

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) NO.847/2018**

**Dr. Ravichandran B.R.**

S/O Late B. Radhakrishnan,  
Chief Medical Officer, 130 Bn. BSF,  
Ambasa, Dhalai, Tripura,  
IRLA No: 18940770.

**-----Petitioner**  
(Accused Officer)

**Versus**

**1. The Union of India,**  
Represented by the Secretary to the  
Government of India,  
Ministry of Home Affairs,  
South Block, New Delhi-110 001.

**2. The Director General,**  
Border Security Force,  
CGO Complex, Lodhi Road,  
New Delhi-110 003.

**3. The Inspector General,**  
Border Security Force,  
Tripura Frontier,  
H.Q. Salbagan, Agartala,  
West Tripura, Pin-799 012.

**4. The Commandant,**  
130 Bn. Border Security Force,  
Ambasa, Dhalai, Tripura, Pin-799 289.

**5. Head Quarters Special Director General,**  
Border Security Force, Eastern Command,  
20/1, Gurusaday Road, Kolkata, Pin-700 019.

**6. No.87655656, Constable(Kahar) Navin Kumar Jha**  
of 85 Bn. Border Security Force(Now 144 Bn. BSF),  
P.O. Simhat, District-Naida, West Bengal, Pin-741 235.

**7. No.980059180, Constable K. Karthikeyan** of  
43 Bn. Border Security Force(Now 144 Bn. BSF),  
P.O. Simhat, District-Naida, West Bengal, Pin-741 235.

**8. No.94254028, Head Constable(NA) Ashok Kumar**  
of 43 Bn. Border Security Force, Roshanbag,  
District-Murshidabad, West Bengal, Pin-741 164.

**9. No.02146085, Constable Shivanna**  
of 130 Bn. Border Security Force,  
Ambasa, Dhalai, Tripura, Pin-799 289.

**-----Respondents**

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For petitioner(s)	:	Mr. Samrat Kar Bhowmik, Adv.
For Respondent(s)	:	Mr. Bidyut Majumder, CGC
Date of hearing	:	<b>20.09.2018</b>
Delivery of delivery of Judgment & Order	:	<b>21.12.2018</b>
Whether fit for reporting	:	<b>YES</b>

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**HON'BLE MR. JUSTICE ARINDAM LODH**

**J U D G M E N T & O R D E R**

The petitioner has filed this writ petition under Article 226 of the Constitution of India questioning the legality and validity of the charge-sheet containing four different charges for committing offence of slapping and punching to his subordinate jawans subject to BSF Acts & Rules.

**2.** Heard Mr. Samrat Kar Bhowmik, learned counsel appearing for the petitioner as well as Mr. Bidyut Majumder, learned CGC appearing for the Union of India and other respondents.

**3.** The petitioner is the Chief Medical Officer(CMO) under the Border Security Force(BSF) and subject to the Border Security Force Act, 1968 and Rules, 1969. In course of his service under 130 Bn. BSF he has been faced with a charge-sheet(*Annexure-7* to the writ petition) consisting of four different offences of simple hurt alleged to have been committed on four different persons

altogether on four different times and places on four different context.

**4.** Mr. Kar Bhowmik, learned counsel for the petitioner submits that the offence, if it is not part of the same transaction, then, similar offences cannot be clubbed together. Further, if the offence is not based on same facts, then also various offences committed on different dates cannot be clubbed together. It is his further contention that eleven numbers of allegations were investigated by a single Staff Court of Inquiry(*in short, SCOI*) which was not permissible in law and thus, the entire proceedings before the SCOI was vitiated and the charge-sheet submitted on the basis of this SCOI is liable to be set aside.

