. When the words of a section are clear, but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in ***Heydon*** case (1584) 3 Co. Rep 7a: 76 ER 637, yields better results.

24. In ***Maharaja Pratap Singh vs. Thakur Manmohan Dev*** AIR 1966 SC 1931 the Court held:

“in Maxwell on Interpretation of Statutes, the relevant principle is stated at p. 168 thus

A general later law does not abrogate and earlier special one by mere implication, Generalia specialibus non derogant, or in other words, ‘where there are general words in a later act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words without any indication of a particular intention to do so.’ In such cases it is presumed to have only general cases in

view, and not particular cases which have been already otherwise provided for by the special legislation.”

25. In **Anandji Haridas & Co. (P) Ltd vs. S.P. Kasture** AIR 1968 SC 565, the Court held:

“The special provision must be taken silently to exclude all cases falling within it from the purview of more general provisions.

Section 11 (4)(a) of C.T. & Berar Sales Tax Act (21 of 1947) specially provides for the intention of proceedings against a registered dealer who had not furnished returns in respect of any period by the prescribed date. Having made this special provision, the legislature must be taken to have intended that in a case falling under Section 11 (4) (a) the sales tax authority must proceed against the registered dealer under Section 11 (4) (a) and not under Section 11-A(1).”

26. In **Om Prakash vs. Union of India** (1970) 3 SCC 942, the Court held:

“Were a specific power is conferred without prejudice to the generality of the general powers already specified, the particular power is only illustrative and does not in any way restrict the general power.”

27. In **Ashoka Marketing Ltd Vs. Punjab National Bank**, (1990) 4 SCC 406, it was held:

“The Latin maxim, leges posteriores priores contrarias abrogant (later laws abrogate earlier contrary laws) is subject to the exception embodied in the maxim, generalia specialibus non derogant (a general provision does not derogate from a special one). This means that where the literal meaning of

the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. However, where both the enactments are special statutes in relation to the matters dealt with therein the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and the principle that the later laws abrogate earlier contrary laws, can be applied. In the case of inconsistency between the provisions of two enactment, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein.”

28. In view of above, option exercised by the Army to proceed with Summary Court Martial for the purpose of trial of the applicant is a quick method to punish guilty and does not seem to suffer from any jurisdiction error.

29. Moreover, why the Army shall falsely implicate the applicant? The motive of false implication is entirely missing. Otherwise also when there is direct evidence, motive has no consequence and pales into insignificance (vide **Bikau Pandey vs. State of Bihar**, (2003) 12 SCC 616). In the case of reported in **Mani Kumar Thapa vs. State of Sikkim**, (2002) 7 SCC 157 their Lordships of Supreme Court held that assuming that evidence is insufficient to establish the motive, but in case

the guilt is established beyond all reasonable doubt from other circumstantial evidence that it is the accused who should have committed the offence, the absence of motive will not hamper a safe conviction. It is well settled that reliable and acceptable version of the eyewitnesses, supported by medical evidence, pointing out guilt of the accused should be accepted (Vide ***Shamsher Singh vs. State of Haryana***, (2002) 7 SCC 536; ***State of U.P. vs. Kishan Pal*** (2008) 16 SCC 73; ***Birendra Das vs. State of Assam***, (2013) 12 SCC 236; ***Pohlu vs. State of Haryana***, (2005) 10 SCC 196, ***Haji Khan vs. State of U.P.***, (2005) 13 SCC 353, and ***Faquira vs. State of U.P.***, (1976) 1 SCC 662.

30. Otherwise also, the motive is a double edged weapon. On one hand, in case there is direct evidence and guilt is proved beyond doubt, motive is not necessary; on the other hand, in the event of direct evidence the case set up by an accused for false implication, the absence of motive strengthens prosecution version.

31. In the present case, the applicant has failed to point out even a piece of evidence which may establish that there was some reason behind his false implication hence evidence of the victim with regard to molestation establishes that the applicant has committed the crime.

