

(1993) 12 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 13366 and 14776 of 1993

P.C. Kakar

APPELLANT

Vs

Commandant, Military Hospital, Trimalgiri and Others

RESPONDENT

Date of Decision : 27-12-1993

Acts Referred:

Army Act, 1950 — Section 145, 191, 192, 39

Constitution of India, 1950 — Article 21, 33

Medical Service Regulations, 1983 — Regulation 446, 447, 448

Citation : (1994) 1 ALT 1 : (1994) CriLJ 1025

Hon'ble Judges : N.D. Patnaik, J;M.N. Rao, J

Bench : Division Bench

Advocate : Advocate General and P. Innayya Reddy, for the Appellant; S.C. for Central Govt., for the Respondent

Judgement

M.N. Rao, J.—These two writ petitions are inter-linked : the relief claimed in both is one and the same viz., for production of the alleged detenu - Captain (Mrs.) Latha Sharma - and her two infant children - Vaman and Pavan - aged 3 and 12 years respectively from the custody of Army authorities and to set them liberty, Because of the commonality of facts and law, we think it proper to dispose of both the writ petition by this common judgment.

2. W.P. No. 13366 of 1993 was filed by Dr. P. C. Kakar, husband of the alleged detenu - Captain (Mrs) Latha Sharma and W.P. No. 14776 of 1993 by Dr. P. C. Kakar and the detenu, Captain Latha Sharma. In the first writ petition two learned advocates - M/s. S. R. Sanku and N. N. Guru Gopal filed vakalat but during the pendency of the writ petition, they withdrew from the case. The latter writ petition was filed by Dr. P. C. Kakar as party-in-person. It is not necessary to go into the controversy as to the circumstances under which the two learned counsel withdrew from the case.

3. When the matter came up for hearing before us, we thought that the assistance of a counsel is very necessary in order to effectively adjudicate the

questions involved. We requested Sri K. G. Kannabhiran, senior counsel, to assist the court as amicus curiae and he readily responded to our request and argued the case exhaustively. We gratefully acknowledge the assistance rendered by Sri K. G. Kannabhiran.

4. The detenu-Smt. Latha Sharma is a Military Nurse holding the rank of "Captain". It was alleged in W.P. No. 13366 of 1993 filed on 7-9-1993 that on 1-9-1993 at about 10.30 a.m., Captain Latha Sharma was illegally locked up in M.I. Room of Artillery Centre and was beaten up and kicked in the abdomen by three Army Officers - Col. P. C. Reddy, Col. Babu and Lt. Col. Ali - as a result of which, she developed bleeding P.V. (per vagina) and she was admitted in the Gandhi Hospital, Secunderabad. She, along with her two infant children, was kept under police and military guard without allowing her husband - Dr. P. C. Kakar - to see them. A further allegation is that attempts were being made to administer, forcibly, harmful narcotic drugs to Captain Latha Sharma in order to damage her health and to attribute mental imbalance to her with a view to discharging her from military service. Incidentally, it was also averred in the affidavit that the Army personnel raided the official quarter of Captain Latha Sharma, ransacked the house and assaulted Dr. P. C. Kakar, her husband.

5. In W.P. No. 14776 of 1993, the allegations are to the effect that Captain Latha Sharma and her two infant children were detained illegally at the Southern Command Hospital, Pune and that her husband, Dr. P. C. Kakar, received a letter to that effect from the detenu. A further averment in the writ petition is that Dr. Kakar received a telephone message on 27-9-1993 from the hospital doctor that his wife was being mentally tortured, denied proper food and other facilities and all this was aimed at coercing her to withdraw charges she has levelled against the Psychiatrist and the Commandant of the Military Hospital, Pune. The concerned military authorities, the Superintendent of Gandhi Hospital, Secunderabad, the Commissioner of Police, Hyderabad and the Superintendent of Police, Ranga Reddy District are shown as respondents.

