

(2009) 09 DEL CK 0404

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1210 of 2003

V.K. Anand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-09-2009

Acts Referred:

Army Act, 1950 — Section 122, 122(1), 122(3), 127, 37
Army Rules, 1954 — Rule 180, 181
Criminal Procedure Code, 1973 (CrPC) — Section 468, 469, 473
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2009) 173 DLT 380

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

**Advocate : Sandeep Sethi, S.M. Dalal and C.M. Khanna, for the Appellant;
Anjana Gosain and Veronica Mohan, for the Respondent**

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The background to the present order by this Court is set out in the order dated 20th February 2009 passed by the Full Bench which reads as under:

Vide order dated 21st October 2003, a Division Bench comprising B.A. Khan and B.N. Chaturvedi, JJ., made a reference to a third Judge on the following issue:

Whether the petitioner's trial by GCM was time- barred or not in the facts and circumstances of the case and in the light of the Rule position?

The issue of interpretation of Section 122 of the Army Act fell for consideration of the Division Bench. Difference of opinion had arisen on the issue whether the petitioner's trial by GCM was time-barred. B.A. Khan, J has held that the trial as time- barred whereas B.N. Chaturvedi, J has held that it was within time. The matter was accordingly referred to third Judge in accordance with Clause 26 of the Letters Patent.

Justice P.N. Nandrajog who heard the reference, felt that the reference as framed require appreciation of facts and circumstances of the case and the counsel for the respondent was handicapped in making submission if it was to be understood that the opinion of the third Judge has to be one of the two views taken by B.A. Khan, J and B.N. Chaturvedi, J. According to the learned Judge possibility of a third view emerging was surfacing during the arguments. Therefore the learned judge opined that the matter needs to be heard and decided by a Full Bench and directed the Registry to place the papers before the learned Chief Justice for constitution of a Full Bench.

We are unable to agree with the view taken by the learned Judge. When the two judges decided the writ petition under Article 226, which is in the nature of original proceedings, differed on a question of fact or law, reference to a third Judge as contemplated is required to be made for disposal of the matter as per the majority opinion of the three judges. (See: Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others, The issue referred to the third Judge is whether the petitioner's trial by GCM was time-barred or not. While deciding this issue the line of reasoning which may be adopted by the third Judge may not be the same as adopted by either of the learned Judges who made the reference. But that cannot be a reason for making a reference to a Full Bench. We are afraid such a course is not permissible under the Rules. We, therefore, remit the matter back to the learned single Judge with a request to decide the reference expeditiously.

2. The submissions of Mr. Sandeep Sethi, learned Senior counsel for the Petitioner and Ms. Anjana Gosain, learned Counsel for the Respondents have been heard.

3. The Petitioner, a Brigadier in the Army, was in 1996-97 commanding the 9th Artillery Brigade, which was under Headquarter (HQ) 11 Corps (the GOC of which is Respondent No. 4). The HQ 11 Corps was under the HQ Western Command headed by its GOC (Respondent No. 3). An anonymous complaint was received against the personnel of the 16 Field Regiment/45 Field Battery by Respondent No. 4. This complaint was forwarded to the Petitioner for investigation through the HQ 9th Infantry Division the GOC of which is Respondent No. 5 herein. By his report dated 5th November 1997 the Petitioner recommended closure of the said complaint. Thereafter on 20th November 1997 the Petitioner relinquished command of the 9th Artillery Brigade.

4. The GOC 9th Infantry Division on 16th June 1998 ordered a General Staff Court of Inquiry on the basis of the complaint against the personnel of the 16 Field Regiment/45 Field Battery. In those proceedings one Subedar P.R. Sharma made certain accusations against one Colonel A.K. Thakur (who was commanding the 16 Field Regiment) and against the Petitioner on 6th August 1998 and 9th August 1998.

