

(1992) 09 KL CK 0014
In the High Court Of Kerala
Case No : W. A. No. 835 of 1992

Mangal Singh Bhatti

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-09-1992

Acts Referred:

Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 — Rule 2, 3, 4, 5, 6
Criminal Procedure Code, 1973 (CrPC) — Section 192, 209, 240, 246(1), 252
Navy Act, 1957 — Section 78, 78(1), 78(2)
Navy Regulations — Regulation 149, 151, 28, 30

Citation : (1993) CriLJ 3070 : (1993) 1 ILR (Ker) 581

Hon'ble Judges : M. Jagannadha Rao, C.J.; P. Krishnamoorthy, J

Bench : Division Bench

Advocate : V.K. Hamza and V.B. Narayanan, for the Appellant; K. Karthikeya Panicker, for the Respondent

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C.J.—This Writ Appeal is preferred against the judgment of the learned single Judge dismissing the Writ Petition by judgment dated 16-7-1992 in O.P. No. 8863 of 1992-E.

2. The appellant-writ petitioner is a Regulating Petty Officer (Air Crew Diver) of INS, Venduruthy, Southern Naval Command. He had 15 years of service, and opted for voluntary retirement. He was to be relieved on 28-3-1992 at Bombay, and before going to Bombay he was to be relieved from his unit on 28-3-1992. But in respect of an incident which took place on 29-2-1992, he was taken into custody on 30-3-1992 by the naval authorities. Thereafter his wife filed a habeas corpus application, O.P. No. 4550 of 1992, to get him released from the custody of the naval authorities. The said Writ Petition was finally heard by a Division Bench of this Court and was disposed of by judgment dated 24-4-1992. While refusing to issue a writ of habeas corpus, the learned Judges directed the naval authorities" to complete the investigation and trial and dispose of the matter in

accordance with law as expeditiously as possible, at any rate within two months from the date of the judgment".

3. Subsequently, the Commodore Franklin, Commanding Officer of the Southern Naval Command wrote a letter to the Addl. Divisional Magistrate of First Class, Erna-kulam, seeking transfer of the case of the detenu to the Commanding Officer, INS Venduruthy, for trial under the Navy Act, 1957, and in accordance with the provisions of Section 78 of the Navy Act 475 of the Cr.P.C. and the Criminal Courts and Court Martial (Adjustment of jurisdiction) Rules, 1978, hereinafter called "the Rules". Pursuant to the said request of the naval authorities, the Magistrate made over the detenu to the naval authorities by endorsement dated 15-5-1992. Thereafter the naval authorities took over the trial of the case, and conducted investigation in May, 1992. The detenu was charged with three offences and was brought before the Officer-in-Charge, Diving School. Later, the Officer-in-Charge put up the case before the Commanding Officer as it was beyond his powers to try. The accused was brought before Commanding Officer, INS Venduruthy and the summary trial of the sailor by the Commanding Officer was commenced. The Commanding Officer examined witnesses in support of the charges, in the presence of the accused. The accused was given opportunity to cross-examine the witnesses. On completion of examination of witnesses, the Commanding Officer warned the accused in terms of Regulation 28 and the sailor was given an option to make a statement, if he so desired. This was on 22-5-1992. Thereafter on 27-5-1992, the sailor was given an option by the Commanding Officer in terms of Regulation 30 of Regulations, Navy Part II to elect trial by Court Martial. In view of the sailor exercising the option to be tried by Court Martial, the Commanding Officer ordered investigation on 29-5-1992 of the case afresh as required by Regulation 149 of Regulations, Navy Part II. Thereafter on 30-5-1992 the sailor was released from close custody, but was required to report to Guard Room at certain specified timings. On 10-6-1992 the investigating officer started de novo investigation of the case, as per Regulation 149, Regulations, Navy Part II, above referred to, and examined 18 witnesses. On completion of the investigation, the Investigating Officer submitted his report to the Commanding Officer on 10-6-1992. Thereafter, the Commanding Officer formulated the charges, the accused was formally brought before the Commanding Officer and charges were read out to him. He was then cautioned in terms of Regulation 151 of Regulations, Navy, Part II. This was on 12-6-1992. Thereafter on 15-6-1992, the Commanding Officer put up the application for trial by Court Martial and accompanying documents to the Flag Officer Commanding-in-chief Southern Naval Command. Thereafter on 19-6-1992, the case was examined at Headquarters, Southern Naval Command and the Flag-Officer Commanding-in-Chief, Southern Naval Command, who is the convening authority, took a decision to bring the accused to trial-by Court Martial on 26-6-1992 giving six clear days for preparation. The notice was served upon the accused by Trial Judge Advocate.