6. In the counter-affidavit filed in W.P. No. 13366 of 1993 by Brig H. K. Sharma, it was averred inter alia, that a learned single Judge of this Court - P. Ramakrishnam Raju, J., - in W.P.M.P. No. 8530 of 1993 in W.P. No. 6746 of 1993 dated 27th August, 1993 directed Captain Latha Sharma to co-operate with the authorities for early completion of the departmental enquiry pending against her and that the Army authorities should provide conveyance on the dates of enquiry and other facilities to her. She was directed to attend the enquiry between 6-9-1993 and 10-9-1993 excluding holidays. The counter-affidavit says that when Captain Latha Sharma was informed of this, she refused to attend the enquiry scheduled to be held on 1-9-1993 at 10.00 a.m. All the witnesses were present along with the Commanding Officer, at the Artillery Centre to conduct the enquiry into the charges against Captain Latha Sharma but as she was not present, it was decided that the Commanding Officer should proceed to the place i.e. Medical Inspection room and the witnesses were asked to be present there.

On seeing them, Captain Latha Sharma made an excuse on the ground that she wanted to get some documents, went out of the room and left the place sitting on the pillion of the scooter driven by her husband. She was traced at the Gandhi Hospital, Secunderabad. After she was discharged on 4-9-1993 from the Gandhi Hospital, she was sent to the Military Hospital, Secunderabad under police escort. Her behaviour was found to be abnormal - she threatened to kill her children - and so her case was referred for Psychiatric investigations. She refused to co-operate and so she was sent to Command Hospital, Southern Command, Pune for treatment. In the additional counter-affidavit sworn to by Brig. H. K. Sharma on 6-10-1993, it was averred that Captain Latha Sharma could not be allowed treatment in a civil hospital because of the Military Nursing Service Ordinance (30 of 1943) as amended by the Army Act, 1950. Captain Latha Sharma absented herself from the place of her duty and, therefore, she committed an offence u/s 39(a) of the Army Act and she got herself admitted in the hospital without obtaining leave.

7. In W.P. No. 14776 of 1993, in the counter-affidavit sworn to by Brig. Parimal Sundar Choudhary, it was averred that when Captain Latha Sharma was in the Gandhi Hospital, Secunderabad, she did not co-operate with Dr. Pramod Kumar, Assistant Professor, (Psychiatry) of the Institute of Mental Health, Hyderabad, who was detailed by the Superintendent of the Mental Institute to examine her. She was, therefore, brought to the Military Hospital, Secunderabad and her case was diagnosed as "PARANOID STAGE - II" and she was transferred to Command Hospital, Southern Command, Pune on 5-9-1993 for final assessment. She was examined by a Board of Senior and highly specialised doctors at Pune and the decision of the Board was finally approved by the Deputy Director of Medical Services. The opinion of the Board was that Captain Latha Sharma is aggressive, her judgment is impaired and she has a sense of persecution complex which might ultimately be the reason for causing injury to herself or people around her or with suicidal tendency and hence presenting her before the Court "is not without danger". The same Officer filed an additional counter-affidavit on 13-10-1993 stating inter alia, that the Invaliding Medical Board held at Command Hospital, Pune considered Captain Latha Sharma to be permanently unfit for military duty as she is suffering from PARANOID STATE (ICD-297) and that the same was informed to her husband - Dr. P. C. Kakar - by registered post with acknowledgement due but the same was not accepted by Dr. Kakar on the ground that the matter is sub-judice.

8. Dr. Sundara Rajulu, Superintendent of the Gandhi Hospital, Secunderabad, the fifth respondent in W.P. No. 13366 of 1993, in his counter-affidavit did not dispute the fact that Captain Latha Sharma was admitted as an in - patient in the hospital on 1-9-1993 and that she complained to the duty casualty medical officer that she was beaten-up by Col. P. C. Reddy and Lt. Col. S. I. Ali around 9.30 a.m., on that day at the Artillery Centre M.I. room, Golconda. He further avers that Captain Latha Sharma complained of "pain, tenderness and swelling over the pubic area and per vaginal bleeding." The only drugs administered to

Captain Latha Sharma were :

"1. Cap. Ampicillin 500 mg PD IM

2. Inj. Calmpose (805)

3. Tab. Brufin O/O

Tab. Vim "C" 500 mg RD".

