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**(2002) 10 GAU CK 0019**  
**In the Gauhati High Court**  
**Case No : WP (C) No. 284 of 2000**

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|---------------------------------|----|------------|
| S. Chaoba Singh                 | Vs | APPELLANT  |
| Union of India (UOI) and Others |    | RESPONDENT |

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**Date of Decision :** 01-10-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Prevention of Corruption Act, 1988 — Section 19, 25

**Citation :** (2003) 2 GLR 455 : (2003) 3 GLT 5

**Hon'ble Judges :** H.K.K. Singh, J

**Bench :** Single Bench

**Advocate :** Khaidem Mani, for the Appellant; N. Ibotombi, CGSC, for the Respondent

**Final Decision :** Dismissed

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## Judgement

H.K.K. Singh, J.—The petitioner joined service in the Border Security Force (for short "B.S.F") on 24.12,1966 as constable and he was promoted to the rank of Naik and thereafter, to the rank of Head Constable. While he was attached to 143 BN. BSF which was stationed at Malda, on 10.8.1990 he along with another personnel namely, LNK Ishu Bhai were put under suspension by the Commandant. Thereafter, the petitioner along with the aforesaid companion namely, LNK Ishu Bhai were tried by a Summary Security Forces Court on the charges at Annexure-A/4 to the Writ Petition which is reproduced below :-

"CHARGE : SHEET

No. 69966739 Head Constable S. Chaoba Singh (Accused No. 1 and No. 87005712 L/NK Ishu Bhai (Accused No. 2) of 143 BN BSF is charged with :-

In that, they while on OP duty at OP Point, Nawada Gate, on 8.8.1998 at 1045 hrs. allowed safe passage to smugglers to cross cattle from India to Bangladesh near RP No. 182/5-8 after Rs. 2000 as bribe money.

Place : Narayanpur

Dated 12 April, 1999.

Sd/-

12.04.99

(MOHINDERLAL)

COMMANDANT

20 BN BSF."

On trial, the court found both the petitioner and his companion guilty for the charges and they were dismissed from service by an order dated 13.4.1999.

2. The aforesaid order of the court was confirmed by the authority concerned and the petitioner made representation u/s 117(2) of the B.S.F. Act, 1968 which was ultimately rejected. Assailing the aforesaid proceedings of the Summary Security Force Court, the petitioner has filed this application under Articles 226 and 227 of the Constitution of India.

3. Mr. N. Ibotombi, learned Central Government Standing Counsel, at the outset, raised a preliminary objection on the ground of lack of jurisdiction of this Court in entertaining the present Writ Petition. The learned counsel relying on the decision of this Court in the case of B.C. Patowary, Petitioner v. Union of India and Ors., respondents reported in (1992) 1 GLR 435 submitted that the High Court has no territorial jurisdiction to exercise power under Article 226 of the Constitution of India in the present case. But, on perusal of the aforesaid decision, it is found that the Court held that no cause of action within the ambit of Clause (2) of Article 226 arose within the territorial jurisdiction over which this High Court may exercise the writ jurisdiction. It appears that the High Court did not consider the territorial jurisdiction of the Court as mentioned in Clause (1) of the Article 226. In the case at hand, the petitioner is a resident of Manipur. He joined B.S.F. and served at different places of India and it so happened that while his Battalion was stationed at Malda, some occurrences took place and departmental proceeding commenced, at Malda which ended in dismissal of the petitioner from service. After he was dismissed, the poor petitioner had to come back to Imphal and he made representation to the Statutory authority which was rejected and order of rejection was communicated to him at his residence at Imphal, and ultimately, petitioner filed the present application at Gauhati High Court, Imphal Bench against the Union of India challenging the action of the authorities of the Union of India. Here, it may be mentioned that the Union of India or the Government of India exercises its jurisdiction throughout the length and breadth of the territories of India in respect of matters or fields on which the Union of India is empowered to exercise its jurisdiction under Constitution. In fact various offices, headquarters, battalion camps, etc., of the B.S.F. are stationed and located throughout the territories of India including Manipur,