4. At that stage, the accused-sailor filed a Contempt Case, C.C.C. No. 111 of

1992, before this Court contending that the naval authorities have not concluded the trial under the naval law within a period of two months as required by judgment of this Court in O.P. No. 4550 of 1992, dated 24-4-1992, and that therefore the naval authorities have committed contempt of Court. That Contempt Case came up before one of us (Jagannadha Rao, C.J.) and Jhon Mathew, J. and was dismissed on 9-7-1992. This Court found that subsequent to the directions of the learned Judges in O.P. No. 4550 of 1992, dated 24-4-1992, the naval authorities have taken various steps as detailed above. In the said elaborate judgment, we have referred to Section 475 of the Cr.P.C. and the various naval regulations which require trial procedure to be followed in the case of conduct of Court Martial against accused officers in the Navy. In that order we have stated that no contempt was committed, that there was no delay on the part of the naval authorities, and that the naval authorities have taken steps under the Navy law. It is not in dispute that subsequently, the naval authorities applied before the Division Bench in O.P. No. 4550 of 1992 for extension of time, and extension was in fact granted. Learned counsel for the appellant-writ petitioner has now conceded that trial has since been completed and in fact on 29-7-1992, the accused has been convicted for six months rigorous imprisonment, etc.

5. In the meanwhile, the accused has filed the present Petition on 9-7-1992, that is on the same day, when the Contempt Case was dismissed, stating that the very transfer of the case from the Magistrate's Court to the naval authorities has not been made in accordance with law. Reliance for this purpose was placed on the procedure in Section 475, Cr.P.C., Section 78 of the Navy Act, and Rules 3,4 and 5 of the Rules. The learned single Judge dismissed the Writ Petition, and it is against the said judgment that this appeal has been preferred.

6. Learned counsel for the appellant-writ petitioner contended that the learned Magistrate ought not to have made over the case to the naval authorities on 15-5-1992, merely because the naval authorities have requested for such transfer by letter dated 30-4-1992. According to counsel, the Magistrate has to record reasons for making over the case to the naval authorities, and the reasons should be within the framework of Section 475, Cr.P.C. Learned counsel also contends that no request has been made by the naval authorities under Rule 3(a) of the above said Rules and that, therefore, the provisions of Rule 5 cannot apply. Even if the provisions of Rule 5 apply, the Magistrate has to pass a judicial order u/s 475, Cr.P.C. recording his reasons.

7. A supplementary contention was raised by the learned counsel for the appellant-writ petitioner that the request by the naval authorities was not made by a competent naval authority as defined in Rule 2(d) of the Rules. It is pointed out that the request must be made only by the Chief of the Naval Staff or the Flag Officer Commanding-in-Chief, Southern Naval Command. We have pointed out to learned counsel that the definition in Rule 2(d) while defining "competent naval authority" listed various officers, apart from the Chief of the Naval Staff

and the Flag Officer Commanding-in-chief, and one of the officers so referred to is "Senior Naval Officer where the accused person is serving". This would mean that the request by the competent naval authority need not necessarily be by the Chief of Naval Staff or Flag Officer Commanding-in-chief, Southern Naval Command. We also pointed out that this point was not raised in the Writ Petition. We are, accordingly, of the view that the writ petitioner cannot be permitted at this stage, namely, where the conviction under Court Martial has already taken place, to raise the above said question.

