

(2019) 09 MAN CK 0011
In the Manipur High Court
Case No : Writ Petition (c) No. 151 Of 2019

Lt. Colonel Dharamvir Singh

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 33, 309, 141
Code Of Criminal Procedure, 1973 — Section 5, 41(1)(b), 55, 91, 154, 154(1), 155, 157(1), 160, 164(5A)(1), 172, 428, 475
Arms Act, 1959 — Section 3, 3(ii), 3(viii), 3(xvii), 25, 36, 37, 38, 42, 69, 70
Indian Penal Code, 1860 — Section 326A, 326B, 354, 354A, 354B, 354C, 354D, 375D, 376, 376A, 376B, 376C, 376E, 509
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 18
Police Act, 1861 — Section 44

Citation : (2019) 09 MAN CK 0011

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Shreeji Bhavsar, S.Suresh, Niranjan Sanasam

Final Decision : Disposed Of

Judgement

Kh. Nobin Singh, J

[1] Heard Mr. Shreeji Bhavsar, learned counsel appearing for the petitioner; Mr. S. Suresh, learned ASG for respondent Nos. 3 & 4 and Mr. Niranjan Sanasam, learned GA for respondent Nos. 1 & 2.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other writ to direct the respondent Nos.1 & 2 to register FIR under the appropriate Sections of the Indian Penal Code, 1860 and the Arms Act, 1959 for alleged recovery of illegal and unaccounted arms and ammunitions by the respondent No.3 on 02.07.2018 from inside the barrack of 2 FID/3CISU, M Sector, Imphal.

[3.1] Facts and circumstances as narrated in the writ petition, are that the

petitioner is a decorated Army Officer with 32 years of service and he has been awarded 4 commendation cards. He initially joined 1 PARA Commando (SF) as a Paratrooper and immediately after his half basic training in the year, 1987, he joined his Battalion in Srilanka during the Operation Pawan. After two years, he came back to India and he along with a team went to Nagaland in Operation ORCHID and RHINO. He took commission and passed out with 100 regular course in June 1997 and did cross attachment in Garhwal Scouts. During attachment, he accomplished various difficult patrols in snow glaciers of Indo-China border at a height ranging from 17000 ft. to 22000 ft. and for the same as 2/Lt, he was awarded with first GOC-in-C-Commendation Card. In 1999 he led a team of mountaineers in Operation VIJAY and played a major role in the capture of BAJRANG POST. After the Kargil War, he moved with an advance party of Gargh Scouts to Naogaon in Srinagar on LoC for counter infiltration operations and in June, 2000, he joined Int Corps at Bagrakote in WB where, for his gallantry act, he got his second commendation card. The petitioner went on staff posting in counter insurgency field at Rajouri in May 2005 where he also got his third commendation card. Finally after 12 years, in May 2008 he got his first peace posting in Mumbai where he was part of a special team who interrogated Ajmal Kasab. During his Mumbai tenure, beyond a call of his duty without caring his life and safety, he jumped into 18 to 20 ft deep drain with full of poisonous gas and inhaled almost 20 points of Methane Gas while rescuing two civilians and for three days thereafter, he was fighting his battle in ICU (INH ASIVINI Colaba) where he narrowly escaped the jaws of death. For his brave act, he was awarded with the Chief's Commendation Card.

[3.2] Thereafter, the petitioner was posted as the Officer Commanding, Z Section, 3 Corps Intelligence & Surveillance Unit, Rangapahar (Dimapur) vide order dated 20.05.2016. While he was being posted at Rangapahar (Dimapur), he sent a confidential letter dated 09.09.2016 to the Lt Gen Praveen Bakshi, AVSM, VSM, ADC, GOC-in-C, Eastern Command in respect of fake encounters and cold blooded murders of civilians by some rogue elements in the same unit of the army, for which he was pressurised by the respondent No. 4 to withdraw it on the assurance that an independent inquiry would be conducted and proper action would be taken in regard to the issues raised in the said letter and the petitioner was, thus, compelled to withdraw it. The respondent No.3, Lt Col RP Nanda who had been posted as reliver of the petitioner, reported at No. 2 FID on 26.06.2018 and from 26.06.2018 onwards, the process of handing/ taking over between the petitioner and respondent No. 3, Lt Col Nanda went on smoothly except in respect of an issue regarding the debt balance of Rs.3,59,000/- (Rupees three lakhs fifty-nine thousand) only. The petitioner was asked by the respondent No.3 to inform about it to the respondent No.4 and accordingly, on 27.06.2018 the petitioner talked to the respondent No.4 and took his verbal permission about the visit of his wife at Imphal for 6 days from 30.06.2018. On 28.06.2018, the petitioner informed the same to the respondent No.3, Lt Col Nanda asking whether the respondent No. 4, CO had passed any order as

