

(2000) 05 DEL CK 0102

In the Delhi High Court

Case No : Letters Patent Appeal No. 79 of 1994

Union of India and Another

APPELLANT

Vs

O.P. Bishnoi

RESPONDENT

Date of Decision : 11-05-2000

Acts Referred:

Border Security Force Act, 1968 — Section 13
Constitution of India, 1950 — Article 226

Citation : (2000) 5 AD 937 : (2000) 54 DRJ 264

Hon'ble Judges : R.S. Sodhi, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : Mr. Keshav Dayal and Ms. Barkha Babbar, for the Appellant; Mr. R.P. Sharma and Sumati Anand, for the Respondent

Judgement

R.S. Sodhi, J.—The appellants by this petition under clause 10 of the Letters Patent Act, 1907 seek to challenge the judgment and order dated 11th April, 1994 passed by the learned Single Judge in Writ Petition No. 243 of 1991 whereby the learned Single Judge set aside the findings of the General Security Force Court and allowed the writ petition. The prayers in the writ petition were - (a) for a writ, order or direction in the nature of certiorari quashing the proceedings conducted by the General Security Force Court against him and; (b) direct the appellants to reinstate the respondent in service with all consequential benefits.

2. The case before the learned Single Judge was that the respondent was tried by General Security Force Court on a charge u/s 31(b) of the Border Security Force Act (for short the Act) namely :- without proper authority extract from any person money wherein he was convicted and sentenced to dismissal from service. The challenge to the order of dismissal from service was made, inter alia, on the ground that the trial was void ab initio because the Commandant of the appellant herein was a witness for the prosecution in the trial before the General Security Force Court. The Commandant having dealt with the case under

Rule 45 of the Border Security Force Rules, 1969 (for short "the Rules") was debarred under Rule 46 from being a witness which, in turn, vitiated the trial. Further grounds of challenge are set out below:

(1) Non-compliance of the mandatory provisions of B.S.F. Rule 45.

(ii) Serious miss-directions on questions of fact as well as law, by the Law Officer who had acted as an adviser at the trial, in his final "summing up" to the Court, which resulted in serious prejudice to the accused (petitioner).

(iii) Total absence of evidence about the factum of recovery and/or taking of any money from the alleged victim by the petitioner, the graveness of the charge. So much so that the said victim was never even examined before or at the impugned trial. Not only that even none of the prosecution witnesses has deposed that they had seen the petitioner extorting money from the victim, as alleged.

(iv) Admission of inadmissible alleged confessional statements of the petitioner given to his superiors under duress, contrary to Section 24 of the Evidence Act.

(v) Absence of independent corroboration of above statements in material particulars.

(vi) Absence of independent corroboration of accomplice evidences, in material particulars.

(vii) Singling out the petitioner for prosecution bailing out the real culprits who had admitted having taken and shared the money among themselves.

(viii) None of the officers mentioned by the petitioner to act his Defending Officer in terms of B.S.F Rules 63 was made available mala fide. This caused serious prejudice to the petitioner in defending himself at the impugned trial."

3. The learned Single Judge, while dealing with the matter, was of the view that of the numerous grounds of challenge, two ground were sufficient to set aside the findings of the General Security Court Force. In the impugned judgment the learned Single Judge takes note of the facts of the case as follows:-

"The petitioner joined the Border Security Force as direct Sub-Inspector in December, 1987. He completed his basic training and thereafter he was posted on Bengal border for undertaking practical training. In February, 1989 the petitioner was sent to border out-post for doing practical training under the guidance of one Naik Sheo Prasad where within two days of his posting he apprehended a Bangladesh national, Nurul Islam, who was attempting to cross over to India. Nurul Islam was brought to the post in the presence of other Border Security Force personnel and local villagers where he was physically searched".