8. Coming back to the main point urged u/s 475, Cr.P.C. read with the Rules, it is necessary at the outset to refer to the provisions of Section 475, Cr.P.C. which reads as follows:

"Section 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 he 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 situate within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial."

It is also necessary to refer to Section 78 of the Navy Act, which reads as follows:

"Section 78. Jurisdiction as to place and offences.- (1) Subject to the provisions

of sub-section (2) every person subject to naval law who is charged with a naval offence or a civil offence may be tried and punished under this Act regardless of where the alleged offence was committed.

(2) A person subject to naval law who commits an offence of murder against a person not subject to army, naval or air force law or an offence of culpable homicide not amounting to murder against such person or an offence of rape in relation to such person shall not be tried and punished under this Act unless he commits any of the said offences-

(a) while on active service; or

(b) at any place outside India, or

(c) at any place specified by the Central Government by notification in this behalf."

It is also necessary to refer to Rules, 3,4 and 5 of the Rules which read as follows:

"Rule 3. Where a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force is brought before a Magistrate and charged with an offence for which he is also liable to be tried by a Court-martial, such Magistrate shall not proceed to try such person or to commit the case to the Court of Session, unless-

(a) he is moved thereto by a competent authority, naval or air force authority; or

(b) he is of opinion, for reasons to be recorded, that he should so proceed or to commit without being moved thereto by such authority.

Rule 4. Before proceeding under clause (b) of Rule 3 the Magistrate shall give a written notice to the Commanding Officer or the competent military, naval, or air force authority, as the case may be, of the accused and until the expiry of a period of fifteen days from the date of service of the notice he shall not-

(a) convict or acquit the accused u/s 252, Sub-sections (1) and (2) of Section 255, Sub-section (1) of Section 256 or Section 257 of the Code of Criminal Procedure, 1973 (2 of 1974), or hear him in his defence u/s 254 of the said Code; or

(b) frame in writing a charge against the accused u/s 240 or Sub-section (1) of Section 246 of the said Code; or

(c) make an order committing the accused for trial to the Court of Session u/s 209 of the said Code, or

(d) make over the case for inquiry or trial u/s 192 of the said Code.

Rule 5. Where a Magistrate has been moved by the competent military, naval or air force authority, as the case may be, under clause (a) of Rule 3 and the

commanding officer of, the accused or the competent military, naval or air force authority, as the case may be, subsequently gives notice to such Magistrate that, in the opinion of such Officer or authority, the accused should be tried by a Court-Martial, such Magistrate if he has not taken any action or made any order referred to in clauses (a), (b), (c) or (d) of Rule 4, before receiving the notice shall stay the proceedings and, if the accused is in his power or under his control shall deliver him together with the statement referred to in Sub-section (1) of Section 475 of the said Code to the officer specified in the said sub-section."

Before we analyse Rules 3, 4 and 5, we shall refer to Rule 8, which reads as follows:

"Rule 8. Notwithstanding anything in the foregoing rules, where it comes to the notice of a Magistrate that a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force has committed an offence, proceedings in respect of which ought to be instituted before him and that the presence of such person cannot be procured except through military, naval or air force authorities, the Magistrate may by a written notice require the commanding officer of such person either to deliver such person to a Magistrate to be named in the said notice for being proceeded against according to law, or to stay the proceedings against such person before the Court-martial if since instituted, and to make a reference to the Central Government for determination as to the Court before which proceedings should be instituted."

In our view, the provisions of Section 475, Cr.P.C., Section 78 of the Navy Act, 1957 and the Rules are intended to see that there is no conflict between the jurisdiction exercised by the ordinary criminal Courts of the land, and the Courts-Martial under the Army, Naval and Air Force Act. If there is conflict of jurisdiction, serious complications will arise. That is why, these provisions have been made to see that such complications do not arise.