regards the debt balance of about Rs. 3,59,000/-. Consequently, the petitioner wrote a letter to the respondent No.4, CO who did not pass any order till 29.06.2018, rather ordered the petitioner to report at the Unit Headquarter on 30.06.2018. By 4 p.m. the petitioner once again wrote a letter to the respondent No.4 seeking clarification on the financial matter. On 30.06.2018, the petitioner informed the respondent No. 3 to take over the detachment who refused to do so on the ground that it was a financial matter. Till almost 10 p.m., the petitioner did not receive any letter but on whatsapp, the respondent No.4 issued warnings that if the petitioner did not report to Unit HQ, disciplinary action would be taken against him.

[3.3] On 01.07.2018 in the early morning around 6 a.m., suddenly, the petitioner saw 8 to 10 jawans standing outside the house who took the petitioner in custody and without proper handing/ taking over the detachment to the respondent No.3, the QRT took the petitioner at Dimapur. From 01.07.2018 to 11.07.2018, the petitioner was kept in illegal custody at Dimapur. On 01.07.2018 itself, his wife and children were left behind at M Sector, Imphal who were also detained by the Respondent No.3, Lt Col Nanda till approx 10:45 a.m. All gates were closed and sentries were instructed by him not to allow anyone to go outside the gate. With the interference of a local friend, the petitioner's wife was allowed to go out and in the evening at 6 p.m, his wife registered FIR at Imphal Police Station.

[3.4] On 02.07.2018, the respondent No.3, Lt Col Nanda appears to have written a letter to respondent No.4, Col. Ranjan Singh mentioning about the recovery of unaccounted arms and ammunitions from inside the barrack of 2 FID/3 CISU, M Sector, Imphal. After about 3 months from 02.07.2018, the Additional Director General, Discipline & Vigilance, Adjutant General Branch issued an order dated 05.10.2018 for attachment of the petitioner from his posting at 52, Maharashtra NCC Battalion, Nanded, Maharashtra to 56 Arty Bde/56 Inf Div/3 Corps at Pasighat, Arunachal Pradesh for disciplinary action under the provisions of the Army Instruction 30/86.

[3.5] In the meantime, on 05.07.2018, his wife filed a habeas corpus petition being WP(Cril) No.11 of 2018 in which this Court directed the Corps Cdr, then Lt Gen R Gopal to ensure presence/ production of the petitioner before this Court on 11.07.2018 on which the petitioner was escorted by a team under the command of Respondent No. 4, CO till Court premises and finally, he got release order.

[3.6] The attachment order dated 05.10.2018 came to be challenged by the petitioner by way of a writ petition being WP(C) No.1031 of 2018 in which the execution of the attachment order dated 05-10-2018 was suspended by this Court on 23.01.2019. Thereafter, after hearing the learned counsel appearing for the parties, the interim order was extended till the disposal of the writ petition. The Union of India filed a petition for special leave to appeal being SLP(C) No.3480 of 2019 before the Hon'ble Supreme Court against the orders dated 05.10.2018 and 23.01.2019 passed by this Court. It may be noted that along

with the said SLP, a letter dated 02.07.2018 was filed and on 13.02.2019 the petitioner came to know about it for the first time. The Hon'ble Supreme Court vide its order dated 15.02.2018 allowed the said SLP and set aside the interim orders dated 05.10.2018 and 23.01.2019 passed by this Court.