The learned Single Judge notes that:-

"According to the petitioner, nothing was found. However, the foreigner was

pushed back by the petitioner at the instance of Naik Sheo Prasad (PW-6). The allegation against the petitioner is that he extorted a sum of 4,000 Bangladesh currency and, after having them converted into Indian rupees, distributed the same amongst the colleagues and subsequently collected the amount back.

The Commandant of the Battalion conducted the proceedings and later referred the matter to higher authorities for convening General Security Force Court. Several witnesses were examined by the prosecution as well as by the defense. Ultimately the General Security Force Court came to the conclusion that the charge against the petitioner stood proved and by way of punishment ordered dismissal from service. Statutory appeals, as provided under the Act, were made but all failed and, Therefore, the petitioner moved the High Court by way of the writ petition,"

4. The learned Single Judge held that since the Commandant had been cited as witness (PW-11) before the General Security Force Court and had conducted proceedings under Rule 45 of the Rules the Commandant has violated Rule 46, Therefore, the trial before the General Security Court stood vitiated. While examining the evidence, the learned Single Judge came to the conclusion that PW-11 could not have been examined by the prosecution before the General Security Force Court and his introduction as a witness as well as reliance on his evidence has introduced inadmissible material and, Therefore, the conclusions of the General Security Force Court based on irrelevant material could not be allowed to stand. The learned Single Judge has also gone into the evidence of witnesses and came to the conclusion that the charge of extortion having not been proved against the petitioner (respondent herein), the findings of the General Security Court Force could not be sustained.

5. The aforesaid judgment in C.W. 2435 of 1991 dated 11th April, 1994 has been challenged by the appellant-UOI on the ground, inter alia, that the learned Single Judge erred in the interpretation and application of Rules 46 and 45 and wrongly came to the conclusion that the proceedings under Rule 45 of the Rules carried out by the Commandant who was a witness vitiated the trial.

6. Another ground of challenge is that the learned Single Judge exceeded his jurisdiction under Article 226 of the Constitution on India in reappraising the evidence adduced before the General Security Court and substituting his own conclusion in place of the General Security Force Court's.

7. This was not a case where the High Court should have interfered in exercise of its jurisdiction under Article 226 of the Constitution as it was not a case "no evidence" while sufficiency, quality and quantity of evidence could not be adjudicated upon by the High Court.

8. Another ground of attack is to the finding that Rule 126 of the Rules had been violated by the Law Officer in rendering opinion on a question of fact.

9. We have been taken through the record of the case as also judgments on

various general propositions. The ambit of the power under Article 226 of the Constitution has been laid down by the Supreme Court as also by a number of judgments of the High Court. In C.W. 3369 of 1995 Ex. Constable Ashok kumar Vs. Union of India, (decided on 1st March, 2000) this Division Bench has held as under:

"We may at the outset state that the judicial review envisaged under Article 226 of the Constitution in respect of the proceedings, in which the defense personnel serving in the Army, Navy, Air Force or even paramilitary force when commit any offence, are dealt with by a special provision contained in statutory enactments governing them and not by normal criminal procedure code is not in the nature of an appellate court. These personnel are to be dealt with under such enactments which are complete codes in themselves and prescribe the procedure to be dealt with under such enactments which are complete codes in themselves and prescribe the procedure to be followed in cases governed by it. Personnels that are tried by such procedure are provided with sufficient safeguards by way of further appeal to the Heads of the organisations and then ultimately to the Union Government. Therefore, ordinarily there should be a finality to the proceedings as envisaged by these enactments, in this case the Border Security Force Act and the Border Security Force Rules. The High court's powers under Article 226 of the Constitution to Judicially review such findings is for a limited purpose, namely, for finding out whether there has been infraction of any mandatory provisions of the Act prescribed and procedure which has caused gross miscarriage or for finding out whether there has been violation of principles of natural justice which vitiated the entire proceedings or that the authority exercising the jurisdiction has not been vested with the jurisdiction under the Act. The power of judicial review cannot be that an appellate authority permitting to re-appreciate the evidence and come to a conclusion that the evidence is sufficient for the conclusion arrived at by the competent authority under the Act. The Supreme Court has held in a number of judgments that at the highest the jurisdiction of the High court of judicial review of the findings of these authorities cannot be higher than those exercised by the High Court would not be justified in entering into the forbidden zone of reappreciating the evidence as a Court of Appeal. A Division Bench of this court in Ex. Major R.S. Budhwar Vs. Union of India (UOI) and Others, had an occasion to go into the question of the nature of judicial review and has dwelt into all aspects thereof. It has held:-