and that no other drug was administered to her at the Gandhi Hospital. The lady Medical Officer who examined Captain Latha Sharma, sought the assistance of the Psychiatrist of the Mental Hospital to examine the patient for the alleged mental imbalance and accordingly Dr. Pramod Kumar, Assistant Professor (Psychiatry) of the Institute of Mental Health examined Captain Latha Sharma and reported on 3-9-1993 that when he wanted Captain Latha Sharma "to come by herself for interview, she insisted that her husband - the petitioner herein - must also be present". The view expressed by Dr. Pramod Kumar was that unless he observed the patient (Captain Latha Sharma) for ten days, it would not be possible for him to give any opinion. A further averment in the fifth respondent's counter-affidavit is that Captain Latha Sharma was discharged from the Gandhi Hospital on 4-9-1993 and when she was examined at 1.00 p.m., on that day, there was no evidence of any external injuries. He denied the allegation that Captain Latha Sharma had abortion after her admission as in-patient in the Gandhi Hospital.

9. When the matter came up for hearing on 27-10-1993, we directed the respondents-military authorities to shift Captain Latha Sharma from the Military Hospital, Pune to the Military Hospital, Secunderabad. The authorities were directed by us, pending further orders, not to initiate any disciplinary action against Captain Latha Sharma for the obvious reason that "invalidation on the ground of mental ill-health and disciplinary action do not go together." We also directed the respondents to produce the detenu - Captain Latha Sharma - before the Court on the next date of hearing. When the case came before us, it was represented by Sri Innayya Reddy, learned Senior Standing Counsel for the Central Government, that because of the mental ill-health of the detenu, it would not be safe to produce her in the Court and her presence might prove dangerous to others in the Court-hall. In order to satisfy ourselves whether the alleged mental illness of the detenu is of such degree that her presence would be dangerous, we requested Smt. D. S. R. Krishna, Advocate of this Court, to go to the Military Hospital, Secunderabad, interview her and report back to us by 15-11-1993.

10. Smt. D. S. R. Krishna, Advocate-Commissioner, accompanied by her junior, Smt. B. S. Prabha, went to the Secunderabad Military Hospital on 12-11-1993 around 9.00 a.m., met Captain Latha Sharma and when the order of this Court was shown to her, the latter agreed to be interviewed. The Advocate-Commissioner, in the report submitted by her to this Court on 15-11-1993, has

observed :

"She (Captain Latha Sharma) looked normal and wearing a decent dress. She appears to be cool and collected. As she finished reading the order, expressed her faith and respect for the Courts. She received us with respect and delight."

Lata Sharma told the Advocate-Commissioner that as she filed several cases against the Army authorities, she was detained on the pretext of "unsound mind" and that she was a witness to a rape case which is pending in the Metropolitan Magistrate's Court, Hyderabad. She complained to the Advocate-Commissioner that she was assaulted by the Commandant and others, which had resulted in miscarriage of six months' pregnancy and this incident happened on 1-9-1993. In respect of the said incident, she filed a complaint before the Mahila Court, Hyderabad against the Commandant. She also complained that on 2-9-1993, Col. P. C. Reddy - one of the officers who allegedly assaulted her - approached the Chief Lady Medical Officer of the Gandhi hospital and forced her to change the case-sheet to write the words "alleged mental imbalance". She also alleged that on 5-9-1993, she was forcibly taken to Pune along with her two infant children and when she insisted that her husband should be informed, her request was rejected and she was not even allowed to make a telephone call. An attempt was made to administer "Haloperador" injection to her but a Nursing officer - Uma - came to her rescue and requested the authorities not to give that injection. She described in detail as to what had happened in the Pune hospital. She alleged that Col. Virendra Singh, the accused in the rape case in which she was figuring as a witness, came to Pune to influence the hospital doctors. One of the pertinent statement made by her to the Advocate-Commissioner was that nobody had informed her about the Court summons or orders and she denied that the military hospital people informed her about the order of this Court for her production.