9. u/s 475, Cr.P.C., which we have extracted above, the Parliament may make rules consistent with this Code and the Army Act, Navy Act and the Air Force Act, and any other laws for the purpose of trial of persons subject to military, naval or air force by a criminal Court under the Cr.P.C. or by a Court-Martial. Section 475 states that 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 the 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 he 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. This Section, as pointed out by the Supreme Court in *Delhi Special Police Establishment, New Delhi Vs. Lt. Col. S.K. Loraiya*, is designed to avoid conflict of jurisdiction in respect of offences triable by both the Court martial and the ordinary criminal Court. Section 78 of the Navy Act, 1957 provides for jurisdiction as to place and

offences. Sub-section (1) states that subject to the provisions of sub-section (2), every person subject to naval law who is charged with a naval offence or a civil offence may be tried and punished under the Act regardless of where the alleged offence was committed. Sub-section (2) states that a person subject to naval law who commits an offence of murder against a person not subject to army, naval or air force law or an offence of culpable homicide not amounting to murder against such person or an offence of rape in relation to such person shall not be tried and punished under the Navy Act unless he commits any of the said offences; (a) while on active service; or (b) at any place outside India; or (c) at any place specified by the Central Government by notification in this behalf.

10. We shall first try to analyse the Rules. Rule 3 of the Rules restricts the powers of a Magistrate to deal with a person subject to military, naval or air force law or similar laws when such a person is produced before the Magistrate and is charged with an offence for which such person could also be tried by a Court martial. The Magistrate is precluded from "proceeding to try such person" or "to commit the cases to the Court of Session", (a) unless the Magistrate is moved "thereto" by a competent military, naval or air force authority, or (b) unless the Magistrate is of opinion, for reasons to be recorded, that he should so proceed or to commit without being moved thereto by such authority and in a case where he comes to such an opinion under Rule 3(b), he has, under Rule 4, before proceeding to try or to commit the case to the Sessions Court, give written notice to the military, naval or air force authority. Until the expiry of 15 days from the date of service of notice, he shall not convict or acquit the accused as stated in Rule 4(a) nor frame a charge as provided in Rule 4(b), nor commit the accused-as in Rule 4(c), nor make over the case for inquiry or trial u/s 192, Cr.P.C. These restrictions on the powers of the Magistrate are obviously intended to see to it that there is no conflict of jurisdiction between the Magistrate on the one hand, and the military, naval or air force authorities on the other. Then comes Rule 5 which is very relevant in the present case.

11. Under Rule 5, where a Magistrate has been moved under Rule 3(a) by the aforesaid military, naval or air force authorities, and, where the concerned officer or authority subsequently gives notice to the Magistrate that, in the opinion of such officer or authority, the accused should be tried by a Court Martial, then the Magistrate ---- if he has not taken any action or passed any order under Rule 4(a), (b), (c) or (d), - before receiving the notice,

"shall stay the proceedings and, if the accused is in his power or under his control, shall deliver him together with the statement referred to in Section 475(1), Cr.P.C. to the officer specified in Section 475(d), Cr.P.C."

Rule 6 provides for a similar stay and delivery of the accused by the Magistrate if within the period of 15 days mentioned in Rule 4 or thereafter - but before the Magistrate has taken action or passed order as in Rule 4, - the officer or authority gives notice to the Magistrate that in the opinion of such Officer or authority, the accused should be tried by a Court Martial.

12. In other words, unless the military, naval or air force authority moves the Magistrate initially as in Rule 3(a) or after the Magistrate takes action or passes an order under Rule 3(b), to proceed to try the person or commit him to Sessions, the Magistrate is completely tied down as in Rule 5 and even thereafter his powers can be restricted as in Rule 6. Once they are so tied down as in Rules 5 and 6, the Magistrate has no choice (Subject to Rules 8, 9) but to "stay" the proceedings and "deliver" the accused to the said officer or authority. In *Joginder Singh Vs. State of Himachal Pradesh*, , it was held on a consideration of Section 549 of the Cr.P.C. 1898 (Section 475, Cr.P.C. 1973) and Rules 3 and 4, that "it is only when the designated officer does not exercise his discretion and decide that the proceedings should be instituted before a Court Martial, that the Army Act would not obviously be in the way of a criminal Court exercising its ordinary jurisdiction....." See also *Lt. Col. S.K. Kashyap and Another Vs. The State of Rajasthan*,); *Som Datt Datta Vs. Union of India (UOI) and Others*, .