"The jurisdiction of this Court under Article 226 is, therefore, defined and is limited to the extent of finding it whether there is an error of jurisdiction and it is a case of total lack of evidence. This Court, as has been consistently held, does not sit as a Court of Appeal. In case legal evidence was available on which a finding could be given, the sufficiency or otherwise was for the Authority to decide and this Court cannot substitute its opinion for that of Court-Martial."

Further:

"The Court on its own appraisal of the evidence may come to a contrary

conclusion but it is not open to quash an order until and unless the impugned order was based on no evidence at all. The sufficiency and insufficiency of evidence is not a matter for this Court to consider in a petition under Article 226 of the Constitution of India. The same is for the Authority to decide. The error or defect of procedure of which some instances have been given by learned Counsel appearing for the petitioner, cannot be entertained in the present proceedings as these may be mere procedural irregularities and they cannot be regarded as errors of law apparent on the face of the record and no challenge was made at an appropriate stage and the principles of natural justice have not been violated."

The judgment has found favor with the Supreme Court in Major R.S. Budhwar Vs. Union of India and others, .

10. In the backdrop of the law, as stated, we proceeded to examine this matter on merits. Investigation into an offence alleged to have been committed by a person subject to the Border Security Force Act 1968 (for short "the Act") is dealt with under chapters V to VII of the Rules. For the present case the relevant chapter is VII and commence with Rule 43 by completing an offence report wherein the allegations are reduced in writing in Form set out in Appendix-IV. The matter is then proceeded with under Rule 44 by the Company Commander in case of a person subject to the Act other than an officers. However, under the proviso the Rule 44 the Commandant can reserve the case or disposal by himself.

11. In the present case it appears that when it came to the knowledge of the Commandant that an offence of taking money from a foreign national had been reported, he took upon himself to deal with the case in the first instance and, Therefore, dealt with it under proviso to Rule 44 and proceeded to deal with it under Rule 45 which reads as follows:

"45. Hearing by the Commandant: The Commandant shall hear the charge against all ranks under sub-rule (1) of Rule 44 and may:-

- (i) award any of the punishments which he is empowered to award, or
- (ii) dismiss the charge, or
- (iii) remand the accused, for preparing a record of evidence or for preparation of an abstract of evidence against him, or
- (iv) remand him for trial by a Summary Security Force Court:

Provided that, in cases where the Commandant awards more than 7 days imprisonment or detention he shall record the substance of evidence and the defense of the accused:

Provided further that, he shall dismiss the charge if in his opinion the charge is not proved by may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him it is not advisable to proceed further with it:

Provided also that, in case of all offences punishable with death a record of evidence shall be taken. (Secs. 53, 55).

12. There is, however, an embargo placed on the Commandant ceiling with the case. If he is disqualified under Rule 46 which reads as under :-

46. Attachment to another unit:- The Commandant shall not deal with any case:-

(i) where the offence with which the accused is charged is against the Commandant himself, or

(ii) where the Commandant is himself a witness in the case against the accused, or

(iii) where the Commandant is otherwise personally interested in the case and the accused shall be attached to another battalion or unit for disposal of the case under the order of the Deputy Inspector General;

Provided that a Commandant shall not be disqualified from hearing a charge merely because the offence was committed against the property of a Force Mess, band or institution of which the Commandant is a member or trustee or because the offence is one of the disobedience of such Commandant's orders."