[4] In view of the above circumstances, the petitioner filed the instant writ petition praying for registration of FIR under the appropriate Sections of the IPC and Arms Act, 1959 for alleged recovery of arms and ammunitions from inside the barrack of 2 FID/ 3 CISU, M Sector, Imphal and for monitoring it by this Court through a Special Investigation Team (SIT).

[5] In the affidavit-in-opposition filed by the respondent No.2, it has been stated that the Army Act is a self-contained code governing persons subject to the Army Act and in view of Section 5 of the Code of Criminal Procedure, the provisions of the Army Act shall continue to apply to persons who are governed by the Army Act. In view of the settled law laid down by the Hon'ble Supreme Court in Chandra Prakash Tiwari Vs. Shakuntala Shukla, (2002) 6 SCC 127, the instant writ petition is not maintainable. The fact that the petitioner's wife lodged a complaint on 01-07-2018 alleging that the petitioner had been taken into custody by the army personnel and that on 02-07-2018, Lt Col. Nanda and Major B.S Rathore lodged a complaint that the petitioner's wife made a false information to tarnish the image of the army, has not been denied by him. It has further been stated that the facts about the alleged recovery of arms and ammunitions from inside the barracks of 2FDI/3CISU, M-Sector, Imphal were not brought to his notice at any point of time in writing / verbally by the petitioner or anybody else to registrar FIR and investigate it. The issue whether the State Government is duty bound to register FIR on the alleged recovery of arms and ammunitions, is sub-judice before this Court and therefore, the question of registration of FIR by taking cognisance of the letter dated 02-07-2018 does not arise.

[6] Although no counter affidavit has been filed by the respondent Nos.3 & 4, it has been submitted by S. Suresh, ASG, appearing for them, raising an objection as regards the maintainability of the writ petition on the inter-alia grounds that the Army Act is a special law which is a self-contained code and that in view of Section 5 of the Code of Criminal Procedure, its provisions are inapplicable in respect of all matters covered by it. In support of his contention, he has relied upon the decision rendered by the Hon'ble Supreme Court in Ajmer Singh etc. etc. Vs. Union of India, AIR 1987 SC 1646. Similar is the submission of Shri Niranjana Sanasam, learned Government Advocate appearing for the State respondents who, relying upon the affidavit filed by the respondent No.2, has submitted that the writ petition is not maintainable, for which he has heavily relied upon the decision rendered by the Hon'ble Supreme Court in Chandra Prakash Tiwari case (supra).

[7] Combating the aforesaid submissions, it has been submitted by Shri Bhavsar, learned counsel appearing for the petitioner that the writ petition is maintainable

and the respondent Nos.3 & 4 should have registered FIR for the reason that the alleged recovery of arms and ammunitions constitutes a cognisable offence under the Arms Act and IPC. It has further been contended that instead of getting FIR registered for more than eight months from the date on which the alleged recovery was made, only a disciplinary proceeding was initiated against the petitioner under the provisions of Army Instructions 30/86. A larger conspiracy had been hatched against him by the respondent Nos.3 & 4, with a view to protect themselves from being alleged guilty of committing offence of disappearing evidence. Section 36 of the Arms Act provides that every person aware of the commission of any offence under this Act shall, in the absence of a reasonable excuse, give information of the same to the police in-charge of the nearest police station or the Magistrate having jurisdiction but the respondent Nos.3 & 4 have failed to comply with it. Section 37 provides that any person arrested and any arms or ammunitions seized under this Act by a person not being a Magistrate or a police officer shall be delivered without delay to the officer-in-charge of the nearest police station. Although the respondent No.3 seized the illegal and unaccounted arms and ammunitions from inside the barrack, M Sector, Imphal, he did fail to deliver the same to the officer-in-charge of the nearest police station even after about eight months, as a result of which no investigation had been conducted by the concerned police so far. In support of his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court in Ramesh Kumari Vs. State (NCT of Delhi) & ors., (2006) 2 SCC 677; the judgment and order dated 24-04-2002, Union of India Vs. L.D. Balam Singh, Appeal (Crl.) No.1368 of 1999 and the judgment and order dated 05-01-2018 rendered by the Armed Forces Tribunal, Regional Bench, Lucknow in O.A No.123 of 2010, Smt. Durgawati Singh Vs. Union of India & others.

