

(2022) 07 TP CK 0021
In the Tripura High Court
Case No : Writ Appeal 110 Of 2019

Dr. Ravichandran B.R.

APPELLANT

Vs

Union Of India And 8 Ors

RESPONDENT

Date of Decision : 27-07-2022

Acts Referred:

Border Security Force Act, 1968 — Section 117, 117(1)
Code Of Criminal Procedure, 1973 — Section 177, 218, 219, 219(1), 220, 222,
223(d), 225(1), 233, 234, 235, 235(1), 236, 239, 239(a), 239(b), 239(c), 239(d),
403(2), 482
Constitution Of India, 1949 — Article 226
Indian Penal Code, 1860 — Section 34, 304B, 406
Border Security Force Rules, 1969 — Rule 48(1), 53, 74, 76, 76(3), 102

Citation : (2022) 07 TP CK 0021

Hon'ble Judges : S.G. Chattopadhyay, J

Bench : Single Bench

Advocate : S. Kar Bhowmik, S. Deb, A. Bhattacharjee

Final Decision : Disposed Of

Judgement

S.G. Chattopadhyay), J

[1] This writ appeal is directed against the judgment and order dated 21.12.2018 passed by the learned Single Judge in WP(C) No.847 of 2018.

[2] The factual back ground of the case is as under:

While the appellant was serving as the Chief Medical Officer(CMO), in the 130 Bn BSF at Roshanbagh in Murshidabad district of West Bengal, a Staff Court of Inquiry (for short SCOI) was held against him on multiple charges. The first of those incidents occurred on 14.02.2015 at Berhampore in the Murshidabad district. Allegedly the appellant on that day slapped one of his subordinates in the office. The second incident occurred on 21.04.2015 at Roshanbagh in Murshidabad district. The appellant on that day allegedly slapped another subordinate staff of the Border Security Force (BSF). In the third incident which

occurred on 15.05.2015 in the combined hospital of BSF at Berhampore in Murshidabad, the appellant punched on the face of a head constable of 43 Bn of BSF and the fourth incident occurred on 18.05.2015 in the same hospital at Berhampore when the appellant allegedly slapped on the face of another constable of his own battalion. The appellant participated in the Staff Court of Inquiry (SCOI). The Staff Court of Inquiry (SCOI) at the conclusion of its inquiry recommended for strict disciplinary action against the appellant under BSF Act and Rules and also recommended to set up a board consisting of senior officers and specialist doctors to assess the suitability of the appellant to continue his service as his conduct 'lacked justification and it was unlike a doctor'. According to the report dated 19.06.2015, such recommendations were made 'with a view to avoid any future mishap in the force'. Finally, the SCOI gave an additional opinion on 18.07.2015 reaffirming its previous opinion and recommendations.

[3] Thereafter, pursuant to the direction of the commandant of his battalion, charge sheet was laid against the appellant for 06 different charges. The appellant was then informed that trial would be conducted against him for those charges by the General Security Force Court (GSFC) in terms of the BSF Act and Rules. Subsequently, the earlier charge sheet containing 6 charges was recalled and a new charge sheet consisting of 04 charges, as stated above, was served on him. Proceedings before the GSFC commenced on 30.01.2018. The appellant applied for supply of legible copies of all incriminating documents to him. Instead of supplying legible copies of those documents to the appellant, the GSFC took up the case for trial against the appellant. Appellant claimed before the GSFC that a single trial on 04 different charges were in contravention of the provisions of the BSF Rules 1969. The challenge of the appellant was discarded by the GSFC. Appellant challenged the order before the higher authority. He presented a petition under Section 117 of the BSF Act, 1968 against the said order of GSFC seeking stay of the proceedings before GSFC pending consideration of his petition. But, he was informed that the trial before GSFC would commence from 15.06.2018. Aggrieved appellant filed petition under Section 482 of the Code of Criminal Procedure read with Article 226 of the Constitution before the High Court for quashing the orders passed by the Staff Court Inquiry, the charge sheet and the proceedings pending before the GSFC. The learned Single Judge by his order dated 31.05.2018 passed in Crl.Petn. No.28 of 2018 passed by the higher authority of BSF and directed the concerned authority of BSF to dispose appellant's petition filed under Section 117 of the BSF Act on merit within 60 days after providing opportunity of hearing to the parties. The GSFC was also directed to supply copies of all documents to the appellant and the trial before the GSFC was stayed till disposal of the objections raised by the appellant in his petition filed under Section 117 of the BSF Act.

[4] Pursuant to the said order dated 31.05.2018 passed by this court in Crl.Petn No.28 of 2018, the concerned authority of BSF disposed of appellant's petition by an order dated 20.07.2018 which reads as under:

“

12. In view of all above, I find that prayer of the petitioner for segregating the trial for each charge is without any basis and is not supported by law. GSFC trial is conducted as per the provisions of BSF Act, 1968 and rules made thereunder. Charge sheet dated 31/12/2017 and countersigned by IG BSF Tripura on 16/01/2018 which was supplied to the petitioner and which formed part of the GSFC convened by the IG BSF Tripura Ftr vide his Order dated 16/01/2018 conforms to the provisions of law. In view of the above, revision petition dated 29/03/2018 is found lacking merits and is, accordingly, rejected.

13. It may be mentioned that revision petition u/s 117(1) of the BSF Act, 1968, dated 29/03/2018 submitted by the petitioner has again been disposed off only in compliance of directions of Hon'ble High Court of Tripura at Agartala dated 31/05/2018 in Criminal Petition No.28 of 2018 titled 'Dr Ravichandran B R Vs UOI and Others'. Such second time disposal of the same petition u/s 117(1) of the BSF Act, 1968 shall be restricted to this case only and will not act as a precedent.”