13. The interpretation placed on the embargo on Rule 46 by the learned Single Judge, with very great respect, appears to be incorrect. In our opinion Rule 46 prohibits a Commandant from holding proceedings under Rule 45 and taking consequent steps, provided he himself, is a witness in the case against the accused. This necessarily means that in the first instance the Commandant should have been a witness to the occurrence and logically, Therefore, being a witness to the occurrence, cannot dispose off nor deal with the proceedings envisaged under Rule 45 and those consequent thereto. By no stretch of reasoning can it be inferred that merely because a Commandant who has proceeded by taking cognizance of the offence under Rule 44 and heard the charge under Rule 45, remanded the accused for preparation of record of evidence under Rule 48 or for preparation of abstract of evidence against him under Rule 49 and thereafter dealt with the case under Rule 51 be the witness as envisaged under Rule 46. The authenticity of the proceedings held under Rule 45 and/or proceedings held thereafter in accordance with rules as required of a Commandant can always be deposed to by him as a witness at the trial and his deposing at the trial cannot vitiate the trial as having violated Rule 46. To hold otherwise, in our opinion, would lead to disastrous consequences. No conviction under the Act is possible. Every proceedings held by the Commandant at the pre-trial stage, if required to be proved, would necessitate the Commandant appearing as a witness and this itself would vitiate the trial. Such an interpretation, with great respect, cannot be accepted.

14. In the present case it appears that the accused was marched up before the Commandant under Rule 45 when the Commandant heard the charge against him in the presence of the accused and decided to remand the accused for

preparing the record of evidence under Rule 45 (iii). The record of evidence was prepared by some other officer who, after preparing the record of evidence in accordance with Rule 48, placed the same before the Commandant for disposal of the case under Rule 51.

15. Rule 51 requires that the Commandant may, after going through the record or abstract of evidence, (i) dismiss the charge; (ii) rehear the charge and award one of the summary punishments or (iii) try the accused by a Summary Security Force Court where he is empowered so to do or (iv) apply to a competent officer or authority to convene a court for the trial of the accused.

16. The Commandant, after applying his mind to the material collected by way of record of evidence, came to the conclusion that the case could best be dealt with under Rule 51(2)(iv). Consequently, he applied to a higher authority to convene a court for the trial of the accused. This he did by making an application under Rule 52 in the prescribed form.

17. According to the Rules, once the General Security Force Court is convened, then it is for that court to go into the veracity of the material placed before it by a Prosecuting Officer and deliver judgment thereon.

18. The reasoning, that the Commandant having dealt with the case at the pre-trial stage could not be called as a witness at the trial, is, with very great respect, not correct. In any case, it is settled law that pretrial proceedings cannot vitiate the trial unless grave prejudice is caused to the accused or lack of jurisdiction to hold the pre-trial proceedings can be shown. We have already pronounced upon this aspect of the matter in Ex. Constable Ashok Kumar's case on the ambit and scope of the proceedings conducted by the Commandant at the pre-trial stage and held:

"A bare perusal of Rule 45 would indicate that by its very nature, the hearing of evidence by the Commanding Officer at the initial stage when the person charged with an offence is brought before him is for the purpose of ascertaining whether the charge should be dismissed or be proceeded with. If the Commanding Officer is of the opinion that the charge ought not to be proceeded with, the person charged with the offence has to be released forthwith. On the other hand, if the Commanding Officer is of the opinion that the charge ought to be proceeded with, he may then follow the procedure prescribed for further proceedings. The object of the Rule, it appears, is to hold a sort of preliminary investigation by the Commanding Officer with a view to ascertain whether a prima facie case exists to justify further proceedings and the nature of those proceedings, namely, he can either award any punishment which he is empowered to or dismiss the charge or remand the accused for preparing a record of evidence or for preparation of an abstract of evidence against him or remand him for trial by Summary Security Force Court, but in cases where the offence is punishable with death, a record of evidence shall be taken. In this case, the Commandant directed recording preparation of record of evidence by

