

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

RESERVED
(Court No. 3)**Original Application No. 298 of 2013**Monday the 20th day of April, 2015**“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

No. 15319215Y Sapper Ram Das aged about 33 years, son of Sri Ram Kumar Kushwaha, r/o Village Gargpur (Sitaram Ka Purwa), Post Office Pauhar, Police Station Badausa, Tehsil Atarra, District Banda, (U.P.).

..... Applicant.

By Shri A.K. Maurya and Shri O.P. Kushwaha, learned counsel for the applicant.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarter, South Block New Delhi.
3. Commanding Officer, 16 Engineer Brigade Regiment (PMS) Pin – 914016, C/O 56 APO.

..... Respondents.

By Shri Prakhar Kankan, leaned Standing Counsel, along with Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. This Original Application has been filed by the petitioner seeking the following reliefs :

“(I) set aside the impugned order dated 20.10.2007 passed by respondent no.2/ General Chief of the Army Staff, Army

Head Quarter, South Block New Delhi s well as order of summary court martial dated 8.8.2006 passed by respondent no. 3, contained as Annexure no. 1 & 2 respectively.

(II) reinstate the applicant in service on the post of Sapper with consequential benefits..

(III) allow the instant O.A. with costs.”

2. The facts of the case, in brief, are that the petitioner was enrolled on 16.1.1999 in Madras Engineer Regiment and was posted to 16 Engineer Brigade Regiment with effect from 7.6.2005. He was detailed as *Sahayak* of Capt. Manish Kapil of the Unit. On 24.6.2006 the petitioner was accused by Mrs. Ruchi Kapil, wife of the officer, of attempt to molest and kill her. He was tried by SCM and charged as follows :

“AA Sec 69 COMMITTING A CIVIL OFFENCE THAT IS TO SAY USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY CONTRARY TO SECTION 354 OF INDIAN PENAL CODE

In that he,

At 1045 hrs on 24 Jun 2006, used criminal force to Smt. Ruchi Kapil, wife of SS-39482W Capt Manish Kapil of 16 Engineer Brigade Regiment (PMS), by pushing her to the bed nd lying on her in the officer”s married accommodation with intent to outrage her modesty.”

3. During the trial the petitioner pleaded not guilty. After examination of witnesses the court found him to be guilty and he was awarded punishment of 12 months’ R.I. and dismissal from service. The sentence of R.I. was to undergo in civil jail. He filed a petition before the COAS, which

was ultimately rejected by the order of the COAS on 12.10.2007. The petitioner was released from Civil Jail, Ambala, on 3.5.2007.

4. The petitioner's case was argued by Shri A.K. Maurya and Shri O.P. Kushwaha, learned counsel. As argued the petitioner was working as Assistant with Capt. Manish Kapil. According to the petitioner he declined to do illegal work ordered by Mrs. Ruchi Kapil and enraged by this she informed her husband that the petitioner had attacked her. Consequent to this the Company Subedar and other officer of the Unit beat him up and arrested him and he was kept under arrest for 45 days. He was tried by Court Martial on 8.8.2006 under Section 69 of the Army Act and was found guilty. The petitioner, however, claims that he did not participate in the SCM and he was not present when the witnesses were examined or he was not given opportunity to cross-examine them. He also claimed that his signatures were obtained on some piece of papers and he was informed that he had been found guilty and the punishment was inflicted upon him.

5. The petitioner states that according to Section 120(2) of the Army Act in case where there is no grave reason for immediate action, offences under Sections 34, 37 and 69 of the Army Act cannot be tried by SCM without reference to an officer holding power for convening DCM or SGCM. The petitioner states that there is nothing on record to suggest that this particular case was referred to a higher authority and, therefore, this entire SCM is vitiated. He goes on to say that had there been a DCM he would have had a counsel, conversant legally, to assist him. In SCM he

only had a friend of the accused, who was unable to provide any legal assistance to him. Also in DCM there would have been a JAG Officer present. In SCM this was not so. This, according to the petitioner, is miscarriage of justice and suo motu action on behalf of the Commanding Officer is totally arbitrary and he was wrongly and unlawfully dismissed without ascertaining the facts.