11. The aforesaid report of the Advocate-Commissioner was submitted to this Court on 15-11-1993. Captain Latha Sharma was produced on that day in the Court on the orders of the Court, the Advocate-Commissioner went to the Military Hospital, Secunderabad and brought Captain Latha Sharma to the Court in the car provided by the Registrar (J). At 11.30 a.m., in our Chambers, in the presence of Dr. (Smt.) Subbalakshmi, Government doctor attached to the High Court Dispensary and Sri P. Innayya Reddy, learned Senior Standing Counsel for the Central Government, we recorded the statement of Captain Latha Sharma. She narrated the inhuman treatment meted out to her by the Army authorities, her undergoing treatment in the Gandhi Hospital, Secunderabad and subsequent forcible removal to Pune against her wish and without the knowledge of her husband. In this connection, it must be mentioned that there was some controversy as to whether Dr. P. C. Kakar, the husband of Captain Latha Sharma, was inclined to withdraw the writ petition. The said Dr. P. C. Kakar did not appear before us but it was alleged that he had sent a telegram stating that he was withdrawing the writ petition. As Captain Latha Sharma also is petitioner in W.P.

No. 14776 of 1993 along with her husband, we specifically asked her whether she wanted to withdraw the case for which she gave a categorical answer : "I do not want to withdraw the writ petition". When we asked her whether she was willing to be examined by a Psychiatrist/Neurologist, she replied : "Yes, I am willing to be examined by an doctor". Dr. (Smt.) Subbalakshmi, Government doctor, who was present throughout in the Chambers observing the behaviour, reaction and demeanour of Captain Latha Sharma has recorded the following opinion :

"I do not find any trace of abnormality in her. She is polite, courteous and her expression is sound. She answered the questions like a normal person".

We have no doubts, whatsoever, that Captain Latha Sharma is a normal person. Our impressions, as recorded on 15-11-1993, are :

"From the answers given by Captain (Mrs.) Latha Sharma, her reaction to the questions put by us and the way she conducted herself when she is in the Chambers, prima facie, we are satisfied that she is a normal person. However, in view of the assertion of the respondents that she is suffering from a mental illness called "Paranoid-Stage II", we would like to have the opinion of the Neurologist of the Osmania General Hospital. Captain (Mrs) Latha Sharma says that she has no objection if Captain (Miss) Uma Devi (Military Nurse) is asked to be present with her at the time of the examination by the specialist".

We, therefore, directed that Captain Latha Sharma should be examined by the Neurologist of the Osmania General Hospital and that Captain (Miss) Uma Devi, Military Nurse attached to the Army Hospital, Secunderabad should accompany her.

12. In compliance with our direction, Dr. (Smt.) Anandavalli, Professor and Head of the Department (Neurology), Osmania General Hospital, examined Captain Latha Sharma on 17-11-1993. Dr. (Smt.). Anandavalli is a specialist in Neurology with academic qualifications - M.D. and D.M. (Neurology). Her observations as incorporated in the written opinion given by her on 17-11-1993 are as follows :

"History narration - Good. Higher functions - Memory good. Speech good. Orientation - Normal. No Hallucinations or delusions. Examination of - Normal cranial nerves Motor System - Normal Sensory system - Normal Cerebellar system - Normal No sings of meningeal irritation Spine & Cranium normal Clinically No focal neurological deficit As far as the mental condition is concerned, I am not competent to give opinion."

13. In the counter-affidavits filed by the Army authorities, there are certain allegations against Captain Latha Sharma and her husband, Dr. P. C. Kakar - the latter is allegedly guilty of certain criminal acts and the former, i.e., the detenu, is in the habit of filing cases against superiors in the regular criminal Courts. We cannot, for obvious reasons, enquire into these allegations since they are outside the purview of these two writ petitions.

14. Sri Innayya Reddy, learned Senior Standing Counsel for the Central Government, has contended that inasmuch as Captain Latha Sharma was detained on medical grounds and the detention not being illegal, no writ for Habeas Corpus will lie. The Army authorities have taken adequate care to comply with the existing rules and regulations for confining Captain Latha Sharma in the Military Hospital at Pune and that the number of cases which she filed against the Army authorities clearly shows that she is suffering from "PARANOID STAGE II" Finally, he submitted that since the matter pertains to the detention of a member of the military service - one of the wings of the Armed Forces - this Court cannot judicially review the legality of the action of the Army authorities in view of the embargo contained in Art. 33 of the Constitution of India.