order dated 6th August, 1992. Once, Therefore, having come to the conclusion directed the formal recording of statement of witnesses, as provided, to enable remand of the accused for trial by General Security Force Court. It is thus implicit in the procedure prescribed that any error or irregularity at the stage before the case is charged for the purpose of having the evidence reduced to writing, will not vitiate the subsequent trial as the guilt of the accused has to be established not on the basis of what the Commanding Officer might have done or might not have done at the initial stage. Any irregularity in procedure at that initial stage might have a bearing on the veracity of witnesses examined at the trial or on the bona fide of the Commanding Officer or on the defense that may be set up by the accused at the trial, but the irregularity, by no means, be recorded as effecting the jurisdiction of the court to proceed with the trial. Therefore, even if it is assumed that there was non-compliance with the requirement of Rule 45, the non-observance of the Rule is not such as to vitiate the trial and ultimate conviction of the petitioner."

From the legal position, as has been stated above, it is clear that the findings of learned Single Judge, with very great respect, on this issue are not sustainable.

19. Having dealt with the ambit and scope of the powers of the High Court under Article 226 as also the effect of pre-trial proceedings, ordinarily, we would have refrained from looking into the record of evidence. However, since the learned Single Judge has re-appreciated the evidence holding that PW-11, the Commandant, could not have been a witness and that reliance on his evidence amounts to admitting into consideration at the trial irrelevant material and also on appreciation of statement of witnesses before the General Security Force Court held that the material does not prove the charge, it has become necessary for us to examine the record of the trial proceedings. A perusal of the proceedings of the General Security Force Court shows that the court was presided over by Mr. S.C. Yadav, Commandant, 39 Bn BSF, and having four other Members, Mr. K.J. Keswani, Dy. Commandant, 152 Bn BSF, Mr. Hakam Singh, Dy. Commandant, 53 Bn BSF, Mr. I.M. Sinha, Dy. Commandant, 161 Bn BSF and Mr. N.D. Bahuguna, Dy. Commandant, 54 Bn BSF. The Law Officer was Mr. Rajinder Pandey of JAD (law) HQ SB Frontier. The Prosecutor in the case was Mr. Shivaji Jadav Dy. Commandant, 109 Bn BSF, (who was not legally qualified) while the Defending Officer was Mr. S.K. Dev, Dy. Commandant, JAD (MT) HQ Calcutta Sector, BSF (also not legally qualified).

20. It may be mentioned that a question by the Presiding Officer had been put to the accused:

"Do you object to be tried by me as Presiding Officer or by any of the officers whose names you have heard read over?" -to which the accused answered "No".

21. The charge-sheet was then read out to the accused, explained to him and then a question was put as to whether the accused pleads guilty to the charge against him to which the answer was "Not guilty". Yet another question that was

put to the accused was:

"Do you wish to apply for an adjournment on the ground that any of the Rules related to procedure before trial have not been complied with and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defense?" - to which the answer of the accused was "No". It is only hereafter that the prosecution produced its witnesses. The charge that was framed against the accused was as follows:

"That at BOP BARUNHAT on 14.2.89 apprehended a Bangladesh national named Nurul Islam, son of Ajif Islam, Village Nolta, PS, Kaliganj, District, Satkhira (Bangladesh) and without proper authority exacted Bangladeshi take 4000/- (Bangladeshi take four thousand only) from the said Bangladesh national."

Therefore, essentially what was required to be proved was violation of Section 31(b) of the BSF Act and not violation of Section 31(a) as it appears to have been noted by the learned Single Judge.

22. From a perusal of the record it appears that the prosecution cited 11 witnesses to bring home the charge while the defense examined 6 witnesses to counter the same.