4. Clauses (1) and (2) of Articles 226 indicate the area over which the High Court

may exercise its jurisdiction under Article 226 of the Constitution, Clauses (1) and (2) of Article 226 occupy distinct fields, though, in a given case, both the Clauses being Clauses (1) and (2) may be applicable. Constitution 15th Amendment Act, 1963 inserted Clause (1A) to Article 226 which has been subsequently, renumbered as Clause (2) by Constitution 47th Amendment Act, 1976. The words "may also be exercised" appearing in Clause (2) clearly indicates that the area over which the High Court may exercise its jurisdiction is in addition to the jurisdiction of the High Court which is available or conferred by Clause (1).

5. Considering the facts and circumstances of the case and in view of the jurisdiction of this High Court under Clause (1) of Article 226. I have no hesitation to come to the conclusion that this High Court has territorial jurisdiction to entertain and decide the present Writ Petition filed against the Union of India. To take a different view may not be in consonance with the ideal of the Constitution of India to secure social justice to citizen of India. In a case like the present one, a poor citizen like the present petitioner may not be compelled to file the Writ Petition only in the High Court of the State within whose jurisdiction the cause of action of the case accrued within the ambit of Clause (2) of Article 226, i.e., the Calcutta High Court or the Delhi High Court but not in the Gauhati High Court which has power to issue a writ under Clause (1) of Article 226 of the Constitution of India.

6. Law has to be interpreted to secure social justice unless such interpretation is expressly or impliedly prohibited. The Union of India can not be pinned down to a particular spot. As noted above, Union of India exercises its jurisdiction throughout the territories of India, and it should not be confined to any place like New Delhi where the capital of the country is situated. It may be mentioned here that a decision of the Supreme Court in the case of State of Rajasthan and Others Vs. Swaika Properties and Another, referred to in the case of B.C. Patowary (supra) was in respect of a Writ Petition filed by a company at Calcutta against the State of Rajasthan in respect of a land acquisition proceeding initiated by the State of Rajasthan in respect of a land situated in Rajasthan State and in that case, the Supreme Court held that the cause of action wholly arose within the State of Rajasthan. In fact, the territorial jurisdiction of the State of Rajasthan confines to the territories of Rajasthan and an executive act of the State of Rajasthan in that case was also confined to the State of Rajasthan only. Hence, Calcutta High Court was held not to have any territorial jurisdiction over the matter in which the cause of action relating to the matter confined within the territories of State of Rajasthan. In the case of Umasankar Chatterjee Vs. Union of India (UOI) and Others, , the order of dismissal from service and also the order of dismissal of the appeal against the said order of dismissal were passed at New Delhi, the orders were served upon the employee at Calcutta. Thus, it was held that Calcutta High Court had jurisdiction over the case. In our present case also, the order of dismissal of the appeal filed by the petitioner was received by the petitioner at Imphal.

7. Mr. Mani, learned counsel for the petitioner has submitted that while convening the Summary Security Force Courts, the provisions of Section 74(2) of the B.S.F. Act was violated inasmuch as there was no grave reason for immediate action and the court was convened without reference to the competent officer which is a statutory requirement.

8. It is true that Sub-section (2) of Section 74 prescribes that when there is no grave reason for immediate action and the reference can without detriment to discipline be made to Officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference to any offence punishable under any of the sections, viz., Sections 14, 17 and 46 of this Act, or any offence against the officer holding the Court. In this regard, in para I(ii) of the Counter-affidavit, it has been averred that the matter was referred to the competent authority and the DIG, under Rule 59 directed the Commandant to try the case by a Summary Security Force Court, by endorsing his remark in the chargesheet and a copy of the chargesheet with the endorsement is annexed to the counter-affidavit marked as X-1, wherein it is found that the DIG, BSF Malda ordered on 12.4.1999 that the case should be tried by a Summary Security Force Court. As the Summary Security Force Court was convened after reference to the authority competent and as endorsed by the authority the court was convened and proceeded and this fact is not denied by the petitioner. As such, I do not find any infirmity in the convening of the Summary Security Force Court on the ground of infraction of Section 74(2) of the B.S.F. Act.