[5] After his petition was thus dismissed, the appellant filed another criminal petition before this court under Section 482 Cr.P.C read with Section 226 of the Constitution seeking a direction to stop further proceedings before the GSFC. The petition was registered as CrI. Petn 54 of 2018 which was withdrawn by the appellant on 11.09.2018.

[6] The appellant then filed WP(C) 847 of 2018 before this court challenging the legality and validity of the charge sheet containing 04 different charges and the proceedings before the GSFC where 04 different charges were clubbed together for a single trial against the appellant.

[7] Learned single judge by his judgment and order dated 21.12.2018 held that provisions of Cr.PC would not apply to the trial held against the appellant and under BSF Act and Rules, a charge sheet may contain more than one charge, if the charges are founded on the same facts or form part of a series of offences of same or similar character and those charges can be tried together in a single trial. Having viewed that the proceedings initiated against the appellant were in conformity with the provisions of BSF Act and Rules, the learned single judge declined to interfere with the proceedings pending before the GSFC against the appellant.

[8] Aggrieved with the order of the learned single Judge passed in WP(C) No.847 of 2018, the appellant filed Writ Appeal No.01 of 2019 which was allowed to be withdrawn by an order dated 11.03.2019 with a liberty to the appellant to file a review petition before the learned single judge.

[9] The appellant then filed a review petition before the learned single judge which was registered as Review Pet No. 30 of 2019. Learned single judge dismissed the review petition by an order dated 02.05.2019 which reads as

under:

"Heard Mr. S. Kar Bhowmik, learned counsel appearing for the petitioner as well as Mr. B. Majumder, learned counsel appearing for the respondents-Union of India.

Having gone through the contents of the review petition and the submissions advanced by the learned counsel for the petitioner, according to me, the entertaining of this review petition will tantamount to opening of the original writ petition. I find no error apparent on the face of the record.

The issue of non-supplying of copies of the documents, it would be taken care of by the concerned respondents in accordance with law in course of the proceeding itself.

I find no merit in the instant review application and hence, stands dismissed."

[10] Thereafter, the appellant filed the present appeal further challenging the impugned judgment dated 21.12.2018 passed by the learned Single Judge in WP(C) No.847 of 2018. The appellant has challenged the impugned judgment of the learned single judge mainly on the following grounds:

(i) Learned single judge did not appreciate the fact that 4 different and distinct charges were clubbed together for a single trial in contravention of Rule 74 read with Rule 76 of the Border Security Force Rules, 1969.

(ii) Learned single judge did not also consider the fact that each of the charges was altogether different because the offences for which these charges were framed were allegedly committed by the appellant at 4 different places on 4 different dates against 4 different persons and as such the evidence to establish those charges as well as defence evidence were also different.

(iii) Non supply of basic documents to the appellant seriously prejudiced him in conducting his defence which was not considered by the learned single judge.

(iv) Challenge of the appellant against non supply of the essential documents before the higher authority of BSF was arbitrarily and unfairly discarded by such authority which was not taken into consideration by the learned single judge at the time of hearing of the writ petition.

(v) Learned single judge did not assign adequate reasons for rejecting the review petition of the appellant against the impugned judgment.

(vi) Combined recording of the evidence for 4 distinct charges in a single trial was contrary to the provisions laid down in BSF Act and Rules and as such an erroneous trial prejudiced the appellant in his defence which amounted to the denial of his right to fair trial.

[11] Heard Mr.Somik Deb, and Mr.S.Kar Bhowmik, learned senior advocates appearing for the appellant along with Mr.A.Bhattacharjee, learned advocate. Also heard Mr.B.Majumder, learned Asst. Solicitor General of India appearing for

the official respondents.

[12] Counsel appearing for the appellant has contended that the appellant raised the plea before the learned Single Judge that clubbing of 4 different charges which did not form part of a series of transaction was contrary to the BSF Act and Rules. But such plea was not taken into consideration by the learned Single Judge.

[13] It is contended that the learned Single Judge did not appreciate the fact that the respondents agreed that collection of charge-wise evidence before the GSFC was absolutely necessary. Despite such agreement, 04 different charges were clubbed together and tried in a single trial against the appellant.

[14] Learned Single Judge did not appreciate the fact that the trial was totally vitiated for clubbing together 4 different charges in a single trial against the appellant.

[15] It has also been argued that the petition filed by the appellant, under Section 117 of the BSF Act was dismissed by Special DG [Eastern Command] without recording justifiable ground and even no opportunity of hearing was given to the appellant during the hearing of the petition. It is further contended by Mr. Kar Bhowmik, learned Sr. Advocate that the learned Single Judge did not appreciate the fact that non supply of charge specific document to the appellant caused serious prejudice to the appellant by preventing him from making out a proper defence.

[16] Under the aforesaid premises, counsel representing the appellant has urged the court to quash the GSFC proceedings which is complete by this time.

[17] In support of his contention, counsel of the appellant has relied on following decisions:

(i) Queen Empress Vs Juala Prasad : (1885) ILR7 ALL 174

(ii) CHANDRA BHAL Versus THE STATE OF U.P.: 1971(3)SCC 983

(iii) Somabhai Shamabhai Patel and Others vs State of Gujarat : 1986 SCC OnLine Guj 54

(iv) MOHAN BAITHA AND OTHERS Versus STATE OF BIHAR AND ANOTHER: (2001)4 SCC 350

(v) NARINDERJIT SINGH SAHNI AND ANOTHER Versus UNION OF INDIA AND OTHERS : (2002) 2 SCC 210

(vi) STATE OF PUNJAB AND ANOTHER Versus RAJESH SYAL: (2002)8 SCC 158

(vii) Sanjay Kumar Ghai versus State Through Its Chief Secretary I.T.O :(2007) Legal Eagle(DEL) 1959

(viii) M/S Nova Vision Electronics Pvt. Ltd. and Anr. v.State and Anr. : (2011)

CRI. L.J. 868

(ix) ESSAR TELEHOLDINGS LIMITED Versus CENTRAL BUREAU OF INVESTIGATION: (2015) 10 SCC 562

(x) State of Jharkhand through SP, CBI versus Lalu Prasad @ Lalu Prasad Yadav : 2017(8)SCC 1

(xi) MS.P1 XXX VERSUS STATE OF UTTARAKHAND & ANR. : CRIMINAL APPEAL NO.903 OF 2022[Arising out of SLP (CRL) No. 6548 of 2019]

(xii) NASIB SINGH Versus STATE OF PUNJAB AND ANOTHER : (2022) 2 SCC 89

[18] Relying on the Allahabad High Court's decision in the case of Queen Emprress Vs Juala Prasad (supra), counsel has contended that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately.