There is certainly evidence on record to show that the accused, SI Om Prakash was Platoon Commander of the BOP Barunhat and that on 14th February, 1989 at around 5.30 hours SI Om Prakash along with other two constables, namely, Brindavan Singh and Dineshwar Ram had gone on patrolling duty. The patrolling party returned along with one apprehended Bangladesh national followed by a few villagers. It is in evidence that the civilians after coming to the post were talking with SI Om Prakash and after sometime SI Om Prakash took that apprehended Bangladesh national along with him out of the post and the said Bangladesh national was pushed back into Bangladesh territory. It is also in evidence that SI Om Prakash and Naik Sheo Prasad told Naik Ashok Ghosh to get the Bangladesh takes 4000 exchanged for Indian currency which was done and after exchanging the currency Rs. 1,950 were handed over to Naik Sheo Prasad which amount ultimately found way into the bands of SI Om Prakash. This amount was then distributed amongst various personnels. It is also in evidence that the name and address of the apprehended Bangladesh national was recorded in "Push Back Register". PW-6, Naik Sheo Prasad has stated in no uncertain terms that:

"The witness continue his statement. After that SI Om Prakash went out with the civilians and apprehended BD National and pushed back BD national inside the BD through a riverbed. On 16th February 1989 ST Om Prakash called NK Ashok Ghosh of BWHG inside his room, where I was also present, SI Om Prakash handed over BD Take 4,000/- to Naik Ashok Ghosh in my presence and asked him to get the Take exchanged for Indian currency. SI Om Prakash also told Naik Ashok Ghosh that he should take Jai Singh Along with him the BOP for exchanging RD Take into Indian currency. At about 1700 hrs or 1800 hrs, Naik

Ashok Ghosh came back at the BOP and enquired about SI Om Prakash. Since SI Om Prakash was not present at that moment, Naik Ashok Ghosh handed me over Rs. 1,950/- Indian currency stating that to further hand over that money to SI Om Prakash. After some time SI Om Prakash came at the BOP and then I handed over Rs. 1,950/- to him. On 17th Feb. 1989, the exact date I do not remember, CT Chunnu Ram gave me Rs. 70/- during evening hour. He also told me that some BD Take has been taken from relative of apprehended BD national. And after exchanging into Indian currency money are being distributed."

The same witness to an answer to Court question has stated :

"While giving money CT Chunnu Ram told me that SI Om Prakash has given this money for sweets. After receipt of the money from CT Chunnu Ram I enquired from SI Om Prakash as to from where this amount has come. SI Om Prakash told me that 4,000/- BD Take was received from the relative of apprehended BD national and the same was converted into Indian currency and share of mine have been given to me. Next day CT Vrindavan Singh had taken back RS. 70/- from me stating that the same has been asked by SI Om Prakash."

PW-7 is SI Kukil Hazong 65 Bn BSF. He states :

"In the month of March 1989, I came to know through a source that some illegal transaction of money had taken place at the BOP Barunhat on 14-2-89. On receipt of information about illegal transaction which had taken place at the BOP I further required as to who had taken money and from whom, and when that the money was given to the BOP Personnel. I called SI Om Prakash from Barunhat BOP to Coy HQ and enquired about the matter. When I asked SI Om Prakash about the illegal transaction of money, he admitted that on 14-2-89, he led a patrol and apprehended a BD national and exacted 4,000/- BD Take from the possession of the apprehended BD national. He further admitted that after exacting BD Take 4,000/- he did not make a seizure memo nor he deposited money with customs. SI Om Prakash also told me that the apprehended BD national has been pushed back to the Bangladesh. SI Om Prakash also admitted that exacted 4,000 BD Take had been further converted into Indian Currency amounting to Rs. 1,950/-."

This witness further states that :

"When Comdt. 65 Bn BSF was talking with SI Om Prakash at BOP Barunhat at that time Subedar S.C. Sarkar was also present there. I had called SI Om Prakash at Coy HQs, Hingalgunj and enquired about the incidence, SI Om Prakash admitted that he had extracted 4,000/- BD Take from apprehended BD national on 14-2-89.