[8] It is not in dispute that the Army is a self contained code and in order to decide the issue involved herein, the relevant provisions of this Act are required to be gone into and considered by this Court. Section 3(xvii) defines "offence" as any act or omission punishable under this Act and includes a civil offence. Section 3(ii) defines "Civil offence" as an offence which is triable by a criminal court. The expression "Criminal Court" is defined in Section 3(viii) as a court of ordinary criminal justice in any part of India. Section 69 and 70 of the Army Act read 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.

70. Civil offences not triable by court-martial. - A person subject to this Act who commits an offence of 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."

On perusal of these Sections, it is seen that a person subject to this Act commits an offence of murder or of culpable homicide not amounting to murder or of rape, shall not be deemed to be guilty of offence against this Act and shall not be tried by the Court-Martial and so far as any other civil offence is concerned, the commission thereof shall be deemed to be guilty of an offence against this Act and shall be liable to be tried by Court-Martial. On top of that, Section 5 of the Code of Criminal Procedure provides that in the absence of a special provision to the contrary, nothing contained in it shall affect any special or local law for the time being in force and any special form of procedure prescribed by any other law. The law on the above is well settled as seen from the decision of the Hon'ble Supreme Court in Ajmer Singh case (supra) wherein the Hon'ble Court had the occasion to consider the divergence of views amongst the High Courts on the issue relating to applicability of Section 428 of the Code Criminal Procedure to person sentenced to undergo imprisonment by the General Court-Martial under the Army Act. After discussing the details, the Hon'ble Supreme Court upheld the view taken by the High Court of Punjab & Haryana as correct and also approved the decisions of the High Court of Madras and Delhi wherein the view has been taken that the benefit of Section 428 of Code of Criminal Procedure cannot be claimed by persons tried and sentenced by the Court-Martial. Paragraphs 7 and 10 thereof read as under:

"7. Section 5 of the Code of Criminal Procedure lays down that nothing contained in the said Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self-contained comprehensive Code specifying the various offences under those Acts and prescribing the procedure for detention and custody of offenders, investigation

and trial of the offenders by Courts Martial, the punishments to be awarded for the various offences, confirmation and revision of the sentences imposed by Courts-Martial, the execution of such sentences and the grant of pardons, remissions and suspensions in respect of such sentences. These enactments, therefore, constitute a special law in force conferring special jurisdiction and powers on Courts-Martial and prescribing a special form of procedure for the trial of the offences under those Acts. The effect of Section 5 of the Code of Criminal Procedure is to render the provisions of the Code of Criminal Procedure inapplicable in respect of all matters covered by such special law. Since in the four cases before us we are concerned with convictions by General Courts-Martial under the provisions of the Army Act, we shall refer specifically to the relevant provisions contained in the Army Act (hereinafter called the 'Act').

10. As we have already indicated, we are unable to accept as correct the narrow and restricted interpretation sought to be placed on Section 5 of the Code by the Counsel appearing on behalf of the appellants. In our opinion the effect of Section 5 of the Code is clearly to exclude the applicability of the Code in respect of proceedings under any special or local law or any special jurisdiction or form of procedure prescribed by any other law. Whatever doubt might otherwise have existed on this point is totally set at rest by Section 475 of the Code of Criminal Procedure which furnishes a conclusive indication that the provisions of the Code are not intended to apply in respect of proceeding before the Courts-Martial. That Section is in the following terms:-

475. Delivery to commanding officers of persons liable to be tried by Court-Martial

(1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950) and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, Naval or Air Force Law, or such other law, shall be tried by a Court to which this Code applies or by a Court-Martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by a Court-martial.

Explanation - in this section -

(a) "unit" includes a regiment, corps, ship, detachment, group, battalion or company,

(b) "court-martial" includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces

of the Union.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situated within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial."