13. If that be so, what should be done when a Magistrate has not, as in the present case, been moved by the authority or officer under Rule 3(a) to proceed to trial or to commit the accused to session or where the Magistrate has not chosen to form the opinion under Rule 3(b) to proceed to trial or to commit the accused? What should be done if, before the above situations contemplated by Rules 3(a) or Rule 3(b) have arisen, the concerned authority or officer has, requested him to deliver the accused to the naval authorities for being tried by a Court Martial? That is exactly the position here.

14. In our view, the intention behind Section 475 of the Cr.P.C. and Rules 3, 4, 5 and 6 of the Rules is to prevent any conflict of jurisdiction. In case the military, naval or air force authorities opine that the accused is to be tried in Court Martial, the Magistrate has to stay the proceedings and deliver the accused to the said authority or officer. If such stay and delivery of accused are contemplated even at a subsequent stage as is referred to in Rule 3(a) or (b), a fortiori there should be stay and delivery of accused, if the said authority or officer intimates the Magistrate earlier and even before the stage of Rule 3(a) or Rule 3(b). That the military, naval or air force authorities have the final say in the matter is clear from Rules 3 to 6 (subject to Rules 8, 9) and this position is accepted by various High Courts. This is the view taken by the Madhya Pradesh High Court in *Major Gopinathan Vs. The State of Madhya Pradesh and Another*, ; the Bombay High Court in *Emperor Vs. Jerry D'sena*,); the Mysore High Court in *Ramanujan v. State of Mysore* AIR 1962 Mys 196 : 1962 Cri LJ 389 and the Calcutta High Court in *Amarendra Chandra Chakravorty Vs. Garrison Engineer and Others*, .

15. However, notwithstanding, the abovesaid superior position of the said military, naval or air force authorities, it is provided in Rule 8 that the Magistrate can arrest to the contrary, in situations provided in Rule 8, that the accused should be tried before the Magistrate and, in such an event, he has to make a reference to the Central Government:

"for determination as to the Court before which proceedings should be instituted."

The Magistrate could question the direction of the authority or officer only in the manner provided in Rule 8: *Ram Sarup Vs. The Union of India (UOI) and Another,)*.

16. In the present case, even before any situation such as is covered by Rule 3(a) or (b) arose, the naval authority had, by letter dated 30-4-1992, requested the Magistrate to allow the accused to be tried under the Naval Law. The Magistrate had no choice but to stay the proceedings and deliver the accused to the naval authorities. The case is an a fortiori case and what is contemplated at a later stage in Rules 5 and 6 has to be done even at an earlier stage by the Magistrate. It was, of course open, because of the "non obstante" clause in Rule 8, to the Magistrate to try to take action under Rule 8 to assert that he alone should try it and seek a reference but he has not chosen to take any such decision even after delivery of the accused. If he thought so, he has to refer the matter for decision to the Central Government. No such situation has arisen in the case. Therefore, the Magistrate was right in staying the proceedings and straightway delivering the accused to the naval authorities.

17. It is then argued that if the Magistrate has no discretion in the matter, why should the words "proper cases" be used in Section 475, Cr.P.C.? It is true that Section 475, Cr.P.C. contemplates that when the person is brought before the Magistrate and is charged with an offence for which he is liable to be tried either by a Court to which the Cr.P.C. 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 he is accused, to the commanding officer."

The expression "have regard to" has come up for consideration before the Privy Council and the Supreme Court in several cases. In, certain cases the words used are "may have regard to" and in certain other cases "shall have regard to". It has been stated that these words do not preclude the taking into account of other factors. In *Commissioner of Income Tax v. William Diamonds, Ltd.* 1958 AC 41 it was observed:

"The form of the words used no doubt lends itself to the suggestion that regard should be paid only to the two matters mentioned, but it appears to their Lordships that it is possible to arrive at a conclusion as to reasonableness by considering the two matters mentioned isolated from other factors. Moreover, the statute does not say "have regard only" to....."