PW-8 is Subedar S.C. Sarkar 65 Bn BSF, He states :

"While in fall in, on being asked by the Comdt as to who all received the money for sweets? at that time SI Om Prakash was asked to stand separately by the Comdt. After discussion with BOP personnel, Comdt called SI Om Prakash in my

presence and inquired as to whether BD Take was extracted from apprehended BD national, who was released later on, to this SI Om Prakash admitted his guilt, saying that "MUJHSE GALTİ HO GAYA. MUJHE MAF KAR DIJIYE. AISA GALTİ KABHI NAHİN KARUNGA.

SI Om Prakash admitted to the Comdt that he extracted 4,000/- BD Take from apprehended BD national on 14th February 1989. SI Om Prakash had also given in writing to the Comdt about the confession. After one/two hours of stay/enquiry at Barunhat BOP, Comdt left for BN HQrs."

23. We have given extracts of statements just to satisfy ourselves that the case put up by the defense of "no evidence" which necessitated the learned Single Judge examining the evidence fell into error in reappraising the evidence to arrive at a different conclusion. We are, of the opinion that this is not a case of "no evidence" requiring investigation by the High Court in its powers of judicial review under Article 226 of the Constitution.

24. Coming to the next challenge of violation of Rule 126 by the Law Officer, it would be appropriate to set out the Rule before discussing the same. It reads as under :

"126. Power and Duties of Law Officer: Where a Law Officer has been named to act on the Court, he shall-

(a) give his opinion on any question of law relating to the charge or trial whenever so required by the Court, the prosecutor or the accused;

(b) inform the Court of any irregularity or other infirmity in the proceedings;

(c) inform the convening officer and the court of any infirmity or defect in the charge or in the Constitution of the Court;

(d) sum up the evidence and give his opinion on any question of law, before the Court proceeds to deliberate upon its findings. (R. 97).

(2) It shall be the duty of the Law Officer to ensure that the accused does not suffer any disadvantage in consequence of his position as such, or because of ignorance or incapacity to examine or cross-examine witnesses and for this purpose the Law Officer may, with the permission of the Court, call witnesses and put questions to them which appear to him to be necessary or desirable.

(3) In the discharge of his duties, the Law Officer shall maintain an attitude of strict impartiality.

(4) Where any opinion has been given by the Law Officer to the Court on any matter before it. it may be entered in the proceedings, if the law Officer or the Court desires it to be entered.

(5) The Law Officer shall represent the Chief Law Officer at a Security Force Court. (S. 83)"

25. Undoubtedly the Law Officer is required to maintain an attitude of strict impartiality and while summing up the evidence give his opinion only on questions of law before the court proceedings and should not dwell upon questions of fact. Merely because the Law Officer in this case has while summing up stated that Pw-11 corroborates the statement of other witnesses does not necessarily mean that the address of the Law Officer to the Court has prejudiced the outcome to vitiate the trial. It may be noted that the Law Officer while addressing the court opened his address as follows :-

"Gentlemen,

You have very patiently and attentively heard the evidence in this case and the closing addresses of the defense and the Prosecution. Before you close to consider your findings and the charges against the accused, it is my duty to explain the law relating to the charge upon which the accused has been arranged, the issues raised and to summarises the evidence. Before I proceed further, I must make it very clear to you that you are the sole judges of the facts as well as the Law. It is not my duty to express any opinion on matters of facts and if at all I do so inadvertently, you should ignore it completely."

26. We are, Therefore, of the opinion that the opinion of the Law Officer that PW. 11 corroborates the prosecution version can at best be an irregularity which does not go to the root of the matter calling for the trial to be vitiated.

In view of the above reasoning, we are, with very great respect, unable to uphold the judgment of the learned Single Judge and, Therefore, set aside the judgment and order dated 11th April, 1994 of the learned Single Judge in Writ Petition No. 2435 of 1991 and allow the appeal. There shall be no order as to costs.