The distinction made in the Section between "trial by a Court to which this Code applies? and by a Court-Martial conclusively indicates that Parliament intended to treat the Court-Martial as a forum to the proceedings before (sic) the provisions of the Code will have no application."

In Chandra Prakash Tiwari case (supra), the issue was as to whether the selection as effected, was to be made under the specific police-related order or the basis of seniority under the General UP Government Servants (Criterion for Recruitment by Promotion) Rules, 1994 framed under Article 309 of the Constitution. While setting aside the judgment and order of the learned Single Judge as also that of the Division Bench, the Hon'ble Supreme Court held:

"37. Police force, admittedly, has a special significance in the administration of the State and the intent of the framers of our Constitution to empower the State Government to make rules therefor has its due significance rather than being governed under a general omnibus rule framed under the provisions under Article 309. When there is a specific provision unless there is a specific repeal of the existing law, question of an implied repeal would not arise. In any event, the General Rules are only prospective in nature and as such could not have affected the selection process which commenced in the year 1993 and it is on this score the parties advanced quite lengthy submissions but in our view question of further consideration thereof would not arise by reason of the commencement of the selection process in 1993."

[9] It is thus clear from Section 5 of the Code of Criminal Procedure, its provisions are inapplicable to a person who is governed by the provisions of the Army Act in relation to a civil offence, as mentioned in Section 69 and 70 of the Army Act except the exception carved out therein, committed by him. Therefore, the question of registering FIR under Section 154 Code of Criminal Procedure will not arise in respect of the civil offence, the commission of which shall be deemed to be guilty of an offence against the Army Act and shall be liable to be tried by Court-Martial. But there is one aspect which needs to be considered by this Court. There are certain cases where the army personnel are alleged to have committed offences under the IPC as well as that of the offences under the provisions of various Special Acts, like the present one involved herein. In the present case, the short question that calls for consideration by this Court is as to whether the provisions of Section 154 of the Code of Criminal Procedure are still

inapplicable, when a person subject to Army Act is alleged to have committed offences under the Arms Act which is also a special Act. Section 154 deals with the registration of FIR and the same reads as under:

"154. Information in cognizable cases.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the information; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

[Provided that if the information is given by the woman against whom an offence under section 326-A, section 326-B, section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 376, section 376-A, section 376-B, section 376-C, section 375-D, section 376-E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that -

(a) In the event that the person against whom an offence under section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 376, section 376-A, section 376-B, section 376-C, section 376-D, section 376-E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeing to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) The recording of such information shall be videographed;

(c) The police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5-A) of section 164 as soon as possible.]

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

[10] Be it noted that various decisions have been rendered by the Hon'ble Supreme Court on the issue relating to non-registration of a case by the police on the complaint of a cognisable offence. In Ramesh kumara case (supra), the issue relates to the non-registration of a case by the police pursuant to the complaints filed by the appellant therein. The Hon'ble Supreme Court, relying upon its earlier decision rendered in Haryana Vs. Bhajan Lal, 1992 Supp. (1) SCC 335, held:

"5. The views expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence."

In Lalita Kumari Vs. Government of Uttar Pradesh & ors, (2014) 2 SCC 1, the Constitution Bench of the Hon'ble Supreme Court held that the provisions contained in Section 154 of the Code of Criminal Procedure are mandatory; the contents of cognisable offence must be recorded and non-compliance thereof amounts to violation of the procedure established by law.

However, the law laid down in the above cases appears to be general in nature and the issue involved herein, is not involved therein at all but in Union of India Vs. L.D. Balam Singh case (supra), the Hon'ble Supreme Court had the occasion to consider various issues relating to the interpretation of the provisions of Article 33 of the Constitution of India. The facts, in short, thereof are that the petitioner therein was serving the Indian Army and while he was being posted at Patiala Cant. with his family in a Government accommodation, a search of his residence was conducted by the Army Officials and opium weighing about 4 kg was recovered from his quarter, for which a trial was convened by the General Court-Martial. After the trial was over, he was convicted and sentenced by it. The issue was as to whether, by reason of the respondent being a member of the Armed Forces, would stand denuded of certain safeguards as prescribed in the NDPS act, in the event the General Court-Martial takes note of an offence under a specific statute. The Hon'ble Supreme Court held:

