

(2024) 09 SC CK 0062

In the Supreme Court Of India

Case No : Writ Petition (Criminal) No. 250, 265 Of 2022

Rabina Ghale & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-09-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 197(2)
Indian Penal Code, 1860 — Section 34, 120B, 201, 302, 307, 326
Armed Forces (Special Powers) Act, 1958 — Section 6

Citation : (2024) 09 SC CK 0062

Hon'ble Judges : Vikram Nath, J;Prasanna Bhalachandra Varale, J

Bench : Division Bench

Advocate : Sultan Singh, Ajit Sharma, Aditya Vikram Singh, Kanchan Kumar Singh, Huzefa Ahmadi, Astha Sharma, Nipun Saxena, Sanjeev Kaushik, Mantika Haryani, Simranjeet Singh Rekhi, Rashmi Singh, Muskan Surana, Archit Adlakha, Soumya Saxena, Aditya Raj Pandey, K M Nataraj, Mukesh Kumar Maroria, Bhuvan Kapoor, Rajan Kumar Chourasia, Vinayak Sharma, Shubham Saxena, Prasenjeet Mohapatra, K.N. Balgopal, Visto Rio, C. K. Sasi, Meena K Poullose, Vanshaja Shukla, Ankeeta Appanna, Siddhant Yadav

Final Decision : Allowed

Judgement

Vikram Nath, J

1. The Writ Petition (Criminal) No. 265 of 2022 and Writ Petition (Criminal) No. 250 of 2022 have been filed with the following prayers:

“(i) Issue a writ of certiorari or any other appropriate writ quashing the Suo moto FIR bearing State Crime Police Station (SCPS) Case No. 07/2021 registered by Respondent No.2, Complaint dated 07.12.2021 by the Respondent No.3, the Findings and recommendations of the SIT constituted by the Respondent No.2 dated 24.03.2022 seeking sanction to prosecute the husbands of the Petitioners along with 28 other Team members u/s 302, 307, 326, 201, 34 IPC r/w 120-B IPC and for initiating disciplinary action against the entire team as per the provisions of the Army Act and Rules, and all other ancillary proceedings

emanating out of the said FIR and/or in furtherance of the incident dated 04.12.2021, being against the mandate of law and being solely targeted at attacking soldiers in exercise of their bona fide duties of upholding the dignity of Indian Flag;

(ii) Issue a writ of mandamus or any other appropriate writ directing the Respondents to desist from engaging in such arbitrary exercises of executive power which impairs the normal and bona fide functioning of the Army in the area;

(iii) Issue a writ of mandamus or any other appropriate writ directing the Respondent authorities to issue guidelines to protect the Rights of soldiers so that no soldier is harassed by initiation of criminal proceedings for bona fide actions in exercise of their duties, as mandated by the Union of India, in protection of sovereignty, integrity and dignity of the Country;

(iv) Issue a writ of mandamus or any other appropriate writ directing that adequate compensation is provided to the effected serving personnel and their families, who have been unnecessarily embroiled in mala fide criminal proceedings in discharge of their bona fide duties;

(v) Issue a writ of mandamus or any other appropriate writ directing the local Police authorities to investigate and file Charge-sheet in the FIR No. 27/2021, instituted by 21 PARA (SF) and prosecute the perpetrators for Terrorist Activities against the unruly, violent and armed mob led to the martyrdom of Paratrooper Gautam Lal, grievous injuries to the entire Operations team and the four civilian drivers, the loss of property by burning the four civil pattern vehicles which had come to extricate the team from the site of the incident, the loss of weapons and ammunitions snatched away from the team and which were burned once the vehicles were set on fire, while discharging duties as ordered by the Central Government; Alternatively,

(vi) Issue a writ of mandamus or any other appropriate writ directing that investigation of the said FIR No. 28/2021 to be carried out in another state with independent and unbiased investigating agencies;

(vii) Pass any other appropriate writ/order/direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Without going into detailed facts, it would be relevant to quote an order dated 19.07.2022 passed by this Court in the above two writ petitions, as the said order incorporates the crux of the matter:

"Issue notice.

Mr. Arvind Kumar Sharma, learned Advocate-on-Record accepts notice on behalf of the Union of India and Ministry of Defence.

These Writ Petitions under Article 32 of the Constitution of India, have been filed by the

wives of officers of the Indian Army for quashing of Suo Moto FIR, bearing State Crime Police Station (SCPS) Case No.07/2021 registered against the personnel of 21 PARA(SF), Unit of the Indian Army including the respective husbands of the Writ Petitioners under Sections 302, 307, 326, 201, 34 read with Section 120-B of the Indian Penal Code, 1860 (IPC) the findings and recommendations of the Special Investigation Team (SIT) dated 24th March 2022 constituted by Respondent No.2. The proceedings in this case emanate out of an incident dated 4th December 2021 which led to a firing in which 6 persons were killed. The incident flared up leading to more killings and also killing of one of the Army personnel. It is stated that a finger of the husband of Anjali Gupta, the Writ Petitioner in Writ Petition (Crl.) No. 250 of 2022, was also chopped off.

The Armed Forces (Special Powers) Act, 1958 is applicable to the place in Nagaland where the incident took place, as stated by the learned Additional Solicitor General.

Section 6 of the Armed Forces (Special Powers) Act, 1958 reads as under:-
"Protection to persons acting under Act.- No prosecution, suit or other legal proceedings shall be instituted except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act."