5. During the annual administrative inspection of the HQ 9th Infantry Division by

the GOC 11Corps (Respondent No. 4) a discussion took place between Respondent No. 4 and the GOC of HQ 9th Infantry Division (Respondent No. 5). It was noticed that in the Court of Inquiry that had commenced on 16th June 1998 the witnesses were not ready to divulge facts in front of Col A.K. Thakur who was present in the Unit as CO. However after Col A.K. Thakur relinquished command of the 16 Field Regiment, three officials voluntarily approached the Court of Inquiry and revealed the acts of commission and omissions pertaining to misappropriation of funds, stores and property by Col A.K. Thakur. Consequent upon the discussions between the GOC 11Corps (Respondent No. 4) and GOC 9th Infantry Division (Respondent No. 5) the GOC 11th Corps decided that the case be submitted to the HQ11 Corps by the GOC 9th Infantry Division for calling the said officer (Col A.K. Thakur) as an essential witness before the Court of Inquiry by invoking Army Rule 180. Consequently, Respondent No. 5 on 4th November 1998 addressed a letter to the Headquarter 11Corps referring to the discussion he had had with the GOC 11Corps on 31st October 1998 concerning Col A.K. Thakur. Importantly in para 7 of this detailed letter the prima facie findings arrived at by the Staff Court of Inquiry, which were supported by the witnesses and the documentary evidence, were set out. Para 7 (s) made a special mention to the role attributed to the Petitioner Brigadier V.K. Anand as under:

(s) Col. A.K. Thakur made available about 840 bottles of liquor to Sub PR Sharma and ordered him to sell them to civs. The profit earned was utilized in construction of an additional room of a pvt. House of Brig VK Anand ex Cdr Arty Bde in Delhi and for purchase of a brass double bed from Moradabad for Brig VK Anand.

6. Following the above letter, on 17th November 1998 a confidential communication was sent on behalf of the GOC 11 Corps (Respondent No. 4) to the HQ Western Command (Respondent No. 3) setting out again in para 3 of the said letter the prima facie findings. Para 3(s) was a reproduction of para 7(s) of the letter written on 4th November 1998 by Respondent No. 5 to Respondent No. 4.

7. The proceedings of the Court of Inquiry ordered by the GOC 9th Infantry Division against the personnel of the 16 Field Regiment/45 Field Battery were finalized on 30th March 1999 by Respondent No. 5 and forwarded to Respondent No. 4 who received them on 1st April 1999. The proceedings were returned by Respondent No. 4 to Respondent No. 5 on 29th April 1999 for revisions. The revised proceedings were sent by Respondent No. 5 to Respondent No. 4 on 8th May 1999. Respondent No. 4 then endorsed the directions for disciplinary actions against Col A.K. Thakur and others of the 16 Field Regiment. However no action was proposed against the Petitioner on the findings of the Court of Inquiry.

8. When the findings of the Court of Inquiry were forwarded to the HQ Western Command (Respondent No. 3), it was noticed that the Court of Inquiry had not commented upon the involvement of the Petitioner despite clear evidence having emerged. By a communication dated 8th September 1999 from Respondent No.

3, the Court of Inquiry was reassembled. However the Court of Inquiry could not convene. On 20th October 1999 Respondent No. 3 directed the convening of an independent Court of Inquiry to investigate the allegations against the Petitioner after complying with the Army Rules 180 and 181 and Regulation 518. Following this on 3rd November 1999 a Court of Inquiry was ordered against the Petitioner.

9. A few more dates are relevant. On finalisation of the Court of Inquiry proceedings against the Petitioner by Respondent No. 4 on 20th October 2000, an administrative action of censure was recommended against the Petitioner. The proceedings of this Court of Inquiry were forwarded to Respondent No. 3 who deferred action to await the outcome of the General Court Martial ("GCM") proceedings against Colonel A.K. Thakur. The GCM proceedings against Colonel A.K. Thakur concluded on 8th August 2001. On 12th November 2001 Respondent No. 3 asked Respondent No. 4, to revise the directions in relation to the Petitioner's Court of Inquiry. The earlier recommended action of censure was replaced with the recommendation for disciplinary action against the Petitioner. Respondent No. 5 then gave the Petitioner a hearing on charge on 13th February 2002. He ordered summary of evidence against the Petitioner on 15th February 2002 and closed the summary of evidence proceedings on 10th April 2002.