9. The second line of argument of Mr. Mani is that the B.S.F. Court has no jurisdiction to try offences under prevention of Corruption Act (hereinafter "P.C. Act"). The offences charged against the petitioner are Section 46 of the B.S.F. Act, 1968 read with Sections 7 and 12 of the P.C. Act, 1988. According to the learned counsel the offences under the P.C. Act shall be tried only by Special Judge appointed and specified u/s 3 of the P. C. Act. Learned counsel gave emphasis to the words "Special Judge only" appearing in Sub-section (1) of Section 4 of the P.C. Act and thus, according to the learned counsel, only Special Judge of the P.C. Act are competent to try offences under the P. C. Act and as such, no court under B.S.F. Act or any other court except Special Judge under the P. C. Act has jurisdiction to try any offence under the P.C. Act. Further, learned counsel has submitted that no court shall take cognizance of offences punishable u/s 7 of the P. C. Act except without previous sanction of the concerned authorities mentioned in the Act as required u/s 19 of the P.C. Act.

10. It is true that Section 19 of the P. C. Act requires the previous sanction for prosecuting an offender and no court shall take cognizance of an offence punishable u/s 7 of the P. C. Act except without previous sanction of the concerned authority. As against this, Mr. N. Ibotombi Singh, learned C.G.S.C. has submitted that the provision relating to the requirement of previous sanction is not applicable in respect of courts convened under the provision of B.S.F. Act.

The relevant provision being Section 25 of the P.C. Act is reproduced below :

"25. Military, Naval and Air Force or other law not to be affected. - (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978), and the National Security Guard Act, 1986 (47 of 1986).

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in Sub-section (1), the Court of a Special Judge shall be deemed to be a Court of ordinary criminal justice."

Sub-section (1) of Section 25 starts with a non obstante clause overriding any provision of the Act and it clearly declares that the provision contained in the P.C. Act shall not affect the jurisdiction exercisable by, or the procedure applicable to any Court constituted or convened under the B.S.F. Act. Under Sub-section (2) of Section 25 of the P. C. Act, it is declared and clarified, that the Court of a Special Judge shall be deemed to be a Court of ordinary criminal justice. Again, u/s 2(1) (g) of the B.S.F. Act, Criminal Court means a court of ordinary criminal justice in any part of India and u/s 2(1)(d), it is provided that civil offence means an offence which is triable by a criminal court. Thus, from the above provisions of the B.S.F. Act and the P.C. Act, it is clear that "summary security force court" of the B.S.F. Act has got jurisdiction to try civil offences, i.e., Section 47 of the B.S.F. Act read with Sections 7 and 12 of the P. C. Act. Accordingly, I have no hesitation to come to the conclusion that as per provision of Section 25 of the P. C. Act, the requirement of sanction u/s 19 of the P. C. Act will not be applicable when the offences under the P. C. Act are tried by the security force court.

11. The next point urged by Mr. Mani is that the finding and passing of sentences by the summary security force court is without any evidence. In this regard, learned C.G.S.C. has made the proceedings of the Court available. In the course of hearing and found that as many as 6 (six) witnesses were examined on behalf of the Department and the accused were also given ample opportunity for their defence and the other delinquent official were also examined by the Court and I do not find any infraction in the procedure followed and adopted by the Court and findings recorded by the court based on evidence which has been confirmed and also appeal carried from the order of the Court having been rejected by the appellate authority. I can not persuade myself to reappreciate the findings recorded by the Force Court in proceeding under Article 226. Here, the learned C.G.S.C. has cited a number of decisions with regard to judicial review against the finding reached by courts constituted under military and other laws including B.S.F. Act and submitted that High Court or Supreme Court while exercising power of judicial review does not sit as an appeal and this Court does not reappreciate the evidence unless there is absolute pervasivity or irregularity in appreciating the evidence. Some of the cases relied by the learned C.G.S.C. are Union of India and Others Vs. Himmat Singh Chahar, and S.N. Mukherjee Vs.

Union of India, .

12. For the aforesaid reasons, observations and conclusions this Writ Petition is dismissed. No Costs.