**5.** The Staff Court of Inquiry(*SCOI*) after considering the materials brought before it found that the writ petitioner might be put to trial for committing four offences to be tried by General Security Force Court(*in short, GSFC*). According to Mr. Kar Bhowmik, the convening of GSFC to try four different charges in a single trial is illegal and separate charges are to be framed for committing four offences and each of the charges has to be tried by four different trials. The learned counsel has drawn my attention to Rules 74, 75 and 76 of the Border Security Force Rules, 1969(*in short, BSF Rules*) which, for the convenience, may be reproduced hereinunder:

**"74. Plea in bar of trial.-** (1) An accused before pleading to a charge may offer a plea that the trial is barred under section 75 or section 76. If he does so,-

(a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto, and

(b) the prosecutor may address the Court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the Court allows the plea it shall adjourn and report to the convening officer :

Provided that if there is another charge or another charge-sheet before the Court, the Court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a Court reports to the convening officer under this rule, the convening officer shall,-

(a) if he approves the decision of the Court to allow the plea,-

(i) dissolve the Court; or

(ii) where there is another charge or another charge-sheet before the Court to which the plea does not relate and which the Court has not tried, direct the Court to proceed with the trial of such other charge or charge-sheet only.

(b) if he disapproves the decision of the Court to allow the plea-

(i) direct the Court to try the charge; or

(ii) where there is another charge or another charge-sheet before the Court to which the plea does not relate and which the Court has not tried direct the Court to proceed with the trial of such other charge or charge-sheet only; or

(iii) convene a fresh Court to try the accused.

**75. Application for separate trial.-** (1) Where two or more accused are charged jointly, any one of the accused may, before pleading to the charge, apply to the Court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately.

(2) Where the accused makes such an application, the prosecutor may address the Court in answer thereto and the accused may reply to the prosecutor's address.

(3) Where the Court is of the opinion that the interests of justice so require it shall allow the application and try separately the accused who made it.

**76. Application for trial on separate charge-sheet.-**

(1) Where a charge-sheet contains more than one charge, the accused may, before pleading to the charges, apply to the Court to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge.

(2) Where the accused makes such an application, the prosecutor may address the Court in the answer thereto and the accused may reply to the prosecutor's address.

(3) Where the Court is of the opinion that interests of justice so require it shall allow the application and try the accused separately on the charge to which it relates as if

*that charge had been inserted in a separate charge-sheet."*

**6.** Mr. Kar Bhowmik, learned counsel for the petitioner further submits that the petitioner in terms of Rule 74 of the BSF Rules 1969 submitted an application to the Presiding Officer, GFSC on 19.03.2018 stating *inter alia* that in his case four charges have been clubbed together to be tried in a single trial as per charge-sheet dated 31.12.2017 which was in contravention of Rule 74 read with Rule 76 of the BSF Rules 1969 for the reason that the offences were distinct and related to four different incidents, committed on four different dates at four different places and towards four different persons. So, according to him, the evidence are totally different from each other and four offences do not form "*part of a series of offences*" as mentioned in the statute and if all the four charges are tried in a single trial then he would be prejudiced since the accused officer would be bewildered in making his defence appropriately. The petitioner in his representation under Rule 74 of BSF Rules 1969 had also sought for charge specific documents and also charge specific list of witnesses.

**7.** Responding to the representation of the writ petitioner dated 19.03.2018, the Presiding Officer, GSFC by a reasoned order dated 20.03.2018 had rejected the plea/objection of the writ petitioner holding that the objections raised by the writ petitioner were irrelevant and did not hold any ground as charge-sheet filed was found to be in order and framed as per BSF Acts & Rules and

thereby there was no question of causing any prejudice to the accused officer *i.e.* the writ petitioner. Thus, the Presiding Officer, GFSC directed the proceedings to be continued.