[19] Appellant's counsel also placed reliance on the decision of the Apex Court in the case of CHANDRA BHAL Versus THE STATE OF U.P. (supra) and contended that separate charge and separate trial for every distinct offence is a mandatory rule. The only object of such rule is to give to the accused a notice of the precise accusation and to save him from being embarrassed in his defence by the confusion which is likely to result from combining several charges at one trial. Counsel has referred to paragraph 5 of the judgment which reads as under:

"5. Turning to the provisions of the Code, Section 233 embodies the general mandatory rule providing for a separate charge for every distinct offence and for separate trial for every such charge. The broad object underlying the general rule seems to be to give to the accused a notice of the precise accusation and to save him from being embarrassed in his defence by the confusion which is likely to result from lumping together in a single charge distinct offences and from combining several charges at one trial. There are, however, exceptions to this general rule and they are found in Sections 234, 235, 236 and 239. These exceptions embrace cases in which one trial for more than one offence is not considered likely to embarrass or prejudice the accused in his defence. The matter of joinder of charges is, however, in the general discretion of the court and the principle consideration controlling the judicial exercise of this discretion should be to avoid embarrassment to the defence by joinder of charges. On the appellant's argument the only provision requiring consideration is Section 235(1) which lays down that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person then he may be charged with and tried at one trial for every such offence. This exception like the other exceptions merely permits a joint trial of more offences than one. It neither renders a joint trial imperative nor does it bar or prohibit separate trials. Sub-section (2) of Section 403 of the Code also provides that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him

on the former trial under Section 235(1). No legal objection to the appellant's separate trial is sustainable and his counsel has advisedly not seriously pressed any before us."

[20] Counsel has also argued that unless a person is accused of more offences than one of the same kind, committed within the space of twelve months or the charges form a series which are so connected together as to form the same transaction, every distinct offence should mandatorily be tried separately. Counsel referred to para 6 of the judgment in the case of Somabhai Shamabhai Patel (*supra*) which reads as under:

6. It may be stated at the outset that Sections 218 to 223 which deal with joinder of charges should be read together and not in isolation inasmuch they deal with the same subject-matter and set out different aspects of it. It is true that general rule is that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately, and joint trial is an exception. It appears that the object of Section 218 in requiring that there shall be separate trial for every charge is twofold, firstly to give the accused notice of charges and secondly to see that he is not embarrassed by having to meet charges in no way connected with one another. However, right from Section 219 to Section 220 certain exceptions to the above rule have been carved out. For example when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three. Further, under Section 220 the exception to the rule embodied in Section 218 is made namely, if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

[21] It has been argued by the appellant's counsel that the charges which have been framed against the appellant are not so connected together as to form the same transaction because the offences involved in these charges took place on different dates and at different places and against different persons. The set of evidence is also different. Counsel contends that whether certain act form part of same transaction or not is purely a question of fact which varies from case to case. To support their contention, appellant's counsel has relied on the decision of the Apex Court in Mohan Baitha (*supra*) in which the apex court has given the following observation on the expression 'same transaction':

"4.....The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute

the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore, a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria.....”

[22] Having relied on the decision of the Apex Court in the case of Narinderjit Singh Sahni(supra), counsel have argued that each of the charges brought against the accused is an independent transaction in terms of the place and date of the offence and the person against whom such offence was committed for which they cannot be treated as offences forming part of same transaction for a single trial.

[23] Relying on the decision of the apex court in the case of STATE OF PUNJAB AND ANOTHER Versus RAJESH SYAL(supra), counsel have contended that only when one series of acts are so connected together as to form the same transaction, offences, even if more than one, can be tried together.

[24] Having relied on the decision of the Delhi High Court in the case of Sanjay Kumar Ghai versus State Through Its Chief Secretary I.T.O (supra), counsel argued that in the said case, a petition was filed under Section 482 Cr.P.C seeking quashing of impugned order passed by the trial court for conducting separate trials of 5 charges against the petitioner. But high court dismissed the petition on the ground that the charges were different because the bank accounts against which the dishonoured cheques were issued were also different and those were issued on different dates and the complaints were also different. Therefore, the court held that the 5 offences brought against the accused do not form part of the same transaction as there was no proximity of time. The high court, therefore, rejected the plea seeking one trial for all the five offences.

[25] Similarly, in the case of M/S Nova Vision Electronics Pvt. Ltd. and Anr. v. State and Anr (supra) relied on by the appellant’s counsel, Delhi High Court has held that the general rule is that the accused should be separately charged in respect of each distinct offence alleged to have been committed by him and is entitled to a separate trial with respect to each of such charge in accordance with the provisions of Section 218 Cr.P.C. It has been held by the high court that it is important that series of acts which comprise of several offences are connected in a manner that they form one continuous whole i.e. one single transaction. High Court held that the transactions in the case were not interconnected as a continuous whole so as to form one single transaction because each purchase transaction being separate there was no continuity of action and each act was complete by itself. Mr. Kar Bhowmik, learned Sr. Advocate submits that in the instant case even though there is similarity in offences allegedly committed by the appellant, the time and place of those offences and the persons against whom those offences were allegedly committed are completely different and to prove those offences, prosecutor has produced separate set of evidence and

therefore, unless each of the transactions are treated as separate and tried separately, appellant would be seriously prejudiced in defending himself. Counsel, therefore, urged the court to quash the proceedings before the GSFC with a direction to hold separate trial for 04 distinct offences against the appellant.