Several cases dealing with the words "have regard to" have been referred to by the Supreme Court in *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, .* That was, however, a case where the words used were "may have regard to". In some other cases as in *Perry v. Wright* 1908 (1) KB 441 where the words used were "regard may be had", it was observed by Cozens

Hardy, M.R. that "no mandatory words are there used" and Fletcher Moulton L.J. said, in the same case, that the factors indicated are a "guide and not a fetter". In another case, *Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI)*, the Supreme Court was dealing with the words "shall be fixed having regard to", Beg, J. (as he then was), observed (at page 462):

"Clause 7(2), set out above, requires the Government to fix the price "having regard to.....". The expression "have regard to" only obliges the Government to consider as relevant data material to which it must have regard (see AIR 1943 164 (Privy Council))."

Inasmuch as the words used in Section 475 are "shall have regard to" it is clear that the Magistrate is bound to have regard to the Rules. He cannot choose to ignore them. He may however have regard to other factors too, if not excluded by the Rules. He may, in proper cases, such as for example, wherein he chooses to opt to Rule 8, make a reference of the matter to the Central Government. There could, perhaps, be other situations too, as stated in decided cases. But, if he does not treat the case as a "proper case" in which he should so refer to the Central Government, and does not even otherwise decide to retain his jurisdiction, he is bound under Rules 5 and 6 of the Rules to deliver the accused to the authority or officer concerned. That is what happened in the present case. Here the Magistrate did not choose to act under Rule 3(b) or under Rule 8 nor did he otherwise think it to be a "proper case", to retain jurisdiction. His action of delivering the accused to the naval authority discloses a clear intention in that behalf and if so, he was under Rules 5 and 6, bound to deliver the accused to the naval authorities. There is no illegality. While doing so, there was, as pointed out below, no reason to record reasons. Reasons were to be recorded only if he proceeded under Rule 3(b).

18. In this context, reference is to be made to the decision of the Madhya Pradesh High Court in *Major Gopinathan Vs. The State of Madhya Pradesh and Another*, . It was there held that at page 165 (of Cri LJ):

"In the first place, under Rule 5 of the Rules framed u/s 549 of the Code of Criminal Procedure, the stay of proceedings by the Magistrate holding the trial in the ordinary criminal Court is obligatory. Under the substantive provisions of Section 549 of the Code, he has been given the power not to hand over the accused to the competent military authority in proper cases, but the operation of that clause must be confined to cases where the Magistrate disputes the jurisdiction of a Court martial to try the accused and where a reference to the Central Government to resolve the conflict would be necessary."

Inasmuch as the Magistrate has not chosen to refer the matter as in Rule 8, or to treat it otherwise as a "proper case" as u/s 475 Cr. P.C., it is clear that the Magistrate did not think that this is a "proper case" for continuing the case in the criminal court as contemplated by Section 475 Cr. P.C.

19. It was also argued that before the Magistrate delivers the accused to the

authority or officer, he must record his reasons. In our view, this is not necessary. In fact it is Rule 3(b) of the Rules that contemplates record of reasons by the Magistrate but that is in a situation where soon after production of the accused, the Magistrate opines that he should try the accused or commit him to sessions and proposes to issue a notice as in Rule 4. The Magistrate in the present case did not admittedly choose to proceed under Rule 3(b). In *Emperor Vs. Jerry D'sena*, , it was observed that at page 100 (of Cri LJ):

"Nor was the Magistrate under any obligation to record reasons for not being of opinion that he should proceed with the trial."

Therefore, there was no necessity to record reasons before delivering the accused to the naval authorities. Before parting with the case, we may observe that the latest position is that the appellant has already been convicted on 29-7-1992 by the Court Martial to six months R.I. and now the appellant wants that the trial should have continued with the Magistrate.

For the reasons given above, we dismiss the Writ Appeal.