**8.** The writ petitioner in his rejoinder to the decision of the Presiding Officer, GSFC dated 20.03.2018 submitted further representation dated 24.03.2018. He reiterated his prayer made on 19.03.2018 with further statement that the provision of BSF Acts & Rules has been borrowed from Section 219 of Code of Criminal Procedure (in short, the Code) which is an exception to Section 218(1) of the Code wherein it is stated:

*"218(1). For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately:*

*Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person".*

**9.** According to the petitioner, the key words of Section 218(1) of CrPC are "*distinct offence*" and "*every such charge shall be tried separately*". So, unless and until separate trials are conducted for four separate distinct charges the entire trial for which only a single trial has been convened shall be vitiated. The prayer dated 24.03.2018, being negated by the authority concern,

the petitioner vide his communication dated 26.03.2018 has sought for four weeks time to move to the higher forum under Section 117 of the BSF Act, 1968. Accordingly, a revision petition was moved before the 'HQ Special DG', BSF, Eastern Command, Kolkata. The said revision petition was disposed of vide order dated 18.04.2018 with the following observations:

"OFFICE OF THE COMMANDANT 130 BN BSF:  
AMBASSA(TRIPURA)

//ORDER//

*As the GSFC convened against IRLA No.18940770 Dr Ravichandran B R, CMO of 130 Bn BSF vide Convening order dated 16<sup>th</sup> Jan'2018 has been dissolved by convening authority and the Court has since been dissolved on 18<sup>th</sup> April'2018, accordingly IRLA No. 18940770 Dr. Ravichandran BR, CMO of 130 Bn BSF, placed under open arrest for the purpose of GSFC trial vide this Unit Order No.Estt/GSFC/130 Bn/2018/4605-09 dated 18<sup>th</sup> March 2018 is hereby released from open arrest with immediate effect.*

*No.Estt/GSFC/130 Bn/2018/6388-90  
Dated, the 18 Apr'2018*

*(NEERAJ SHARMA)  
COMMANDANT  
130 Bn BSF"*

**10.** The competent authority vide its communication dated 25.04.2018 informed the writ petitioner about the tentative date for convening the GSFC w.e.f. 15.05.2018 by the convening authority, copy of signal also was attached therewith.



**11.** In response to the said communication, the writ petitioner made a prayer on 25.04.2018 proposing that he was required to be defended by an advocate, and also for supplying of certified copies of all the relevant documents of the GSFC proceedings. Further, on 25.04.2018 learned advocate of the writ petitioner made a prayer to supply certified copies of the proceedings from 30.01.2018 to 18.04.2018, on contemplation of filing appropriate petition before the appropriate Court of Law.

**12.** Vide letter dated 01.05.2018, the writ petitioner submitted a representation praying for informing him about the status of the revision petition. Responding to the said letter, the respondents vide communication dated 02.05.2018 had informed the writ petitioner that as soon as the GSFC was dissolved on 17.04.2018, the order dated 26.03.2018 passed by the same GFSC, stood automatically dissolved being *non-est* and there was no need for disposing of the petition filed by the writ petitioner under Section 117(1) of the BSF Act on merits.

**13.** Thereafter, a writ petition was filed before this Court which was disposed of by this Court vide order dated 31.05.2018 directing to supply all the copies of the proceedings to the writ petitioner with further direction that the revision petition filed by the writ petitioner dated 29.03.2018 was required to be disposed of on merit. Again objection was filed and there was demand for furnishing of some documents. Accordingly, on 20.07.2018, the

revision petition was disposed of by the revisional Court wherein the revisional Court has made the following observations:

".....

12. In view of all above, I find that prayer of the petitioner for segregating the trial for each charge is without any basis and is not supported by law. GSFC trial is conducted as per the provisions of BSF Act, 1968 and rules made thereunder. Charge sheet dated 31/12/2017 and countersigned by IG BSF tRIPURA on 16/01/2018 which was supplied to the petitioner and which formed part of the GSFC convened by the IG BSF Tripura Ftr vide his Order dated 16/01/2018 conforms to the provisions of law. In view of the above, revision petition dated 29/03/2018 is found lacking merits and is, accordingly, rejected.