10. On 17th April 2002 the Petitioner was served with a charge sheet signed by Respondent No. 5 and co-signed by Respondent No. 4. The said charge sheet which is relevant to the present proceedings reads as under:

The accused, IC-19149W Brigadier (Substantive) Anand, Vinod Kumar of HQ 10 Corps Arty Bde, attached to HQ 9 Inf Div, an officer holding a permanent commission in the regular Army is charged with:

First Charge Army Act Section 69: Committing a civil offence that is to say, by abusing his position as a public servant, obtains for himself a valuable thing, contrary to Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988

In that he, at Meerut Cantt, between August 1997 and November 1997, which came to the knowledge of the authority competent to initiate action on 08 May 1999, while Commander 9 Arty Bde, a public servant, obtained for himself a brass double bed valued at Rs. 14,500/- (Rupees fourteen thousand and five hundred only) from IC-34180A Col Arvind Kumar Thakur, the then Commanding Officer 16 Field Regiment through JC- 190661N Sub Prithvi Raj Sharma of 16 Field Regiment.

Second Charge Army Act Section 63: An act prejudicial to good order and military discipline In that he, at Meerut Cantt, between July 1997 and October 1997, which came to the knowledge of the authority competent to initiate action on 08 May 1999, while Commander 9 Arty Bde, improperly misused Army personnel of 16 Field Regiment and 52 Engineer Regiment for construction of a room at his residence at Vijay Nagar, New Delhi, contrary to para 347 of the Regulations for the Army (Revised Edition) 1987, which prohibits employment of Government servant for private purposes.

11. On 20th April 2002, a GCM was ordered against the Petitioner by Respondent No. 4. The GCM assembled on 26th April 2002. The Petitioner raised a "plea in bar" with regard to limitation on 28th May 2002. On 10th August 2002 the GCM accepted the plea of limitation and submitted its recommendations to Respondent No. 4 for confirmation. However by an order dated 31st October 2002 Respondent No. 4 ordered that further evidence should be recorded. Consequently, on 18th November 2002 the GCM reassembled and took additional evidence. For a second time the GCM allowed the plea in bar entered by the Petitioner and sent its findings to Respondent No. 4 for confirmation. On 1st February 2003 Respondent No. 4 passed a non-confirmation order and asked the GCM to assemble on 17th February 2003. This order dated 1st February 2003 has been challenged in the present writ petition.

12. By an order dated 17th February 2003 this Court stayed the GCM proceedings. By separate orders dated 21st October 2003 the two learned Judges of this Court Constituting the Division Bench which heard the case differed in their opinion whether the Petitioner's trial by GCM was time barred. While B.A. Khan J held the trial to be time barred, B.N. Chaturvedi J. held that it was not. Consequently, a reference was made by the Division Bench to a third Judge was made on the following question:

Whether Petitioner's trial by GCM was time barred or not in the facts and circumstances of the case, and in light of the Rule position?

13. In order to answer the question posed a reference may be first made to Section 122 of the Army Act which reads as under:

Section 122. Period of limitation for trial.-(1) Except as provided by Sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be committed after the expiration of a period of three years and such period shall commence.-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action whichever is earlier.

(2) The provisions of Sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in Section 37.

(3) In the computation of the period of time mentioned in Sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in

evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion of active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

14. For Section 122(1)(b) to apply, the knowledge of the commission of the offence as well as the identity of offender should have been known to the competent authority. If there was knowledge only of the offence and the identity of the offender limitation would begin to run from "the first date on which the identity of the offender is known." The further question that has been raised by the Respondent is whether the word "knowledge" connotes "actionable knowledge" or in other words knowledge of which cognizance could be taken by the competent authority. A reference is made to the guidelines issued by the AG's Branch in the Army HQ on 12th April 2001 in terms of which the knowledge for the purposes of Section 122 of the act must amount to actionable information i.e. it should relate to the offence and the identity of the offender with reasonable precision and certainty to warrant action."

15. It is submitted by the Respondents that such "actionable knowledge" can emerge only upon the conclusion of a Court of Inquiry against the person accused of the offence and not on any earlier date. This is because, according to the Respondents, the holding of a Court of Inquiry against the offender has to mandatorily precede the convening of a GCM, and without such Court of Inquiry the trial by GCM would stand vitiated. Therefore, according to the Respondents the time from which the limitation for commencing of trial by GCM would begin to run would be the date of conclusion of the Court of Inquiry.