[26] To nourish their contention, appellant's counsel have also referred to para 19 of the decision of the Apex Court in the case of *ESSAR TELEHOLDINGS LIMITED* (supra) which reads as under:

19. Read in the backdrop of Sections 220 and 223, it is clear that a discretion is vested with the Court to order a joint trial. In fact, in *Chandra Bhal v. State of U.P.*, this Court stated: (SCC p. 987, para 5)

"5.Turning to the provisions of the Code, Section 233 embodies the general mandatory rule providing for a separate charge for every distinct offence and for separate trial for every such charge. The broad object underlying the general rule seems to be to give to the accused a notice of the precise accusation and to save him from being embarrassed in his defence by the confusion which is likely to result from lumping together in a single charge distinct offences and from combining several charges at one trial. There are, however, exceptions to this general rule and they are found in Sections 234, 235, 236 and 239. These exceptions embrace cases in which one trial for more than one offence is not considered likely to embarrass or prejudice the accused in his defence. The matter of joinder of charges is, however, in the general discretion of the court and the principle consideration controlling the judicial exercise of this discretion should be to avoid embarrassment to the defence by joinder of charges. On the appellant's argument the only provision requiring consideration is Section 235(1) which lays down that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person then he may be charged with and tried at one trial for every such offence. This exception like the other exceptions merely permits a joint trial of more offences than one. It neither renders a joint trial imperative nor does it bar or prohibit separate trials. Sub-section (2) of Section 403 of the Code also provides that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235(1). No legal objection to the appellant's separate trial is sustainable and his counsel has advisedly not seriously pressed any before us."

[27] Having relied on the decision of the Apex Court in the case of *State of Jharkhand through SP, CBI versus Lalu Prasad @ Lalu Prasad Yadav* (supra), counsel have argued that in the said case, the court reiterated that every distinct offence should be charged and tried separately unless it forms part of the same transaction. Counsel has referred to para 27 of the judgment which reads as under:

"27. In State of A P v. Cheemalapti Ganeswara Rao & Anr. (1964) 3 SCR 297 this Court dealt with misjoinder of parties under section 239 of the old Cr.P.C. This Court with respect to 'same transaction' has observed thus :

"10. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which the Legislature has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same." Further, it was held that: "Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. But here, again, if those offences are alleged not be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embarrassment or difficulty caused to the accused persons in defending themselves."

(Emphasis supplied)

When several offences are alleged to have been committed by several accused persons this Court has laid down that normal rule is of separate trials."

[28] Counsel has also relied on the decision dated 16.06.2022 of the Hon'ble Apex Court in the case of Ms.P1 XXX VERSUS STATE OF UTTARAKHAND & ANR. (supra), in which the following question came up for consideration before the court:

Whether the acts complained would be said to be 'one series of acts so connected together as to form the same transaction' for the purpose of trial together. While examining the issue, the Hon'ble Apex Court made the following observations in the judgment:

"20.1. In the case of Mohan Baitha and Ors. v. State of Bihar and Anr.: (2001) 4 SCC 350, this Court observed that the expression 'same transaction', from its very nature, was incapable of an exact definition and it was not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. However, this Court indicated a few factors, which would be relevant to decide this question in a given set of facts. In that case, on the complaint of the father of deceased, FIR was lodged for offences under Sections 304-B/34/406 IPC at Police Station Nath Nagar in the District of Bhagalpur, Bihar. Police report was filed on 03.04.1999 after completion of investigation. However, the accused approached the High Court, seeking direction to the Magistrate not to proceed with the matter on the grounds of lack of territorial jurisdiction, as the offence

under Section 304-B IPC had taken place at Jahanaganj in the State of Uttar Pradesh and the Court at Bhagalpur was lacking in territorial jurisdiction to try the same. The High Court dismissed the petition of the accused. In further appeal, this Court also observed that the acts formed parts of the same transaction, which came under the ambit of Section 220 CrPC; and directed the Magistrate at Bhagalpur to proceed with the matter expeditiously. This Court, while expounding on Sections 177 and 220 CrPC, observed and laid down as under: -

"4.....Section 177 of the Code of Criminal Procedure on which Mr Mishra relies, uses the expression "ordinarily". The use of the word "ordinarily" indicates that the provision is a general one and must be read subject to the special provisions contained in the Criminal Procedure Code. That apart, this Court has taken the view that the exceptions implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided by law on considerations of convenience or may be implied from other provisions of law permitting joint trial of offences by the same court..... It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria.

(emphasis supplied)"

20.2. The said decision in Mohan Baitha (supra) has further been referred to and relied upon by this Court in the case of Anju Chaudhary v. State of Uttar Pradesh and Anr.: (2013) 6 SCC 384 while indicating the tests to be applied for determining the question as to whether two or more acts constitute the same transaction. This Court observed and explained as under: -

"43. It is true that law recognises common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straitjacket formula, but this question has to be answered on the facts of each case. This Court in Mohan Baitha v. State of Bihar (SCC pp. 354-55, para 4) held that the expression "same transaction" from its very nature is incapable of exact

definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction".

20.3. Thus, in the aforesaid decisions in Mohan Baitha and Anju Chaudhary, this Court has underscored that the expression 'same transaction' seems to be having vague underpinnings; and this Court has also pointed out that no formula of universal application could be enunciated for determining as to whether two or more acts constitute the same transaction. However, even while pointing out that the question as to whether a series of acts are so connected together as to form the same transaction is purely a question of fact, this Court has indicated the core elements like proximity of time, unity or proximity of place, continuity of action and community of purpose or design, which are of relevant considerations and when these factors are applied to common sense and ordinary use of language, the vexed question of 'same transaction' could be reasonably determined."