13. It may be mentioned that revision petition u/s 117(1) of the BSF Act, 1968, dated 29/03/2018 submitted by the petitioner has again been disposed off only in compliance of directions of Hon'ble High Court of Tripura at Agartala dated 31/05/2018 in Criminal Petition No.28 of 2018 titled 'Dr Ravichandran B R Vs UOI and Others'. Such second time disposal of the same petition u/s 117(1) of the BSF Act, 1968 shall be restricted to this case only and will not act as a precedent."

**14.** Mr. Bidyut Majumder, learned CGC appearing for the respondents submits that proceedings against the writ petitioner is initiated following due process of law and the mandates as prescribed under the BSF Acts & Rules. The learned counsel further submits that in the instant case, all the four charges are of similar

nature and character. The Court of Inquiry has been completed and the record of evidence also has been noted. The GSFC was constituted, but, it was dissolved due to the death of one of the members of the GSFC. The writ petitioner had participated at the time of recording of evidence as well as the proceedings before the SCOI as witness No.12. The petitioner was afforded all opportunities in terms of BSF Rules 173(8) during the Staff Court of Inquiry while adducing evidence as witness No.12. The petitioner also has put his signature in the statements he made before it. Even the petitioner was given an opportunity of hearing by the superior officer i.e. the Commandant in compliance of the provision of Rule 45B of the BSF Rules. Mr. Majumder, learned CGC has further contended that all necessary copies were furnished to him which are transparent and legible. Lastly, the learned counsel submits that the Code of Criminal Procedure, 1973 is not at all applicable to prosecute a member subject to BSF Acts & Rules.

**15.** In the backdrop of the aforesaid submissions, the following points are taken up for decision:

(A) *Whether the provisions of the Code of Criminal Procedure, 1973 are applicable to the personnel subject to BSF Acts & Rules?*

(B) *Whether offences of similar nature and character, though committed on different dates, places and against*

*different persons, can be clubbed together and be tried in a single trial on the basis of one charge-sheet?*

**16.** While dealing with the first point as framed hereinabove as to whether CrPC is applicable to the members subject to BSF Acts & Rules, I take note of Section 5 of the CrPC which reads as under:

**"5. Saving.**—*Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."*

A bare reading of the said provision makes it clear that Section 5 of CrPC provides the Code inapplicable in all respects in regard to all matters covered by any special law or local law which are framed only for the purpose to govern the members of the security force, be it under the Army Acts & Rules, BSF Acts & Rules, or any enactment meant for other forces.

**17.** The Border Security Force was introduced towards the end of 1965 and the Force has been charged with the responsibility of ensuring the security of the Indo-Pakistan International border, to create a sense of security of the people living in the border areas, and preventing trans-border crime, smuggling and unauthorized entry into and exit from Indian Territory. The legislature in its wisdom has considered the nature

and purpose of the Force and the experience gained within two years of its introduction, it was felt that the Force should be regulated by a separate self-contained statute which will provide for its special needs, especially the needs of efficiency and discipline. So, in my opinion, BSF Acts & Rules are framed to achieve a definite purpose and it is a complete Code to face with the situations, we are dealing with the present case.

**18.** The BSF Acts & Rules being a special law meant for the members subject to the said Acts & Rules will run independently and the provisions of the CrPC 1973 are of no relevance to the applicability of the provisions of BSF Acts & Rules to the members subject to the said Acts & Rules.

In the case of **Ajmer Singh & Ors. v. Union of India & Ors., (1987) 3 SCC 340**, the Apex Court while countered with a similar aspect has held as under:

*"Section 5 of the Code of Criminal Procedure lays down that nothing contained in the said Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self-contained comprehensive Code specifying the various offences under those Acts and prescribing the procedure for detention and custody of offenders, investigation and trial of the offenders by Court-martial, the punishments to*