16. The date of commencement of the trial of the Petitioner by the GCM was 26th April 2002. The Petitioner's case is that this was beyond the period of 3 years after the date on which the commission of the offence was known to the authority competent to initiate action. However, the stand taken by the Respondents as to the date on which the authority competent to initiate action knew of the commission of the offence has not been consistent. In the charge sheet served on the Petitioner, which was signed by Respondent No. 5 on 17th April 2002 and co-signed by Respondent No. 4 on 18th April 2002, it is stated that the knowledge of the offence Constituting both the first and the second charges "came to the knowledge of the authority competent to initiate action on 8th May 1999." In the counter affidavit in the present petition it is contended by the Respondents that the knowledge envisaged by Section 122 of the Act is "actionable information" which should relate to the offence as well as the identity of the offender "with reasonable precision and certainty to warrant action." It is accordingly contended that the "General Officer Commanding 11 Corps acquired knowledge of the offence and the offender on 20th October 2000, the date he directed administrative action against the Petitioner." This according to the

Respondents in the counter affidavit would be the date when the period of limitation would begin to run.

17. It further appears that the Deputy Judge Advocate General (DJAG) of the HQ 11 Corps whose advise was sought on the issue of limitation opined as under:

Brig VK Anand was the beneficiary by receiving the brass double bed from Col AK Thakur through Sub PR Sharma during Jul 97-Jun 98 which matter came to the knowledge of GOC 9 Inf Div while finalizing the court of inquiry on 08 May 99. Thus for the purpose of limitation the date of authority coming to know the offence be taken as 08 May 99 and not the date when the second Court of Inquiry was finalised.

18. During the GCM, the minutes sheet of the HQ 9th Infantry Division dated 30th and 31st March 1999 were produced. This showed that Major General AJB Jaini the then GOC 9th Infantry Divisions was the proceedings of the Court of Inquiry against the personnel of the 16 Field Regiment/45 Field Battery on 30th March 1999. He amended the draft directions and signed them on 31st March 1999. In the GCM, Major General AJB Jaini stated: "I acquired the knowledge with regard to the allegations made against the accused when the proceedings of C&I were put up for my directions on 30th March 1999." However, he added:

I could not have taken cognizance in respect of the accused unless he was called as a witness and statutory provisions applied in his respect. Moreover nothing stated in respect of the accused by any witness before the Court of Inquiry was immaterial to me as he was neither serving under my command nor I have any jurisdiction over him.

19. The question which then arises is whether the stand of Respondent No. 5, the GOC 9th Infantry Division, was legally tenable. The letter addressed by him to the GOC 11 Corps (Respondent No. 4) on 4th November 1998 clearly shows that both Respondent No. 4 and Respondent No. 5 knew not only about the commission of the offence on account of the statement of P.R. Sharma during the Court of Inquiry against the personnel of the 45 Field Battery, but also the identity of the two persons namely Col A.K. Thakur and the Petitioner. The mere fact that on 8th May 1999 Respondent No. 5 finalised the revised directions and sent them to Respondent No. 4 for confirmation of the directions for commencement of disciplinary action against Col A.K. Thakur cannot somehow postpone the date of acquisition of knowledge of the offence and the offender by Respondent No. 4 or Respondent No. 5 from 30th March 1999 to 8th May 1999.

20. In *Union of India v. Major P.B. Pandurangi* Mil LJ 2004 MP 179 (DB) Section 122 Army Act was interpreted by the Supreme Court as laying "emphasis on date of knowledge with regard to the offence and identity of offender." In the said case although the name of the offender was not mentioned, the designation of the officer was mentioned in the investigation report. That was held to be sufficient for attributing knowledge. In the present case however as is seen from the letters dated 4th November 1998 and 17th November 1998 both the offence

as well as the identity of the offenders were known to both Respondents 4 and 5. What is significant is that Respondent No. 4 and Respondent No. 5 met and discussed the issue on 31st October 1998. Then on 4th November 1998 Respondent No. 5 sent a confidential communication to Respondent No. 4. Based on this, on 17th November 1998 a further letter was sent by the GOC 11 Corps (Respondent No. 4) to Respondent No. 3. Both officers therefore had knowledge of both the commission of the offence and the offender when these letters were written.