[29] Appellant's counsel have also relied on the decision of the Apex Court in the case of NASIB SINGH Versus STATE OF PUNJAB AND ANOTHER (supra) to contend that holding a separate trial is a rule and joint trial is an exception. Counsel has referred to paragraphs 42 and 43 of the said judgment which reads as under:

"42. Section 239(d) of the old Code which corresponds to Section 223(d) Cr. PC 1973 was interpreted by a three-Judge Bench of this Court in State of A.P. v. Cheemalapati Ganeswara Rao by juxtaposing the provision with Section 225(1) of the old Code, which is Section 219(1) of CrPC 1973. In that case, two respondents along with two others were tried together for offences under the

Penal Code. The High Court set aside the convictions on the ground that inter alia the joint trial of two or more offences committed by each of them is illegal. Mudholkar, J. speaking for the Bench observed that the phrase "offence committed in the course of the same transaction" would mean offences that are committed in the proximity of time or place, or unity of purpose and design : (AIR PP.1860-861, para 27)

"27. According to Mr Chari Section 235 (1) cannot be construed as having an overriding effect on Section 239 because whereas it contemplates acts so connected together as to form the same transaction resulting in more offences than one, Section 239(d) contemplates offences committed in the course of the same transaction and nothing more. The question is whether for the purposes of Section 239(d) it is necessary to ascertain anything more than this that the different offences were committed in the course of the same transaction or whether it must further be ascertained whether the acts are intrinsically connected with one another. Under Section 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words "so connected together as to form" are not repeated after the words "same transaction" in Section 239. What has to be ascertained then is whether these words are also to be read in all the clauses of Section 239 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between the acts and the transaction. According to this provision there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a, strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in clauses (a), (c) and (d) of Section 239 would make little difference. Now a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different

transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in clauses (a), (c) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes ." (emphasis supplied)

43. The Bench held that holding a separate trial is the rule and a joint trial is the exception. However, in case the accused persons commit different offences forming a part of the same transaction, a joint trial would be the rule unless it is proved that joint trial would cause difficulty:(Cheemalapati Ganeswara Rao case, AIR PP.1861-862, para 30)

"30. No doubt, as has been rightly pointed out in this case, separate trial is the normal rule and joint trial is an exception. But while this principle is easy to appreciate and follow where one person alone is the accused and the interaction or intervention of the acts of more persons than one does not come in, it would where the same act is committed by several persons, be not only inconvenient but injudicious to try all the several persons separately. This would lead to unnecessary multiplicity of trials involving avoidable inconvenience to the witnesses and avoidable expenditure of public time and money. No corresponding advantage can be gained by the accused persons by following the procedure of separate trials. Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. But here, again, if those offences are alleged not to be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embarrassment or difficulty caused to the accused persons in defending themselves."

(emphasis supplied)

[30] Counsel appearing for the appellant therefore, urges the court to quash the proceedings conducted by the GSFC against the appellant in which they have held single trial for four distinct offences against the appellant. Counsel has also sought for issuing direction to the respondents to conduct separate trials after framing separate charges against the appellant.

[31] Mr.B.Majumder, learned ASG, appearing for the official respondents has vehemently opposed the contention raised by the appellant's counsel that clubbing of four different charges together for a single trial was illegal. According to Mr.Majumder, learned ASG, serious charges of misconduct were brought against the appellant who used criminal force against his subordinates on various occasions and harassed the troops by not giving them proper medical care and treatment. Counsel has contended that full-fledged disciplinary proceedings were drawn up against the appellant after providing reasonable opportunity of hearing to him. In terms of BSF Act and Rules, preparation of record of evidence[ROE] was ordered under Rule 48(1) of the BSF Rules after hearing the appellant on the

charge sheet containing six different charges. According to learned counsel, after preparation of ROE, the Commandant of the battalion of the appellant requested IG, BSF for convening General Security Force Court (GSFC) for trial of the charges against the appellant.

[32] It has been submitted by the ASG that initially after examining the ROE, IG, BSF in consultation with their Law Officer decided to constitute GSFC for trial of the case on six charges. However, after the examination of the Record of Evidence [ROE], IG, BSF dropped two (2) charges and decided that GSFC will try four (4) charges against the appellant. Accordingly GSFC was constituted by an order of IG, BSF and the proceeding before GSFC commenced on 30.01.2018.

[33] Counsel has contended that on 19.03.2018 appellant filed a petition before GSFC challenging the validity of the proceeding on the ground that four different charges pertaining to four offences allegedly committed at different places against different persons on different dates were clubbed together and a single trial was being held for those charges which prejudiced the defence of the appellant. Said petition of the appellant was rejected by GSFC.

[34] Mr. Majumder, learned ASG has further contended that the appellant then filed a petition dated 29.03.2018 to the Addl.DG, HQrs Spl. DG(EC)Kolkata challenging the order passed by GSFC on appellant's petition questioning single trial for four different charges.

[35] It is contended by learned ASG that before appellant's petition dated 29.03.2018 was disposed of, the appellant filed criminal petition No.28 of 2018 before the High Court in which High Court issued direction to the Addl. DG, HQrs Spl.DG(EC)Kolkata to dispose the petition dated 29.03.2018 of the appellant within 60 days. Thereafter, the same was disposed by a speaking order on 20.07.2018.

[36] It has been argued by learned ASG that there is no bar to try series of offences of similar character under the BSF Act and Rules. Moreover, rule 102 of BSF Rules,1969 provides that there shall be single sentence in respect of all offences which by implication means that there is no bar to try more than one charges in a single trial.