*be awarded for the various offences, confirmation and revision of the sentences imposed by Court-Martial, the execution of such sentences and the grant of pardons, remissions and suspensions in respect of such sentences. These enactments, therefore, constitute a special law in force conferring special jurisdiction and powers on Court-martial and prescribing a special form of procedure for the trial of the offences under those Acts. The effect of Section 5 of the Code of Criminal Procedure is to render the provisions of the Code of Criminal Procedure inapplicable in respect of all matters covered by such special law. Since in the four cases before us we are concerned with convictions by General Court-martial under the provisions of the Army Act, we shall refer specifically to the relevant provisions contained in the Army Act (hereinafter called 'the Act').*

**19.** To buttress the aforesaid view, I may gainfully take note of Section 475 of the Code of Criminal Procedure, which, in my opinion, will make this proposition more clear and transparent and remove all doubts to the point in question about the inapplicability of the said Code to the personnel of the armed forces who are subject to a special law enacted for a particular force with a definite purpose and objective therein to achieve.

Section 475 of CrPC reads as follows:

**"475. Delivery to commanding officers of persons liable to be tried by Court-martial.—**(1) *The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950 ), the Navy Act, 1957 (62 of 1957 ), and the Air Force Act, 1950 (45 of 1950 ), and any other law, relating to the Armed Forces of the*

*Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for the purpose of being tried by a Court-martial.*

*Explanation.- In this section-*

*(a) " unit" includes a regiment, corps, ship, detachment, group, battalion or company.*

*(b) " Court-martial" includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.*

*(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.*

*(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situate within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial."*

**20.** The sum and substance is that the Force Courts and the Codes enacted for them therein have primacy over the criminal

Courts and the option lies with the competent Security Force officials to decide under which provision, the personnel subject to the special law enacted for such Force would be tried.

In other words, the BSF Act is a complete Code having its Rules and the persons subject to this Act can be tried within the scope and ambit of various provisions of said Act.

Further, I may clarify that the applicability of the Code of Criminal Procedure is limited only to the provisions which are expressly provided in the Act related to any armed Forces of the Union for which special law has been enacted by the Parliament.

**21.** In ***Joginder Singh v. State of Himachal Pradesh, AIR 1971 SC 500***, it was authoritatively laid down that for the offences which are triable both by Criminal Courts as well as by the Military Courts, the scheme of the Rules requires that the Magistrate shall not proceed to try the military personnel unless he forms an opinion, for the reasons to be recorded in writing, and before forming such an opinion, he is required to give the notice to the Commanding Officer of the accused and till the expiry of the period of notice, he is enjoined not to pass any further orders. It was further laid down that the option to try the accused rests with the military authorities and in case they exercise the option, Rules require that the accused be delivered to the Commanding Officer with the statement of the offence with which he is charged as envisaged under Section 475 CrPC(549 Old Code). So, primacy has



been given to the special law enacted for a particular security force of the Union.

**22.** Now, the question remains to be dealt with, is whether the charge-sheet can be filed containing four different charges and whether all the four charges can be tried in a single trial within the scope & ambit of the BSF Acts & Rules.

The charge-sheet(Annexure-7 to the writ petition) dated 31.12.2017 is reproduced here-in-below, *in extenso*:

"CHARGE SHEET

*The accused, IRLA No.18940770 Dr Ravichandran B R, CMO of 130 Bn BSF is charged with:-*

<u>First chare</u> <u>BSF Act, 1968</u> <u>Section 25</u>	<u>USING CRIMINAL FORCE TO A PERSON</u> <u>SUBJECT TO THE BSF ACT BEING HIS</u> <u>SUBORDINATE IN RANK</u>  <i>in that he,</i> <i>at Combined Hospital, SHQ BSF, Berhampore,</i> <i>Murshidabad(West Bengal), on 14<sup>th</sup> Feb'2015,</i> <i>at about 1100 hrs, slapped No.87655656</i> <i>Ct(Kahar) Navin Kumar Jha of 85 Bn BSF(Now</i> <i>144 Bn BSF).</i>
<u>Second</u> <u>Charge</u> <u>BSF Act, 1968</u> <u>Section 25</u>	<u>USING CRIMINAL FORCE TO A PERSON</u> <u>SUBJECT TO THE BSF ACT BEING HIS</u> <u>SUBORDINATE IN RANK</u>  <i>in that he,</i> <i>at BSF Campus, Roshanbagh,</i> <i>Murshidabad(West Bengal), on 21<sup>st</sup> Apr'2015,</i> <i>at about 0930 hrs, slapped No.980059180 Ct K</i> <i>Karthikeyan of 43 Bn BSF(Now 144 Bn BSF).</i>
<u>Third Charge</u> <u>BSF Act, 1968</u>	<u>USING CRIMINAL FORCE TO A PERSON</u> <u>SUBJECT TO THE BSF ACT BEING HIS</u>