21. In any event when the Court of Inquiry proceedings were finalised and signed by Respondent No. 5 on 30th March 1999, he obviously knew of the offence and the offender. In *Union of India v. Hav/Pham S.P. Shukla* Mil LJ 2008 UP 111 it was held by the Allahabad High Court that the "limitation of three years as provided in Section 122 of the Army Act will run from the date when the competent authority takes a decision to initiate the disciplinary proceedings against the offender." This Court finds that the said conclusion is not preceded by an analysis of the said provision. It also makes no reference to the decision of the Supreme Court in *Major Radha Krishan Vs. Union of India and Others*, where after terming Section 122 of the Act as "a complete code in itself," it was emphasised that "the terms of the above Section are absolute and no provision has been made under the Act for extension of time" like Section 473 CrPC, it was "obvious that any trial commenced after the period of limitation would be patently illegal. Such a provision or limitation prescribed under the Act cannot be overridden or circumvented by an administrative act, done in exercise of powers conferred under a Rule." In other words, merely because on the administrative side Respondents 4 and 5 between themselves took time to finalise the recommendations for commencement of disciplinary action pursuant to the Court of Inquiry, it could not give them the benefit of extended period of limitation. The "actionable knowledge must be held in the facts and circumstances of the case to have been acquired by both Respondents 4 and 5 on 4th November 1998 itself and in any event on 30th March 1999 when the proceedings were finalised.

22. There is no question of any "cognizance" having to be taken of the commission of any offence. The stand of Major General AJB Jaini to this effect during his deposition was plainly misconceived. Section 122 does not talk of cognizance but knowledge of the commission of offence by the competent authority. Even if one were to go by the repeated submissions made that at the relevant point in time it was only GOC 11 Corps (Respondent No. 4) who was competent to initiate action against the Petitioner, it does not in any manner help the Respondents. Respondent No. 4 had knowledge of the commission of offence as well as the identity of the offender on 17th November 1998 itself when a letter was addressed by him to Respondent No. 3 mentioning the information concerning the alleged offence involving the Petitioner. The argument as to whether it was Respondent No. 5 or Respondent No. 4 that was the authority competent to take action is really to no avail. If it was Respondent No. 4 and not Respondent No. 5 who was the competent authority as was sought to be argued

by the respondents, both of them had knowledge of the offence and the offender on 4th and 14th November 1998 and later on 30th March 1999.

23. The distinctions sought to be drawn between knowledge and "actionable knowledge" does not help extend limitation. Section 122 does not talk of "actionable knowledge" but "knowledge". Even if the holding of the Court of Inquiry prior to convening a GCM is considered to be mandatory, the steps taken to translate the knowledge into "actionable knowledge. are expected to be taken within the period of limitation that has already begun to run from 30th March 1999. Consequently it is not necessary to examine whether it was mandatory for the Court of Inquiry to have first concluded its proceedings before the competent authority could be said to have had actionable knowledge in regard to the offence and the identity of the offender. It was argued that the holding of the Court of Inquiry was a step protective of the Petitioner and that the Respondents were being extra cautious before arraigning the Petitioner before the GCM. While that may be true, that step cannot suspend the limitation for the commencement of the trial by GCM which begins to run from the date of the "knowledge" of the offence first by the competent authority.

24. In the considered view of this Court Section 122 which is a penal provision admits of a strict construction. The said penal provision prescribes a period of limitation for commencement of trial by GCM. If one were to draw an analogy with the general criminal law, for computing the period of limitation for the purposes of Section 468 CrPC, it is not the date of the charge sheet which is reckoned. Section 122 is a virtual reproduction of Section 469 CrPC. When an FIR is registered and both the commission of the offence and the name of the offender are known, that would be reckoned as a date on which the limitation is said to commence since it was certainly within the knowledge of the police officer in question. Perhaps it is only after investigation that the police is confident that the person named in the FIR is the person likely to have committed the offence. There is a whole process that has to be undertaken before a charge sheet is finally signed by the Investigating Officer and filed in Court. These processes might take some time but cannot suspend the period of limitation which has already begun to run in terms of Section 468 CrPC. As pointed out by the Supreme Court in *Radha Krishan*, inasmuch as there is no provision in the Army Act corresponding to Section 473 CrPC, there is no possibility of extension of the period of limitation. In *Lt. Col. V.N. Singh Vs. Union of India (UOI) and Others*, it was observed: "Law of limitation in the context of court martial proceedings must be interpreted strictly. The criminal justice system necessarily interferes or encroaches upon the fundamental rights guaranteed under Part III of the Constitution of India, and thus, in case of doubt or dispute, the interpretation must lean in favour of the accused."