"Turning attention on to the procedural aspect, be it noticed that Section 18 is an offence which cannot but be ascribed to be civil in nature in terms of the provisions of Army Act if Section 18 is to be taken recourse to then and in that event the provisions of the statute come into play in its entirety rather than piecemeal. The charge levelled against the respondent is not one of misdeeds or wrongful conduct in terms of the provisions of the Army Act but under the NDPS Act. in the event, we clarify, a particular statute is taken recourse to, question of trial under another statute without taking recourse to the statutory safeguards would be void and the entire trial would stand vitiated unless, of course, there are existing specific provisions therefor in the particular statute. Needless to record that there were two other civilian accused who were tried by the Court at Patiala but were acquitted of the offence for non-compliance of the mandatory requirements of the NDPS Act. once the petitioner was put on trial for an offence

under the NDPS Act, the General Court Martial and the Army authorities cannot reasonably be heard to state that though the petitioner would be tried for an offence under Section 18 of the NDPS Act, yet the procedural safeguards as contained in the statutory provision would not be applicable to him being a member of the Armed Forces. The Act applies in its entirety irrespective of the jurisdiction of the General Court Martial or other Courts and since the Army authorities did not take into consideration the procedural safeguards as is embodied under the Statute, the question of offering any credence to the submissions of Union of India in support of the appeal does not and cannot arise. There is no material on record to show that the authorities who conducted the search and seizure at the house of the respondent herein has in fact done so in due compliance with Section 42 of the statute which admittedly stand fatal for the prosecution as noticed above as a matter of fact, two of the civilians stand acquitted therefor."

Over and above, a judgment and order dated 05-01-2018 of the Armed Forces Tribunal, Lucknow, rendered in Smt. Durgawati Singh case (supra), has been heavily relied upon by the counsel appearing for the petitioner to contend that in the present case, the registration of FIR is a must and indispensable. The applicant therein is the mother of late Capt Vivek Anand Singh who is alleged to have been caught red-handed with a suit case from which an illegal weapon, ie., a pistol was recovered by the Army. A Court of Inquiry was convened from 20-05-2007 to 07-09-2007 and on 02-03-2009, a charge-sheet was served upon him. During the pendency of the application, Capt Vivek Anand Singh died in a purported accident. It was admitted by the respondents that no FIR was lodged with regard to the recovery of weapons in question from the possession of Capt Vivek Anand Singh nor was it recovered in the presence of any civilian or any independent witness. No seizure memo was prepared nor was the weapon sealed at the time of recovery. The learned Tribunal considered various issues relating to FIR, Seizure, Confession, Recovered Items, Witness, accident, Invalidment etc. and after hearing the counsel appearing for the parties, the application was allowed by the learned Tribunal with the following directions:

"(1) The impugned convening order as well as the charge-sheets are set aside and late Capt Vivek Anand Singh is exonerated of all the charges levelled against him.

(2) Since recovery of pistol and cartridges makes out a cognizable offence under Sections 25 and 36 of the Arms Act to lodge an FIR followed by investigation, it is the duty even of a common citizen aware of the commission of any offence under law to give information of the same to the officer in charge of the nearest police station or the magistrate having jurisdiction. Hence we direct the respondents/ authorities concerned to lodge an FIR at Meerut or Delhi Cantt with regard to recovery of arm in question and investigation into the matter may be done by an appropriate independent forum in accordance to law.

(3) The unit of late Capt Vivek Anand Singh is directed to lodge an FIR with

regard to incident occurred on 02.03.2011 with follow up investigation. The authority concerned shall investigate as to whether the incident took place was normal or it was the result of any conspiracy hatched against late Capt Vivek Anand Singh.

(4) The respondents are directed to grant invalid pension to late Capt Vivek Anand Singh upto his death and thereafter family pension to the NOK as per rules of invalidment pension. Arrears thereof shall be paid by the respondents to the NOK within three months from today, failing which they shall pay interest at the rate of 10% per annum on the amount due."