<u>Section 25</u>	<u>SUBORDINATE IN RANK</u>  <i>in that he, at Combined Hospital, SHQ BSF, Berhampore, Murshidabad(West Bengal), on 15<sup>th</sup> May'2015, at about 1200 hrs, punched on the face of No.94254028 HC(NA) Ashok Kumar of 43 Bn BSF.</i>
<u>Fourth</u> <u>Charge</u> <u>BSF Act, 1968</u> <u>Section 25</u>	<u>USING CRIMINAL FORCE TO A PERSON</u> <u>SUBJECT TO THE BSF ACT BEING HIS</u> <u>SUBORDINATE IN RANK</u>  <i>in that he, at Combined Hospital, SHQ BSF, Berhampore, Murshidabad(West Bengal), on 18<sup>th</sup> May'2015, at about 1245 hrs, slapped on the face of No.02146085 Ct Shivanna of 130 Bn BSF.</i>

Place : Ambassa  
Date : 31 December, 2017

(NEERAJ SHARMA)  
COMMANDANT  
130 BN BSF"

**23.** It is revealed from the record that the writ petitioner was provided with the copy of SCOI and additional SCOI before preparation of Record of Evidence(ROE). The Court of Inquiry was also conducted under his full participation and as such, it cannot be said that he has been prejudiced in any manner whatsoever. Needless to say, he also made a statement as witness No.12 at the stage of SCOI and his statement was also authenticated by his own signature. So, he cannot have any grievance to the procedural aspect prescribed under Rule 173(8) and Rule 174 of Chapter XIV of the BSF Rules, 1969 relating to Court of Inquiry. Though, initially six charges were decided to be framed by the competent authority against the writ petitioner, but ultimately, as per Rule 48

of BSF Rules 1969 charges were reframed and all the four charges were prepared under Section 25 of the BSF Act 1968. After perusal of the charges, in my opinion, the gravamen of the charges remains the same as reproduced here-in-above.

**24.** The petitioner was blamed by the SCOI and thereupon the IG, BSF, South Bengal directed the competent officer to initiate disciplinary proceeding against him. The petitioner was also heard under Rule 45B of the BSF Rules and only thereafter, Record of Inquiry(ROE) was demanded in the matter. It was further directed to hold GSFC for trial whereupon charges were reframed but GSFC was dissolved under the order of IG, BSF, Tripura being the convening authority since required number of members were reduced. Subsequently, another GSFC was convened by the competent authority when the petitioner has approached this Court with the filing of the present writ petition for quashing GSFC on the ground that charge-sheet containing four different charges is in contravention of the provisions of BSF Rules.

**25.** It leads me to look into the ancillary issues under which provision the charges can be framed under the BSF Rules. Chapter VIII of the BSF Rules 1969 relates to charges and matters antecedents of trial.