25. Even if one were to accept the submissions of the Respondents that in order to be sure of the identity of the offender a Court of Inquiry prior to the commencement of the GCM had to be concluded, that is really a matter of

internal administrative convenience of the Respondents. What in effect it means is that the Court of Inquiry convened for confirming the commission of the offence and identity of the offender has to conclude its proceedings well within the three years limitation period which already has begun to run from the date of acquisition of the knowledge of the offence and the identity of the offender. The Court of Inquiry is merely a further confirmation. It does not postpone the time from which the period of limitation for the purposes of Section 122 has already begun to run. The Army is entitled to hold as many enquiries it wishes to for it to have "actionable knowledge". However the army will have to get its act together and conclude all such enquiries within the three year period from the date of knowledge and a delay in that process concluding will not have the effect of postponing the date of commencement of limitation.

26. It was submitted that the question of "actionable knowledge" was a mixed question of law and fact and therefore in exercise of its powers under Article 226 of the Constitution should not interfere with the determination of that question by the Respondents. In Colonel D.D. Pawar, C-25415-A Vs. Commander HQ Andhra Sub-Area, Secunderabad and another, a question that arose was whether knowledge of the offence, without knowledge of the identity of the offender, was sufficient for the period of limitation to commence. In that case it was held that in such a situation Section 122(1)(c) would be attracted. Further on the question of the factual determination of the identity of the offender, it was left to the GCM to determine that question on the basis of "proper evidence that may be let in the proceedings by the proper authorities." In the present case, there was never a doubt about the identity of the offender. Nevertheless the issue was examined twice over by the GCM after evidence was led before it. It twice came to the conclusion on facts that the trial was time barred and that the plea in bar of the petitioner should be upheld. As to the finality to be attached to the findings of the GCM, it was held by the Supreme Court in Delhi Special Police Establishment, New Delhi Vs. Lt. Col. S.K. Loraiya, as under:

10. Again, Sub-section (3) of Section 122 of the Army Act provides that while computing the period of three years specified in Sub-section (1), any time spent by the accused as a prisoner of war or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded. On a conjoint reading of Sub-sections (1) and (3) of Section 122, it is evident that the court-martial and not the ordinary criminal court has got jurisdiction to decide the issue of limitation. There is nothing on record before us to indicate that the respondent had not been evading after commission of the offence. As the court-martial has initial jurisdiction to enter upon the enquiry in the case, it alone is competent to decide whether it retains jurisdiction to try the respondent in spite of Sub-section (1) of Section 122. The issue of limitation is a part of the trial before it. If the court-martial finds that the respondent cannot be tried on account of the expiry of three years from the date of the commission of the offence, he cannot go scot free. Section 127 of the Army Act provides that when a person is convicted or acquitted by a court-martial, he may, with the previous sanction of the Central

Government, be tried again by an ordinary criminal court for the same offence or on the same facts. So it would be open to the Central Government to proceed against the respondent after the court-martial has recorded a finding that it cannot try him on account of the expiry of three years from the date of the commission of the offence.

27. For all of the aforementioned reasons, this Court concurs with the conclusion arrived at by B.A. Khan J. that the period of limitation for the commencement of trial by GCM in terms of Section 122 commenced on 30th March 1999 is concurred with. It is held that the GCM trial against the Petitioner commenced beyond the prescribed three years statutory period u/s 122 of the Act. The GCM trial is, therefore, time-barred and without jurisdiction.

28. Consequently, the writ petition is allowed. The impugned orders dated 1st February 2003 of non-confirmation of the findings of the GCM accepting the plea in bar of the Petitioner and the order dated 4th February 2003 reconvening the GCM are hereby quashed.