The observations made by the learned Tribunal which are relevant for deciding the issue involved herein, read as under:

"25. A perusal of aforesaid Section 154 Cr. P.C indicates that for all cognizable offences, FIRS should be lodged. The provision is mandatory, as held by the Hon'ble Supreme Court in catena of decisions. In a case reported in (2014) 2 SCC I Lalita Kumari vs. Government of Uttar Pradesh and others, the Constitution Bench of Hon'ble Supreme Court held that the provisions contained in Section 154 of Cr.PC are mandatory and the contents of cognizable offence must be recorded. Non-compliance of Section 154 Cr.P.C amounts to violation of procedure established by law. For convenience, Paras 83 to 86 of the aforesaid judgment of Lalita Kumari are reproduced as under:

"83. The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later

84. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police etc. are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence etc., for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the concerned officer to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/ panchnama has to be drawn for every article seized etc

85. The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating to commission of a

cognizable offence also has to be registered under Section 155 of the Code to maintain several records non

86. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure 'judicial oversight'. Section 157(1) deploys the word 'forthwith'. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary."

26. Though the aforesaid Constitution Bench judgment in the case of Lalita Kumari was rendered by the Apex Court in 2014, but the principle of lodging of FIR in pursuance to the provisions contained in Section 154 Cr.P.C have been reiterated by it in number of cases even prior to the present incident. In the absence of F.I.R, the appropriate authorities shall not be able to infer the factum of crime and the manner in which the incident occurred. In view of above, we are of the view that since the weapon was a civil and non-military weapon, hence the possibility of involvement of other civilians in the matter cannot be ruled out. Thus, by not registering an F.I.R with regard to the recovery of alleged weapon, the respondents have committed a gross illegality by proceeding against Capt Vivek Anand Singh straightaway with the GCM.

28. Keeping in view the provisions contained in Sections 25 and 36 of the Arms Act (supra), the condition precedent to proceed with a crime under the Arms Act is to lodge an FIR. The judgments of the Hon'ble Supreme Court including the Constitution Bench decision in the case of Lalita Kumari (supra) are binding on all courts within the territory of India under Article 141 of the Constitution and they being the law of the land, it is incumbent upon the Government including the Armed Forces to follow the same and they have no authority to violate them. In this view of the matter, the respondents should have lodged an FIR with regard to recovery of weapon, if any, from late Capt Vivek Anand Singh, but that was not done.

29. Lodging of F.I.R in the present case was also necessary for the reason that under Section 38 of the Arms Act, every offence committed therein is a cognizable offence. For convenience, Section 38 of the Arms Act is reproduced as under:

"38. Offences to be cognizable.-Every offence under this Act shall be cognizable within the meaning Procedure, 1973 (2 of 1974) the Code of Criminal Procedure, 1973 (2 of 1974)."

30. A plain reading of the aforesaid provision indicates that the offence committed under the Arms Act is a cognizable one under the Code of Criminal Procedure. The Arms Act is a special law and it refers to the Code of Criminal Procedure, 1973. Since charge against the applicant's son under was also framed under Section 25 of the Arms Act, it was incumbent upon the respondents to

lodge an FIR keeping in view the provisions contained in Section 154 of the Cr.P.C read with Section 38 of the Arms Act. Keeping in view the facts and circumstances of the present case, an adverse inference may be drawn against the respondents since no FIR was registered against the applicant's son late Capt Vivek Anand Singh.

32. In view of above, once late Capt Vivek Anand Singh had been tried under Section 25 of the Arms Act through GCM, then it was incumbent upon the respondents to follow the provisions contained in the Arms Act during the course of trial, but the same was not done. In the present case, as discussed hereinabove, even the article seized in pursuance to recovery was not produced during the proceedings of GCM. In this view of the matter, an inference may be drawn that the recovery made from late Capt Vivek Anand Singh was a sham and a farce.