32. With regard to the contention of the applicant that the sole witness cannot be relied upon for the purpose of conviction and

sentence, certain case laws requires to be considered. In the case of ***Badan Mahato @ Budhan Mahato vs. The State of West Bengal and Kamal Chandra Dey & Ors. Vs. The State of West Bengal*** reported in [2010 (2) CLJ (Cal) 610 held in a case under section 376 of the IPC that the sole statement of the victim is enough to convict in the crime of rape. In that case when the victim was returning from the house of neighbour she was taken up by the accused persons to jute field where the accused persons committed rape one by one against her will.

33. In another case reported in (2004) 13 SCC 308 in the case of ***State of M.P. vs. Dharkole alias Govind Singh and Ors.*** The Hon'ble Supreme Court held that even the names of some witnesses are not mentioned in the FIR does not affect the merit of the case. It is further held that in case ocular evidence is independent trustworthy it cannot be discarded merely because it is at variance with the medical opinion. The concept of probability cannot be expressed with mathematical precision, subjective element and it rests on common sense, more, when the witnesses examined by the prosecution withstood the cross-examination and pointed to the guilt of the accused.

34. In the present case reported in (2004) 13 SCC 257 in the case of ***Anil Kumar vs. State of U.P.*** Hon'ble the Supreme Court held that where the allegation is based on lady the minor variance in her or his statement should not be given primacy

and in case oral evidence is credible and cogent then even the minor variance in medical evidence shall be inconsequential.

35. In the case reported in (2004) 13 SCC 150 **Pramod Mandal vs. State of Bihar** Hon'ble Supreme Court reiterated the aforesaid principle of law with regard to appreciation of evidence which seems to squarely cover the present controversy. In Pramod Mandal's case (supra) Hon'ble the Supreme Court further held that in the absence of any motive for false implication, and if the offence is supported by trustworthy evidence, then the prosecution case may not be thrown out. Their Lordships further held that such matter including the matter with regard to Test Identification Parade should be left to the Courts of facts to decide as to whether evidence requires sustained the conviction or not keeping the facts and circumstances of the case.

36. In the case reported in (2013) 12 SCC 399 **Yogendra vs. State of Rajasthan** their Lordships of the Hon'ble Supreme Court held that effort should be made to separate falsehood from truth or separation of grain of chaff. In case separation is not possible only then evidence will be discarded. In the present case, statement of the victim supported by other statements combinely established the guilt of the accused beyond reasonable doubt.

37. The Hon'ble Supreme Court further held that the Court has to examine whether the evidence led as a whole have a

ring of truth and the case should be considered in the light of entire circumstances ignoring minor discrepancies which do not affect the core of prosecution version [vide (2013) 14 SCC 434, ***Rohtash Kumar vs. State of Haryana***].

38. As held by the Hon'ble Supreme Court, the minor discrepancies cannot take away the sub-stratum of testimony. More so, the presence of witnesses are not doubtful [vide (2014) 12 SCC 457, ***Putchalapalli Naresh Reddy vs. State of A.P.***].

39. It may be noted that criminal trial and the disciplinary inquiry under Court Martial proceedings deal with different nature of subjects. In criminal trial guilt should be proved beyond reasonable doubt whereas in service matter probability of commission of misconduct should be looked into. In criminal trial ocular testimony supported by medical opinion has got primacy over other evidence and in case the statement with regard to commission of offence is proved and established by ocular testimony with due compliance of principles of natural justice, then other minor discrepancies in the procedure shall not affect to convict and punish the accused.

40. In case, subject to aforesaid settled proposition of law the present case is considered then the applicant's seems to have committed dastardly act in the evening of 23.10.2010 at about 06.30 pm and there was no one to defend the minor girl. A person who was deputed to look after the children and maintain

the park indulged into a crime and deserves to be severely punished. The prosecution has proved the guilt of the applicant beyond reasonable doubt and that apart there is no motive with regard to false implication.

41. We do not find any merit in the O.A. to interfere; rather we are of the view that the applicant should have been punished with some more severe punishment. However, keeping in view the long lapse of time we refrain to proceed further in accordance with law to enhance the punishment.

42. The O.A. lacks merit and deserves to be dismissed. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)