[37] Learned ASG has further contended that Rule 53 of the BSF Rules provides that charges founded on similar facts or forming part of series of offences of similar character can be tried together in a single trial and therefore, contention raised by appellant's counsel is devoid of merit.

[38] It is further argued by the counsel of the respondents that full opportunity of hearing has been provided to the appellant during the proceeding before SCOI, ROE proceeding and the proceedings before the GSFC. Other than clubbing together of four different charges, the appellant does not have any grievance against the conduct of the proceedings. Since the clubbing of four different charges is permissible under the BSF Act and Rules, the appellant does not have

any case.

[39] At the end, learned ASG has submitted that GSFC has concluded the trial of the case on 08.04.2021. The appellant shall be entitled to the statutory appeal and revision once the final order is passed by GSFC. But the petitioner has approached this court without availing these statutory remedies which is contrary to law. Learned ASG has, therefore, urged the court to dismiss the writ appeal with cost.

[40] Considered the submissions made by learned counsel representing the parties. Perused impugned judgment passed by the learned single judge. Obviously the learned single judge did not find any fault with the proceedings against the appellant before the General Security Force Court (GSFC). In the impugned judgment the learned Single Judge examined the following issues:

“(i) Whether the provisions of the Code of Criminal Procedure 1973 are applicable to the personnel who are subject to BSF Act and Rules.

(ii) Whether offence of similar nature and character though committed on different dates, places and against different persons can be clubbed together and to be tried in a single trial on the basis of one charge.”

[41] For deciding the first issue regarding application of Cr.P.C to the present case, learned Single Judge discussed the relevant provisions of Cr.P.C in contrast with the provisions of BSF Act and Rules and came to the following conclusion:

“20. The sum and substance is that the Force Courts and the Codes enacted for them therein have primacy over the criminal Courts and the option lies with the competent Security Force officials to decide under which provision, the personnel subject to the special law enacted for such Force would be tried.

In other words, the BSF Act is a complete Code having its Rules and the persons subject to this Act can be tried within the scope and ambit of various provisions of said Act.

Further, I may clarify that the applicability of the Code of Criminal Procedure is limited only to the provisions which are expressly provided in the Act related to any armed Forces of the Union for which special law has been enacted by the Parliament.”

[42] Learned Single Judge dealt with the second issue in paragraphs 22-31 and arrived at the following conclusion:

“31. Thus, I hold that under BSF Rules, charge-sheet can be filed containing different charges for committing different offences on different dates and at different places against different persons, and invariably can be tried in a single trial. Only it is the bounded obligation of the authority concerned to take notice of all the particulars in the charges, and liberty lies with the petitioner to rectify or to point out any of the statement in mentioning any of the facts, described in the statement of particulars of each charge.”

[43] Having said so, learned Single Judge held that the proceedings initiated against the appellant under the BSF Act and Rules did not call for any interference. Consequently, learned Single Judge dismissed the Writ Petition of the appellant challenging the validity of the proceedings before the GSFC viewing as under:

"32. Since I already held that the Code of Criminal Procedure, 1973 has no applicability in the trial of any personnel subject to BSF Act & Rules, I do not think it necessary to discuss the provisions of sections 218, 219, 220 and Section 222 of the CrPC as referred to by the learned counsel for the petitioner.

33. The remedy under Constitution of India is prerogative remedy and Article 226 of the in the nature of the extraordinary jurisdiction of the High Court is purely discretionary. The petitioner Dr. Ravichandran B.R. without any controversy is subject to BSF Act & Rules. The proceeding initiated against the writ petitioner being inconformity with the provisions of relevant BSF Act & Rules, it does not call for any interference.

34. Given these findings, I find no reason to exercise the discretionary jurisdiction of this Court under Article 226 of Constitution of India in favour of the writ petitioner.

35. The writ petition stands dismissed accordingly." [44] Before going into the question of applicability of Cr.PC provisions in the instant case, or whether the respondents were justified in taking up four different charges in a single trial before the GSFC, let us have a look into the charges against the appellant which are as under:

[44] Before going into the question of applicability of Cr.PC provisions in the instant case, or whether the respondents were justified in taking up four different charges in a single trial before the GSFC, let us have a look into the charges against the appellant which are as under:

(i) First charge : USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE BSF ACT BEING HIS SUBORDINATE IN RANK in that he, at Combined Hospital, SHQ BSF, Berhampore, Murshidabad(West Bengal), on 14th Feb?2015, at about 1100 hrs, slapped No.87655656 Ct(Kahar) Navin Kumar Jha of 85 Bn BSF(Now 144 Bn BSF).

(ii) Second charge: USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE BSF ACT BEING HIS SUBORDINATE IN RANK in that he, at BSF Campus, Roshanbagh, Murshidabad(West Bengal), on 21st Apr?2015, at about 0930 hrs, slapped No.980059180 Ct K Karthikeyan of 43 Bn BSF(Now 144 Bn BSF).

(iii) Third charge: USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE BSF ACT BEING HIS SUBORDINATE IN RANK in that he, at Combined Hospital, SHQ BSF, Berhampore, Murshidabad(West Bengal), on 15 th May?2015, at about 1200 hrs, punched on the face of No.94254028 HC(NA) Ashok Kumar of 43 Bn BSF.

(iv) Fourth charge: USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE BSF ACT BEING HIS SUBORDINATE IN RANK in that he, at Combined Hospital, SHQ BSF, Berhampore, Murshidabad(West Bengal), on 18th May?2015, at about 1245 hrs, slapped on the face of No.02146085 Ct Shivanna of 130 Bn BSF.