15. Article 33 of the Constitution of India empowers Parliament to determine, by law, the extent to which any of the fundamental rights contained in Part III shall be made applicable to the members of the Armed Forces and the other four categories of persons specified therein. The power to restrict or abrogate the application of fundamental rights in respect of the excluded categories of persons was for the purpose of ensuring "proper discharge of their duties and the maintenance of discipline among them". The power to enact the Army Act, 1950 is referable to Entry 2 in List I and in respect of the members of the Armed Forces, the fundamental rights available to them are those which are not excluded or abrogated or modified by the provisions of the said Act. Vide *Ram Sarup Vs. The Union of India (UOI) and Another*, , *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, .

16. The argument of Sri Innayya Reddy was that members of the Armed Forces afflicted with psychiatric complaints are governed by paragraphs 446 to 453 of the Regulations for Medical Services, 1983 made u/s 192 of the Army Act. Section 191 of the Army Act confers power on the Central Government to make rules for the purpose of carrying into effect the provisions of the Act and in particular, the purposes specified in the sub-section (2). In respect of the other purposes not covered by S. 191, the Central Government is empowered to make regulations under S. 192 of the Army Act.

17. Regulation 446 speaks of responsibility of the medical services towards cases of Psychosis. Sri Innayya Reddy, relies upon clause (a) of Regulation 446 which says that any person subject to the Army Act, Navy Act or Air Force Act "showing symptoms of psychois will at once be admitted to hospital and placed under observation and treatment. If no hospital exists in the station, he will be transferred to the nearest station in which one is situated". The justification for confining Captain Latha Sharma in the Military Hospital at Pune is the aforesaid statutory power according to Sri Innayya Reddy.

18. The facts brought on record clearly point out that for a collateral purpose, the aforesaid provision was invoked. From what we have observed of Captain Latha Sharma when she made the statement before us in the Chambers and the opinion recorded by the Government doctor attached to the High Court

Dispensary about the condition of Captain Latha Sharma and the medical opinion given by the neurologist of the Osmania General Hospital, she (Captain Latha Sharma) does not suffer from any symptoms of abnormality. The plea of the military authorities that if she were to be produced before the court, the safety of others might be endangered is only a device to prevent this Court from ascertaining the true state of facts. The mental illness attributed to Captain Latha Sharma and the alleged observation by the military authorities of symptoms of psychosis in her are only a mere facet to prevent her from prosecuting the cases she had filed against the military authorities. When we have asked Sri Innayya Reddy for the explanation of the authorities as to why Captain Latha Sharma was treated so cruelly and branded as an insane person, Sri Reddy came out with the suggestion, when the argument were about to be closed, that she may be released. Obviously, realising that sustaining their action would be impossible before this Court, the military authorities suggested that she may be released. No further evidence is required suggestive of oblique motives that prompted the authorities in attributing mental illness to Captain Latha Sharma. It is not a case of bona fide exercise of power in good faith on alien or irrelevant grounds. The impugned action was propelled by improper motives - to silence an inconvenient nursing officer by deliberately flouting the mandatory statutory requirements. Statutory power was thus exercised in bad faith and so the entire action is vitiated by mala fides. See : S. Pratap Singh Vs. The State of Punjab, and Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, .