6. The respondents' case was argued by Shri Prakhar Kankan, learned Standing Counsel, along with Capt. Ridhishri Sharma, Departmental Representative.

7. The respondents stated that the petitioner was detailed/engaged as *Sahayak* with Capt. Manish Kapil. On 24.6.2006 at 1035 hours he was told by Mrs. Ruchi Kapil to take the officer's uniform to the Unit for ironing. Instead of obeying her the petitioner followed her in the bedroom, grabbed clothes from her hand and pushed her on the bed. The lady resisted. The petitioner, however, continued to molest her and attempted to outrage her modesty. He also threatened to kill her. To this offence the petitioner was tried by SCM on 8.8.2006 by the Commanding Officer, Col. A.K. Ramesh, for the offence under Section 69 of the Army Act and was appropriately sentenced.

8. The respondents vehemently denied that any injustice was done to the petitioner. According to the respondents, the petitioner's contention in the petition to the COAS are totally misconceived and bereft of merit and hence was rejected. The petitioner pleaded not guilty during SCM and after

examination of witnesses he was found guilty. The respondents state that the SCM was conducted with due deliberation and care and all provisions of law were scrupulously followed. The respondents stated that Section 120(3) of the Army Act states that any person subject to the Army Act except officers, JCOs and women officers may be tried by SCM and hence there is no illegality in the SCM proceedings. The petitioner was provided all the opportunities to defend himself and to cross examine the witnesses and considering the gravity of the offence, the punishment so awarded to the petitioner is correct, just and legal. The petitioner's case is totally devoid of merit and is worthy of being rejected.

9. Heard both the sides and examined the documents.

10. We have perused the original SCM proceedings. The charge under Rule 22 of the Army Rules was heard on 27.6.2006 wherein the Commanding Officer ordered that Summary of Evidence to be recorded. During the hearing of the charge the petitioner stated that *"I lost my mental balance momentarily and committed this mistake."*

11. The SCM started at 1200 hours on 8.8.2006 and concluded at 14.50 hours. Two officers, as provided in law, attended the trial and one Major P. Dharuwal was provided to the petitioner as Friend of the Accused. The petitioner pleaded not guilty and this declaration has been signed by him. Five witnesses were examined by the court and the petitioner cross-examined each one of them. The first witness was Mrs. Ruchi Kapil, who in her statement stated as under :

“On 24 Jun 06 I was in my home during the morning and was going about my household chores. My maid servant and Spr Ramdas who is my husbands Sahayak were also present. At about 1030hr my maid finished her work and lit. Soon I asked Spr Ramdas also to leave. While leaving I asked him to take my husbands clothes to the Regiment that was required for some event the next day. Saying so I went into my bedroom and began tidying up the room. I had asked Spr Ramdas to carry the clothes in a polythene cover so he had go into the next room. While I was tidying up my room I turned around and saw Spr Ramdas. He was too close to me and I felt uncomfortable. At this moment I was holding some clothes in my hand. He snatched it from my hand caught hold of me and threw me on the bed and tried to force himself on me. I cried out for help and pleaded with him to leave me. However he closed my mouth. I continued to struggle with all my might and in doing so fell off the bed onto the ground. He again caught hold of me and started hitting me. In the struggle a stand used as our “Mandir” was knocked down. I was help less and pleaded with him to leave me while shouting out for help. I offered him money and also promised not to complain. He threated to kill me asking me to cooperate. He reached for a cloth close by used as as a duster and tried to gag me with it. In this process one of his fingers came into my mouth and I bit it hard. This made his grip a little slack on me. I quickly pushed him and broke free. I rushed out of the room and opened the doors. I asked him to leave. He asked me not to report the matter particularly to my husband and assured me he will continue to work with sincerely. He straightened the things lying down in the room pick up the clothes he was to carry to the Regiment and left. I immediately called up my husband and asked him to come home without delay.”