From the report bearing No. PHQ/IGP/CID/SCPS/CN0/07/2021/25 dated Kohima, 24th March 2022 of the Chief Investigation Officer being the range IGP, it appears that sanction of prosecution is to be obtained under Section 197(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) and Section 6 of the Armed Forces (Special Powers) Act, 1958. The Section 197(2) of the Cr.P.C. has inadvertently been typed as Section 197(2) of the IPC in the said report of the Chief Investigation Officer.

Section 197(2) of the Cr.P.C. applies to taking cognizance by the Court. However, Section 6 of the Armed Forces (Special Powers) Act, 1958 clearly provides, no prosecution, suit or other legal proceedings shall be instituted except with the previous sanction of the Central Government.

On the query of this Court, the learned Additional Solicitor General submitted that no previous sanction has been granted by the Central Government. The question of sanction is awaiting consideration at the appropriate level.

In view of the admitted position that mandatory previous sanction as required under Section 6 of the Armed Forces (Special Powers) Act, 1958 has not been obtained, we are constrained to pass an interim order staying further proceedings pursuant to FIR No. 27 of 2021/Final Report of the Special Investigation Team/Chargesheet.

In the past, this Court has entertained similar Writ Petitions filed by close family members of officers of the Indian Army including Writ Petition (Crl.) No. 36/2018 (Vineet Dhanda vs. Union of India & Ors.) and Writ Petitioner (Crl.) No.42 of

2018 (Lt. Col. Karamveer Singh vs. The State of Jammu and Kashmir & Others). The copies of the orders in the aforesaid writ petitions are annexed to the writ petition.

List the matters after eight weeks.”

3. Thereafter, on 07.03.2024, Ms. Aishwarya Bhati, learner Additional Solicitor General, informed this Court that the sanction under Section 6 of the Armed Forces (Special Powers) Act, 1958 ‘In short, the AFSP Act, 1958’ has since been declined by competent authority, vide order dated 28.02.2023. When this Court expressed its view that it was quashing the FIRs in view of the rejection of the sanction, the learned Advocate General for the State of Nagaland, Mr. K.N. Balgopal insisted on filing an affidavit and praying for time to do the needful. With hesitation, this Court granted time to the Advocate General. The order dated 07.03.2024 is reproduced hereunder:

“There is already an interim order operating in favour of the petitioners. Ms. Bhati, learned ASG, upon instructions, states that the sanction has since been rejected by the competent authority on 28th February, 2023. As such we were inclined to close these matters.

However, learned counsel appearing for the State of Nagaland insisted that he has to file an affidavit and has prayed for three weeks’ time.

Time, as prayed for, is granted.

The affidavit may be served upon the learned counsel for the petitioners as well as on the Union of India by 1st April, 2024.

List these matters on 5th April, 2024.”

4. The matter has since remained pending, and arguments were heard on 6th August, 2024. The learned Senior Counsels and counsels for the parties had made submissions making allegations and counter-allegations. However, we are not inclined to go into those submissions, as in our view, in view of the specific bar contained in Section 6 of the AFSP Act, 1958 which provides that no prosecution, suit, or other legal proceedings can be instituted except with the previous sanction of the Central Government with respect to the exercise of any power conferred under the said Act, the proceedings based on the impugned FIRs cannot continue any further. The interim order, granted by the order dated 19.07.2022, deserves to be made absolute, and the proceedings arising from the impugned FIRs deserve to be quashed.

5. However, there is one aspect of the matter that needs consideration. The learned Advocate General for the State of Nagaland, Mr. K.N. Balgopal submitted that the State has already assailed the correctness of the order dated 28th February, 2023, passed by the competent authority, declining sanction under Section 6 of the AFSP Act, 1958, by way of filing Writ Petition (Criminal) Diary No. 17297 of 2024, titled The State of Nagaland vs. Ministry of Defence & Anr.,

instituted before this Court on 16.04.2024. He submitted that if the said writ petition is allowed, and the rejection of sanction is set aside and this Court either grants sanction or for fresh decision by the competent authority, which may ultimately result into a sanction under Section 6 of the AFSP Act, 1958 for continuing the proceedings, then the proceedings pursuant to the impugned FIRs may proceed in accordance with law and may be carried to their logical conclusion. We have no manner of doubt that, in case, if ultimately at some stage, sanction is granted under Section 6 of the AFSP Act, 1958, the proceedings pursuant to the impugned FIRs are liable to be continued.

6. As such, we make it clear that if such situation arises, at any stage of sanction being granted under Section 6 of the AFSP Act, 1958, the proceedings pursuant to the impugned FIRs would continue according to law and may take its own course as provided under law.

7. Mr. K.N. Balgopal had also placed heavy reliance on the affidavit filed on behalf of the Armed Forces before the Chief Judicial Magistrate, in which observations were made that they were likely to proceed on the departmental side administratively, and as such, directions may be issued to the Armed Forces to carry on the said exercise. The said submission does not merit consideration by this Court as that would be at the sole discretion of the Armed Forces whether or not to carry on disciplinary proceedings against its officers. As such, we are not inclined to issue any such directions. The concerned wing of the Armed Forces would be at liberty to take or not to take any disciplinary proceedings against its officers.

8. In view of the aforesaid discussions, the Writ Petition (Criminal) Nos. 265 of 2022 and 250 of 2022 are allowed. The proceedings pursuant to the impugned FIRs shall remain closed. However, in case sanction is granted at any stage under Section 6 of the AFSP Act, 1958, the proceedings pursuant to the impugned FIRs may continue and may proceed in accordance with law and be brought to a logical conclusion.