19. Why the military authorities acted in this cruel manner to deprive the personhood of Captain Latha Sharma and her guaranteed fundamental right under Art. 21 of the Constitution ? A Departmental enquiry was pending against her and she filed a writ petition - W.P. No. 6746 of 1993 - in this Court alleging that she was subjected to harassment. An order was passed by our learned brother, P. Ramakrishnam Raju, J., in W.P. M.P. No. 8530 of 1993 on 27-8-1993 directing the authorities to complete the enquiry expeditiously and provide conveyance on the dates of enquiry and all other facilities to Captain Latha Sharma. She was directed to attend the enquiry between 6-9-1993 and 10-9-1993 excluding holidays. But the enquiry was scheduled to be held on 1-9-1993 at 10.00 a.m., and according to the counter-affidavit sworn to by Brig. H. K. Sharma in W.P. No. 13366 of 1993, she was not present at the enquiry although witnesses were assembled and when all of them proceeded to the Medical Inspection room of the Artillery Centre, Secunderabad, Captain Latha Sharma escaped on a scooter driven by her husband on seeing them. But according to Captain Latha Sharma, she was kicked and beaten up by certain Army officers which had necessitated her admission as an in - patient in the Gandhi Hospital, Secunderabad, about which we have already adverted to. Even assuming that the allegation is true, inasmuch as abnormal behaviour was noticed in the course of the trial by the court-martial - there is no dispute that the writ petition, W.P. No. 6746 of 1993, was in relation to a Court martial proceedings governed, by Chapter V of the Army Rules - the only course open for

the authorities is to follow the procedure prescribed in S. 145 of the Army Act. Sub-section (1) of S. 145 says that in the course of a trial by a court-martial, if it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act, the court shall record a finding accordingly. Sub-section (2) says that the presiding officer of the Court shall forthwith report the case to the confirming officer, who may, if he does not confirm the finding, take steps to have the accused person tried by the same or any other court-martial for the offence with which he was charged. (vide sub-section (3)). When the authority to whom the finding of the court-martial is reported and a confirming officer confirmed the finding, sub-section (4) mandates that the accused person shall be kept in custody in the prescribed manner and a report shall be submitted to the Central Government. Sub-section (5) says that the Central Government, on receipt of the report, may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody. The mandatory provisions of S. 145 of the Army Act were totally ignored by the authorities. They cannot circumvent the provisions of S. 145 of the Army Act by resorting to Regulation Nos. 446(a) and 447 and 448 which deal with procedure on admission of a case of psychosis to an Armed Forces Hospital and management of such a case respectively. The fact that the guaranteed fundamental rights incorporated in Part III of the Constitution could be abrogated or restricted in their application to members of the Armed Forces because of the provisions of the Army Act or the regulations made thereunder can never be a justifiable ground for the non-compliance of the provisions of S. 145 of the Army Act.

20. What was the condition of Captain Latha Sharma when she was admitted as an in-patient in the Gandhi Hospital, Secunderabad at 12.25 p.m., on 1-9-1993 ? The O.P. chit No. 16798 attached to the case-sheet shows that when she was examined, the following injuries were noticed :

"Pain tenderness and swelling over the supra pubic area".

Bleeding P.V. (per vagina) was also recorded. Although these injuries were not present on the date of her discharge i.e. 4-9-1993, prima facie, the presence of these injuries on 1-9-1993 at the time when she was admitted in the hospital lends credence to her assertion that she was beaten and kicked by certain Army personnel. After four days, by the time she was discharged, injuries of this nature must have been healed and that is the reason why the case-sheet says that by the time of discharge, there were no external or internal injuries. After she was discharged on 4-9-1993 from the Gandhi Hospital, she was sent to the Military Hospital, Secunderabad under police escort, obviously at the instance of the military authorities. That she was sent to the Military Hospital, Secunderabad under police escort is admitted in the counter-affidavit. She was not willing to go back to the Military Hospital but forcibly she was taken there. From the counter-affidavit filed by Brig. H. K. Sharma, it is clear that because

Captain Latha Sharma did not allow her to be examined by the Army doctors at the Military Hospital, Secunderabad, she was sent to Military Hospital, Pune, for psychiatric examination and this was done despite the stiff resistance put up by her.