[45] It would appear from the first charge against the appellant that on 14.02.2015 he slapped Navin Kumar Jha of 144 Battalion of BSF at Berhampore in Murshidabad. Second charge indicates that on a different date i.e. on 21.04.2015, at a different place in Roshanbagh in Murshidabad at the BSF campus, the appellant slapped another constable namely K Karthikeyan of 43 battalion, BSF. It would appear from the third charge that on 15.05.2015 at around 12 noon in the combined hospital of BSF at Berhampore in Murshidabad, appellant punched on the face of Head Constable Ashok Kumar of 43 battalion, BSF and the fourth charge against the appellant reveals that on 18.05.2015 in the same hospital at Berhampore in Murshidabad, he slapped on the face of Constable Shivanna of 130 battalion of BSF.

[46] Apparently, the offences allegedly committed by the appellant took place on different dates against different persons. 3 of the offences took place at the same place and the offence in the 2nd charge took place at a different place. Question is whether the proceedings before the GSFC in which those charges have been tried together in a single trial despite objections raised by the appellant call for any interference. To find out the answer let us first examine the BSF Act and Rules applicable to the case.

[47] Even though Rule 53 of the BSF Rules, 1969 provides that a charge-sheet may contain more than one charge if the charges are founded on the same facts or form part of a series of offences of same or similar character, Rule 76 under the said Rules of 1969, by means of procedural safeguard, gives the liberty to the accused to apply to the court to be tried separately on any charge in that charge sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge. Under sub-rule(3) of Rule 76 of the BSF Rules, the BSF court (GSFC) is empowered to allow such application and try the case separately on the charge to which it relates as if that charge had been inserted in a separate charge-sheet.

[48] To sum up, what has been laid down under Rule 53 and 76 of the BSF Rules 1969, even if the charge-sheet contains more than one charge, the accused may claim separate trial for each of the charges on the ground that without separate trial he would be prejudiced in his defence and the BSF court conducting the trial may allow such petition and try each of the charges separately if the court is of the opinion that it is necessary in the interest of justice.

[49] In the present case, at the very beginning of the proceeding before the GSFC the appellant claimed separate trial for each of the charges on the ground that each of the charges was distinct in terms of the nature of the charge, date, time and place of the occurrence and in terms of the distinct and different

circumstances under which the incidents occurred. In this regard, admittedly, the appellant filed an application on 19.03.2018 in which the appellant claimed that since the incident occurred at different places on different dates, against different persons and under different circumstances, these offences do not form part of series of offences and the set of evidence of the prosecution as well as of the accused were also completely different. It was asserted by the accused appellant in his petition that 'he would be completely bewildered in making appropriate defence if these charges were tried in a single trial'. Accused appellant, therefore, contended that the single trial for 4 distinct charges before the GSFC was barred under Rule 76 of the BSF Rules and prayed for separating the charges to be tried in 4 different trials.

[50] The said petition dated 19.03.2018 of the appellant was considered by GSFC following the procedure laid down under sub-section (2) of Section 76 of the BSF Rules. The prosecutor addressed the GSFC on the issue who suggested that segregating charge-wise evidence at that stage was not feasible as one set of record of evidence [ROE] was ordered for all the 4 charges and question of separate trial does not arise. The appellant also filed his reply to the prosecutor's address containing, inter alia, that the proceeding before the GSFC was illegal because GSFC should have held separate trial for each of the 4 distinct offences to save the accused from being prejudiced in his defence. On 26.03.2018, the GSFC rejected the prayer dated 19.03.2018 of the petitioner.

[51] Aggrieved by the order dated 26.03.2018 passed by the GSFC appellant presented a petition dated 29.03.2018 before the HQrs Spl. DG, BSF (EC) Kolkata in terms of Section 117 of the BSF Act 1968 seeking remedy against the impugned order dated 26.03.2018 of the GSFC.

[52] The said petition was kept pending without consideration. Appellant then approached this court by filing Criminal Petition No.28 of 2018. Following the direction of the High Court, HQrs Spl. DG (EC), BSF, Law Branch, decided the petition dated 29.03.2018 of the appellant by order dated 20.07.2018 viewing as under:

"9. In view of the above, it is observed that all actions have been taken by the BSF authorities before commitment of the petitioner to trial by GSFC in accordance with the provisions of BSF Act and the Rules. Rule 53 of BSF Rules, 1969 postulates that a charge sheet shall contain the whole of the issues or issues to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form part of the series of offences of same or similar character.

Provided, that a charge u/s 18,19,29 and 32 may be included in any charge sheet, notwithstanding that other charges in that charge sheet are not founded on the same facts or do not form part of a series of offences of the same or similar character.

10. Thus, request of the petitioner for conducting separate trials on all the four

charges and supplying him charge specific evidence in ROE is beyond the provisions of law.

11. Thus, it can be concluded that the objections raised by the petitioner in his revision petition dated 29.03.2018 addressed to the Spl. DG (EC) are without any basis and are not supported by law. It has been intimated by Ftr HQ Tripura that all the documents which are required to be provided before commencement of the trial have already been given to the petitioner.

Further, in terms of directions of Hon'ble High Court about supply of such documents, it has been intimated by Ftr HQ Tripura that order of Hon'ble High Court has already been complied with on that aspect.

12. In view of all above, I find that prayer of the petitioner for segregating the trial for each charge is without any basis and is not supported by law. GSFC trial is conducted as per the provisions of BSF Act, 1968 and rules made thereunder. Charge sheet dated 31/12/2017 and countersigned by IG BSF Tripura on 16/01/2018 which was supplied to the petitioner and which formed part of the GSFC convened by the IG BSF Tripura Ftr vide his Order dated 16/01/2018 conforms to the provisions of law. In view of the above, revision petition dated 29/03/2018 is found lacking merits and is, accordingly, rejected.

13. It may be mentioned that revision petition u/s 117(1) of the BSF Act, 1968, dated 29/03/2018 submitted by the petitioner has again been disposed off only in compliance of directions of Hon'ble High Court of Tripura at Agartala dated 31/05/2018 in Criminal Petition No.28 of 2018 titled 'Dr Ravichandran B R Vs UOI and Others?'. Such second time disposal of the same petition u/s 117(1) of the BSF Act, 1968 shall be restricted to this case only and will not act as a precedent."