12. The petitioner cross-examined this witness. He also cross-examined P.W. 2, P.W. 3, P.W. 4 and P.W. 5, whose statements lend credence to the statement of the victim lady, Mrs. Ruchi Kapil. P.W. 5, Sub. Major M. Govindaraj, in his testimony stated that the petitioner was brought to his office and on being asked the petitioner stated that he injured his finger while working in Capt. Kapil's residence. During SCM the petitioner declined to make any statement.

13. The testimonies during the SCM brings out that the petitioner did participate in the SCM contrary to what he stated in the petition and his learned counsel stated in the Court. We are, therefore, inclined to believe that the contention of the petitioner that he did not participate in the SCM is mis-representation of facts with a view to mislead the Court. We strongly condemn such behaviour and the petitioner is advised to state the truth and nothing but the truth while presenting his case.

14. Though the petitioner did not make any statement during the SCM or during Summary of Evidence, in a Court of Inquiry held earlier, he testified as witness No. 2. The extracts of the statement are as under :

“3. On 24 Jun 2006 at around 1045 h when I was doing my routine work at Capt Manish Kapil's House, Mrs Kapil told me that I could lve for the unit lines as my work was over and also asked me to carry some clothes for ironing to the regt. I was working in the second bedroom at that time and there was no one else in the house except myself and Mrs Kapil.

4. I went into the main bedroom where Mrs Ruchi Kapil was arranging clothes, to take the clothes for ironing. Sensing that she

was alone at home and was helpless I was overwhelmed with my urge to touch her. As I was picking up the clothes I brushed my elbow against her breast to gauge her reaction. She reacted back quit strongly and started scolding me for my misbehavior. I somehow gathered more courage and lost control of my senses. Mrs Kapil was shouting at me the top of her voice scolding me for my misbehavior. I snatched the clothes from her and pushed her on the bed and molested her. She kept resisting and shouting for help.

5. *After a while she managed to push me aside and tried to get up, I pulled her back, this time she fell on the ground. Seeing her forceful resistance I started hitting her and she also reciprocated by hitting me. In this tussle she got bruises on her face and I got hurt in my head and near my left ear. When I lost control over her and could not complete my motive I threatened to kill her and my rage I forced a duster towel into her mouth.*

6. *Along with the duster towel my finger also went into her mouth on which she bit frantically leading to my receiving an injury on my ring finger, right hand. Suddenly the thought of my misdeed and the fate of my family and children came to my mind and I left Mrs Kapil and requested her not to report the matter to anyone for God's sake and for the sake of my children and wife. I apologized to her for my misdeed and promised her of my renewed behaviour. I pleaded in front of her to pardon me took all the clothes scattered on the ground and started readjusting the racks and mandir which had fallen off during our tussle.*

7. *In the meantime, Mrs Kapil ran to the door and stood next to the door, and told me to leave, she assured me that she will not tell anyone about I once against requested her not to reveal the incident and came back to the unit line, I gave the clothes to the dhobi, took some rest and was going to go for lunch. After a while I got up and went towards the toilet complex to urinate when I heard Sub MB*

Kangralkar calling my name, when I saw him coming I came forward and he caught me and took me to the Coy Cdr's office.

Questions Asked by the Court

Q1. Did you plan your misdeed in advance knowing very well that Mrs Kapil will be alone at home on 24 Jun 2006, being a Saturday?

A No I did not plan anything in advance, it just happened in a spur on the moment I lost control over myself and somehow gathered courage to do the misdeed.

Q2. Did you threaten to kill Mrs Kpil in the course of your misdeed?

A. She was shouting to for help uncontrollably, I got scared that somebody might hear her and come for help. To stop her from shouting I did threaten to kill her.”

15. The statement of the victim, i.e. Mrs. Ruchi Kapil, during the SCM and the statement of the petitioner in the Court of Inquiry corroborate each other which goes to establish that the incident, as narrated by the victim, did occur and the charge against the petitioner is proved beyond reasonable doubt. In view of above, this Original Application is dismissed being devoid of merit. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

PG.