40. The statement given by PW-3 Lt Col MV Joshi is not only startling but indicates how the provisions of law have been abused while dealing with such a sensitive case where the allegation is of recovery of a pistol from a commissioned officer of the Indian Army holding the rank of Captain. The procedure adopted and the manner in which the accused has been dealt with by the Intelligence Unit and the authorities of Indian Army at the time of arrest, recovery and preservation of recovered material appear to be based on unfounded facts. The statement of PW-3 Lt Col MV Joshi further indicates that while arresting the accused, he had got money but there is no evidence in support to establish that the accused was in possession of any money. Keeping in view the fact that the charge framed against the accused was with regard to recovery of pistol No. 7602953 but the pistol produced before the court was different bearing No. 4602953, it may safely be held that the respondents have tried to prosecute the applicant's son on unfounded grounds. Non-production of recovered article is fatal to the prosecution in the facts and circumstances of the present case for the reason that the charges were not framed with regard to the pistol which was produced during the course of trial. It further shows how and to what extent sometimes the prosecuting officer goes ahead to involve an innocent person in a farce case, that too in the country of ours where the dignity of every citizen and his right to fair trial, equality of life and other facets of human life are protected by Article 21 of the Constitution. We have no hesitation in holding that the right of Capt Vivek Anand Singh for fair trial was infringed in a most arbitrary and illegal manner for reasons best known to the respondents and he was subjected to GCM proceedings with a pre-determined mind."

[11] From the decisions referred to hereinabove, it is absolutely clear that the registration of FIR under Section 154 of Code of Criminal Procedure is mandatory in respect of a cognisable offence but in view of Section 5 of the Code of Criminal Procedure, an exception has been carved out in respect of the civil offence, the commission of which shall be deemed to be guilty of an offence against the Army Act and shall be liable to be tried by Court-Martial. But this exception shall have

no application in case where an army personnel is alleged to have committed an offence under the provisions of the Special Acts like NDPS Act, Arms Act, Unlawful Activities Act etc. The facts of the case in Smt. Durgawati Singh Vs. Union of India are not exactly the same as that of the present case but are almost identical and moreover, the Armed Forces of India are involved in both the cases. It has been specifically held therein that it is incumbent upon the Government including the Armed Forces to follow the law laid down by the Hon'ble Supreme Court in Lalita Kumari case (supra); that they have no authority to violate them and that the respondents should have lodged FIR with regard to the recovery of weapon, if any, from Capt Vivek Anand Singh but was not done. In fact, this Court is not bound by the judgment and order of the learned Tribunal except its persuasive value.

But after having perused its judgment and order minutely, this Court is of the opinion that the views expressed by it can be endorsed by this Court which this Court does. Moreover, the present case can be said to be in a better footing, in the sense that while in the case of Capt Vivek Anand Singh, the weapon was alleged to have been recovered from him, in the present case, the allegation is that in the absence of the petitioner, a large number of arms and ammunitions were recovered and that too, in the absence of any civilian or independent witness. During the course of hearing, a query was put to the counsel appearing for the parties whether any appeal has been preferred by the Union of India against the judgment and order rendered in Capt Vivek Anand Singh case or not, the answer was in the negative and in other words, they expressed their lack of knowledge about it. In view of the law laid down in Union of India Vs. L.D. Balam Singh case as well as that of Capt Vivek Anand Singh case, this Court is of the considered view that it can be safely held that the respondent Nos.3 & 4 have failed to register FIR in respect of the recovery of arms and ammunitions from M Sector, Imphal as mandatorily required under the provisions of Arms Act and consequently, the inaction of their part is totally illegal.

[12] For the reasons stated hereinabove, the instant writ petition is disposed of with the direction that the respondent Nos.3 & 4 shall inform the Officer-in-Charge, City Police Station, Imphal within fifteen days from today, as regards the recovery of arms and ammunitions from M Sector, Imphal as mentioned hereinabove and shall hand over the said illegal and unaccounted arms and ammunitions to the said Officer-in-Charge within the same time and after the information being received by the Officer-in-Charge, City Police Station, Imphal about it, he shall take appropriate steps in accordance with law. There shall be no order as to costs.