21. In respect of the alleged assault made on her by certain Army Officers on 1-9-1993 at the Artillery Centre, Secunderabad, Captain Latha sharma lodged a complaint with the Criminal Court (F.I.R. No. 120/93 dated 1-9-1993 registered with the Golconda Police Station) and the police had taken up investigation by the time she was sent forcibly to Pune. The reason why she was forcibly sent away to Pune Military Hospital for psychiatric examination is transparent; the Army authorities did not want her presence in Secunderabad when the police are investigating the complaint filed by her. To cover up their illegal action, an utterly untenable plea was taken in the additional counter-affidavit filed by Brig. H. K. Sharma on 6-10-1993 that Captain Latha Sharma could not be allowed treatment in a Civil hospital because of military regulations. The plea of the respondents that Captain Latha Sharma was removed to Pune Military Hospital for proper treatment is preposterous.

22. Breach of the mandatory provisions of S. 145 of the Army Act on the part of the authorities vitiates not only their action regarding the involuntary commitment of Captain Latha Sharma to the Military Hospital at Pune for psychiatric treatment but also, the certificate issued by the Army doctor - Col. P. S. Vaidya, Senior Advisor, Psychiatry, Command Hospital, Pune - and the opinion of the Medical Board comprising P. K. Chakravarthy, Lt. Col. N. Kumar and Lt. Col. A. C. Anand. The presumption of correctness attached to the opinion of medical experts is rebutted in the present case in view of the deliberate illegal methods adopted by the authorities. Any normal person subjected to cruel treatment as was meted out to Captain Latha Sharma would definitely, to some extent, exhibit hostility, aggression and mistrust towards the hospital staff. Col. Vaidya's opinion : "she (Captain Latha Sharma) was resentful during interviews, was suspicious, showed hostility, aggression and mistrust towards psychiatrists and other staff of this hospital" cannot be treated as an abnormal behaviour. Similar observations also are found in the opinion of the Medical Board which also are not entitled to any weight. The opinion of the Medical Board that Captain Latha Sharma is suffering from "PARANOID STATE (ICD 297) manifested in elaborate and systematised persecutory delusions" lacks both legality and legitimacy; the situations leading to the tendering of such opinion was deliberately contrived. The perceptive observations of Thomas Szasz, Professor of Psychiatry at the State University of New York Upstate Medical Centre in Syracuse, New York, may be noticed in this context :

"If, however, an individual is pressed into the role of mental patient against his will - for example, by being committed to a mental hospital - then his social role most closely resembles that of the criminal sentenced to imprisonment". (See : Thomas Szasz - Ideology and Insanity - p. 101.)

Most people who are considered mentally sick (especially those confined involuntarily) are so defined by their relatives, friends, employers, or perhaps the police - not by themselves. These people have upset the social order - by disregarding the conventions of polite society or by violating laws - so we label them "mentally ill" and punish them by commitment to a mental institution.

The patient knows that he is deprived of freedom because he has annoyed others, not because he is sick. And in the mental hospital, he learns that until he alters his behaviour he will be segregated from society. But even if he changes and is permitted to leave, his record of confinement goes with him. And the practical consequences are more those of a prison than a hospital record. The psychological and social damage thus incurred often far outweighs the benefits of any psychiatric therapy." (Thomas Szasz - Op. Cit., p. 83)

"It is significant, moreover, that there is hardly a prominent person who, during the past fifty years or so, has not been diagnosed by a psychiatrist as suffering from some type of "mental illness". Barry Goldwater was called a "paranoid schizophrenic"; Whittaker Chambers, a "psychopathic personality"; Woodrow Wilson, a "neurotic" frequently "very close to psychosis" and Jesus, "a born degenerate" with a "fixed delusional system" and a "paranoid" with a "clinical picture (so typical) that it is hardly conceivable that people can even question the accuracy of the diagnosis". The list is endless.