[53] It would appear from the said order dated 20.07.2018 that the Addl. DG(EC), HQrs Spl. DG(EC), BSF did not address the core issue as to whether in his opinion the appellant would be prejudiced if a single trial is held against him for the 4 charges.

[54] Under Rule 53 of the BSF Rules, 1969, it has been clearly provided that the charge sheet may contain more than one charge for trial at one time if those charges are founded on the same facts or form part of series of offences of same or similar character.

[55] It is obvious that in the case in hand facts of each of the charges are different and distinguishable as they occurred at different places and at different dates against different persons under the different circumstances. The only question which remains to be answered is whether the charges formed part of the series of offences of the same or similar character.

[56] The general mandatory rule of separate trial for every distinct charge is also applicable to the instant case as it is intended to ensure fair trial. In the case of Chandra Bhal (supra), relied upon by the counsel of the appellant, it has been

held by the apex court that the broad object underlying the general rule seems to be to give the accused a notice of the precise accusation and to save him from being embarrassed in his defence by the confusion which is likely to result from lumping together in a single charge distinct offences and from combining several charges at one trial.

[57] Such plea was taken by the appellant before the GSFC at the very beginning of the proceeding by filing petition on 19.03.2018 which was summarily rejected by the GSFC without addressing the issue raised by the appellant. The petition dated 29.03.2018 of the appellant challenging the GSFC's order under Section 117 of the BSF Act was also turned down by the Addl. DG (EC), Kolkata without highlighting as to why appellant's apprehension of being prejudiced by a common trial of 4 different charges was found to be devoid of merit.

[58] Obviously, in the given fact situation of this case, the facts on which the charges against the appellant are founded, do not form part of a series of offences in terms of proximity of time, continuity of action and commonality of purpose or design. The alleged facts indicate that separate cause of action arose for each of the cases as the circumstances were different. Moreover, separate offences were committed against different persons on different dates and at different places. Obviously, set of evidence are also different. It is contended by the appellant's counsel that in order to defend himself from the charges, the accused appellant needs to produce separate set of defence as the witnesses were different. In his petition dated 19.03.2018 before the GSFC accused consciously pleaded that if a single trial is held for the 4 charges, the accused appellant 'would be bewildered in making an appropriate defence'. In his address before the GSFC for adjudication of the said petition, the GSFC's prosecutor in his written reply dated 20.03.2018 [Annexure-15 to the Writ Petition] made the following statements in para 7 of his reply:

"7. While the charges of similar character are permissible in the Hon'ble Court and accused was heard in one charge sheet for all the charges. Accordingly, the Record of Evidence as well as the Additional Record of Evidence were conducted on multiple charges. Therefore, segregating charge-wise evidence at this stage, though obvious, is not feasible as, only one ROE was ordered for all the four charges and question of separate trial does not arise. However, complete set of ROE and Addl ROE containing copies of its exhibits have been provided to accused vide 130 Bn Letter No.1264 dated 21.01.2018 to prepare his defence and list of witnesses, which has been received by accused on 24.01.2018."

[Emphasis supplied by us]

[59] It is clear from GSFC's prosecutor's reply that there should have been charge wise recording of evidence in the case. According to the prosecutor, this was not feasible since one ROE (Record of Evidence) was ordered for all the 4 charges and therefore, question of separate trial did not arise. It means that had separate ROE for each of the charges been prepared, there would have been

separate trial.

[60] The prosecutor did not deny the necessity of charge wise Recording of Evidence (ROE) and separate trial. But according to him, it was not feasible as one ROE was ordered for all the 4 charges. Sub-section (3) of Rule 76 of the BSF Rules, 1969 has clearly contemplated that if the court is of the opinion that interest of justice so requires, it shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge sheet.

[61] In view of sub-section (3) of Section 76 of the BSF Rules, 1969 there is no bar for separate trial on each of the charges even though one charge sheet has been submitted. There is no justification as to why charge-wise ROE was not prepared and separate trial was not held for each of those charges which were not connected with each other in any respect.

[62] Undisputedly, the appellant raised objections before the GSFC against the composite trial for four distinct charges at the commencement of the trial before the GSFC. But, it is crystal clear that GSFC despite having power under sub-rule (3) of Rule 76 of the BSF Rules 1969 to conduct separate trial for distinct charges, never considered the objections seriously. It rejected the petition of the appellant without assigning adequate reasons. Similarly, the confirming authority of BSF, while rejecting the petition of the appellant filed under Section 117 of the BSF Act, 1968, against the rejection order of the GSFC, did not also seriously considered the propriety of the order passed by GSFC.

[63] In view of the law laid down in the judgments cited to supra, and the discussions made in the preceding paragraphs, we are of the considered view that the accused appellant shall be seriously prejudiced in making his defence if separate trials are not held for each of the 4 distinct charges brought against the appellant. Therefore, we are unable to agree with the findings of the learned Single Judge. Resultantly, the impugned judgment is set aside and the appeal stands allowed with the following directions.

[64] The proceedings held by GSFC against the appellant stand quashed. GSFC shall try each of the charges separately after giving full opportunity of hearing to the appellant and for this purpose GSFC shall conduct fresh trial. The appellant be at liberty to adduce defence witness before GSFC in each of the trials. The trial before the GSFC shall be completed as early as possible preferably within a period of 6 months from today. The accused appellant is directed to cooperate so that the trial gets completed within this period. Nothing said in this judgment shall be taken as expression of opinion on the merits of the charges. GSFC shall decide the case in the light of the evidence which may be produced by the prosecution as well as by the defence before it.

[65] In terms of the above, the Writ Appeal stands disposed of. Interim order(s), if any, shall also stand vacated.