

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**M.A.No. 355 of 2018****(Leave to Appeal)****In Re:****O.A.No. 41 of 2015**Tuesday, this the 13th day of February, 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Lt Gen Gyan Bhushan, Member (A)**

1. Union of India (UOI), through The Hon'ble Secretary, Ministry of Defence, South Block, IHQ of MoD (Army), DHQ PO New Delhi-110011
2. Chief of the Army Staff (COAS), South Block, IHQ of MoD (Army), DHQ PO New Delhi-110011
3. General Officer Commanding-in-Chief, HQ Central Command, PIN- 908544 C/O 56 APO
4. General Officer Commanding, HQ 6 Mountain Division, PIN- 908406 C/O 56 APO
5. Commanding Officer, No. 54 Engineer Regiment, PIN-914054 C/O 56 APO

..... Applicants

By **Shri G.S.Sikarwar**, learned Central Govt Standing Counsel for the applicants.

Versus

No. 153447890-F Ex-Sapper Parmjit Singh, son of Shri Surat Singh through legal Representative (Smt. Amandeep Kaur, legally wedded wife of the applicant), resident of village Mustafabad Saidan, P.O. Hemarajpur, District Gurdhaspur (PB)-143521

..... Respondent

By Legal Practitioner **Shri Shailendra Kumar Singh**, learned counsel for the respondent.

ORDER (Oral)

1. Heard learned counsel for the parties.
2. This is an application under Section 31(2) of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the Act), for grant of leave to appeal against the judgment and order of this Tribunal dated 05.01.2018, passed in **O.A.No. 41 of 2015** in re: *Parmjit Singh versus Union of India and others*. As per Section 31, sub-section (1) of the Act, an appeal to the Supreme Court shall lie with the leave of the Tribunal and such leave shall be granted if it is certified by the Tribunal that a point of law of general public importance is involved in the decision.
3. In this case, Ex Sapper Parmjit Singh was charged under Section 60 of the Army Act read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) for committing 'aggravated sexual assault' on a minor girl child. In the judgment, the Tribunal has held that the offence of 'aggravated sexual assault' is not proved against Ex Sapper Parmjit Singh. It has, however, found that it was a case of simple 'sexual assault', which is punishable under Section 7 of the POCSO Act.
4. Learned counsel for the applicants submits that even for the offence of sexual assault, the minimum punishment under Section 8 of the POCSO Act is the imprisonment for three years, which may extend to five years. He has argued that when an offence of sexual assault is committed by a member of Armed Forces or security

forces, then it shall be an 'aggravated sexual assault', punishable under Section 10 of the POCSO Act, for which minimum five years of sentence is prescribed. The submission is that the Tribunal has, thus, committed error of law and jurisdiction in holding that the offence committed by respondent Parmjit Singh was of 'sexual assault' and not of 'aggravated sexual assault' and reducing the period of imprisonment from five years to the period already undergone by him, which was about only two and a half years.

5. Admittedly, Ex Sapper Parmjit Singh was a member of Armed Forces. The offence committed by him would fall within the purview of 'aggravated sexual assault' by virtue of provision of clause (b) of Section 9 of the POCSO Act. The punishment for the said offence is provided under Section 10 of the POCSO Act, which shall not be less than five years and may extend to seven years and the offender shall also be liable to fine.

6. Thus, the submission of learned counsel for the applicants is two-fold; first, that a point of law of general public importance involved in this matter is as to whether the Tribunal has authority to award a punishment which is less than the minimum prescribed under the statute; and second, whether the offence of 'sexual assault' if committed by a member of Armed Forces would automatically fall within the purview of 'aggravated sexual assault'.

7. At this juncture, it would be relevant to quote the relevant part of Section 9 of the POCSO Act, as hereinafter:

“9. Aggravated sexual assault.- (a) Whoever, being a Police Officer, commits sexual assault on a child-

- (i) *within the limits of the Police Station or premises where he is appointed; or*
 - (ii) *in the premises of any station house whether or not situated in the police station to which he is appointed; or*
 - (iii) *in the course of his duties or otherwise; or*
 - (iv) *where he is known as, or identified as a Police Officer; or*
- (b) *Whoever, being a member of the armed forces or security forces commits sexual assault on a child-*
- (i) *within the limits of the area to which the person is deployed; or*
 - (ii) *in any areas under the command of the security or armed forces; or*
 - (iii) *in the course of his duties or otherwise; or*
 - (iv) *where he is known or identified as a member of the security or armed forces.*

.....

.....

is said to commit aggravated sexual assault.”

8. Keeping in view the aforementioned definition of aggravated sexual assault and the minimum punishment provided under Sections 8 and 10 of the POCSO Act, we are of the considered view that in this case a point of law of general public importance to be considered by the Hon'ble Apex Court is involved; that is, regarding the imposition of punishment for the offence of sexual assault, whether it can be less than the one prescribed under the Act and whether the offence of sexual assault committed by a member of Armed Forces will automatically fall within the definition of 'aggravated sexual assault'.

9. In view of above, we **allow** this application. It is certified that in this case, a point of law of general public importance is involved in the decision of the Tribunal.

Accordingly, **leave to appeal is granted.**

(Lt Gen Gyan Bhushan)
Member (A)

(Justice SVS Rathore)
Member (J)

February 13, 2018

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