Sometimes, psychiatrists declare the same person sane and insane, depending on the political dictates of their superiors and the social demand of the moment. Before his trial and execution, Adolph Eichmann was examined by several psychiatrists, all of whom declared him to be normal; after he was put to death, "medical evidence" of his insanity was released and widely circulated." (Thomas Szasz - Op. Cit., pp. 118-119)

23. Forcibly committing Captain Latha Sharma to a mental hospital without the authority of law is a clear breach of her guaranteed fundamental right under Art. 21 of the Constitution. Knowing and deliberately this was done by the respondents-military authorities. They almost succeeded in permanently committing her to the precincts of the psychiatric ward in the Command Hospital, Southern Command, Pune with little prospect of her emerging out of it as a sane person. Next to life, the most cherished right is personal liberty. But for these habeas corpus petitions, Captain Latha Sharma, in all probability, would have permanently lost both her personal liberty and sanity. This conduct of the military authorities shocks judicial conscience. The respondents-military authorities acted mala fide. That is the inescapable inference emerging from the record placed before us. When Captain Latha Sharma refused to submit herself for psychiatric examination in the Military Hospital at Secunderabad, how did Pune Military doctors examine and give their opinion ? The only reasonable inference is that some drug or injection must have been forcibly administered to her in order to incapacitate her from knowing what was happening to her.

24. The United States Constitutional Law recognises the position that involuntary confinement in a mental hospital amounts to deprivation of personal liberty : it is no different from ours. As observed by Chief Justice Burger in O'Connor v. Daraldson, 422 US 563 :

"There can be no doubt that involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason is deprivation of liberty which the State cannot accomplish without due process of law (in the Indian context procedure established by law)".

From 4-9-1993, when Captain Latha Sharma was removed under police escort from the Gandhi Hospital, Secunderabad to the Military Hospital, Secunderabad and from there to the Command Hospital, Southern Command, Pune, she has been in illegal detention branded as a "mentally ill person". Any amount of monetary compensation would not wipe out the damage done to her. The shock is too severe to be forgotten by efflux of time. It is equally true that in these writ petitions, we cannot do anything more than awarding monetary compensation to her as was done by the Supreme Court to Sri Bheem Singh, a former Member of the Legislative Assembly of Jammu and Kashmir, See : Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, . It would be a stultification of our responsibility as a constitutional Court to say that no compensation need be given. The law expounded by the Supreme Court in Bhim Singh's case (7 supra) :

"When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases, the Court has the jurisdiction to compensate the victim by awarding suitable monetary compensation" fully applies to the case on hand.

25. Taking into consideration the official rank of Captain Latha Sharma, the extent of mental torture suffered by her and the duration of deprivation of her constitutional and legal right, we are of the view that a sum of Rs. 25,000/- (Rupees twenty five thousand only) would be adequate monetary compensation. This, we make it explicit, is without prejudice to her right to initiate civil action for claiming damages against the concerned persons responsible for this illegal act. Not only respondents 1 and 2 in W.P. No. 13366 of 1993 and respondents 6, 7, 8, 10 and 11 in W.P. No. 14776 of 1993, but the Union of India represented by the Secretary to Government, Ministry of Defence, New Delhi is also responsible for payment of compensation since it cannot disown its vicarious responsibility. Therefore, within two months from today, the aforesaid respondents and the Union of India shall deposit, jointly and severally, the above mentioned compensation of Rs. 25,000/- with the Registrar (Judl.) of this Court for payment to Captain Latha Sharma through Sri P. Innayya Reddy, learned Senior Standing Counsel for the Central Government. On such amount being deposited, the Registrar (judl.) shall pay the same to Captain Latha Sharma. The

remuneration of Smt. D. S. R. Krishna, Advocate-Commissioner is fixed at Rs. 6,000/- out of which, Rs. 2,000/- shall be paid to her junior - Smt. B. S. Prabha. This amount of Rs. 6,000/- also shall be deposited within two months from today with the Registrar (Judicial) of this Court by the aforesaid respondents and the Union of India, jointly and severally, through Sri P. Innayya Reddy. On such deposit being made, the Registrar (judl.) shall pay the same to the Advocate-Commissioner and her junior as stated above.

26. Captain Latha Sharma and her two infant children are set at liberty forthwith.

27. The two writ petitions are accordingly allowed with the aforesaid directions.

28. Soon after the judgment is pronounced, Sri P. Innayya Reddy, Senior Standing Counsel for the Union of India requests that the judgment may be suspended for two months. We are not inclined to do so, since it would amount to continuation of Captain (Mrs.) Latha Sharma in wrongful custody.

29. Petitions allowed.