Rule 53 of the Rules of 1969 is reproduced hereunder:

**"53. Charge Sheet.—**(1) *A charge-sheet shall contain the whole of the issue or issues to be tried at one time and*

*may contain more than one charge, if the charges are founded on the same facts or form part of a series of offences of same or similar character:*

*Provided that a charge under section 18, section 19, section 29 and section 32 may be included in any charge sheet, notwithstanding that other charges in that charge sheet are not founded on the same facts or do not form part of a series of offences of the same or similar character.*

*(2) Every charge sheet shall in its lay out follow the appropriate specimen, set out in Appendix VI to these rules."*

**26.** A plain reading of sub-rule (1) of Rule 53 makes it amply clear that there is no bar that a charge-sheet to contain all the issues or whole of the issue which are necessary to be tried and also may contain more than one charge, if the charges are founded on the same facts or form part of a series of offences of same or similar character. The proviso of the said provision under Rule 53 is very significant. It says that even the charge under section 18(Desertion and aiding desertion), section 19(Absence without leave), section 29(Escape from custody) and section 32(Making away with equipment) of the BSF Act may be included in any charge-sheet, notwithstanding the fact that the other charges in that charge-sheet are not founded on the same facts or do not form part of a series of offences of the same or similar character. The proviso, as stated above contains a *non-obstante* clause, which emboldens the competent authority not only to

frame charges for committing offences, which are founded on the same facts or form part of a series of offences of same or similar character but also the same charge-sheet may contain the charge for committing offences under other provisions mentioned in the BSF Act as aforestated.

**27.** Thus, a reasonable inference should be made that under the BSF Rules not only the charges founded on same facts or form part of series of offences of same or similar character but also other nature of offences can be added in a single or same charge-sheet. So, the contention of the learned counsel for the petitioner that the offences which are not founded on same facts or form part of a series of offences of same and similar character cannot be clubbed together, according to me, does not deserve any merit and I repel the submission of the learned counsel in regard to this aspect of law. More so, in the instant case, all the four charges relate to slapping and punching which undoubtedly, if are not same, but, obviously are of similar character.

**28.** Rule 54 of the BSF Rules 1969 provides that there shall be a separate charge for each offence. In the case at hand, four separate charges have been framed for committing four separate offences.

Rule 54 is reproduced below for the convenience of further discussions:

**"54. Charges.—**(1) There shall be a separate charge for each offence.

(2) (a) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.

(b) The charge for the more serious offence shall precede the one for the less serious offence.

(3) Each charge shall consist of two parts, namely:—

(a) statement of the offence, and

(b) particulars of the offence.

(4) The offence shall be stated, if not a civil offence, as nearly as practicable, in the words of the Act, and if a civil offence, in such words as would sufficiently describe that offence.

(5) (a) The particulars shall state the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which, it was committed and these should be sufficient to give the accused notice of the matter with which he is charged.

(b) In case such particulars are not sufficient to give the accused notice of the matter with which he is charged the charge shall also contain such particulars of the manner in which the offence was committed as will be sufficient for that purpose."

**29.** Sub-rule(2) of Rule 54 clearly envisages that any number of charges may be tried at trial. Sub-rule(b) says that charge for more serious offence shall precede the one for the less serious offence. Sub-rule(3) lays that each charge shall consist of two parts, namely (a) statement of the offence, and (b) particulars of the offence. Sub-rule(5)(a) postulates that the particulars shall state the time and place of the alleged offence and the person against whom, or the thing in respect of which, it was committed and these should be sufficient to give the accused notice of the matter with which he is charged. In the case at hand, all the charges framed separately in the charge-sheet, describe all the particulars relating to time and place and against whom the offence was committed.

**30.** A conjoint reading of sub-rule 5(a) and 5(b) of Rule 54 makes it clear that if the particulars are complete and no grievance was raised in regard to the particulars mentioned in a particular charge, then, this should be treated as sufficient to give the accused notice of the matter with which he is charged. In the present case, it is not the case of the writ petitioner that any of the particulars mentioned in the charges are not correct.

**31.** Thus, I hold that under BSF Rules, charge-sheet can be filed containing different charges for committing different offences on different dates and at different places against different persons, and invariably can be tried in a single trial. Only it is the bounded obligation of the authority concerned to take notice of all the

particulars in the charges, and liberty lies with the petitioner to rectify or to point out any of the statement in mentioning any of the facts, described in the statement of particulars of each charge.

**32.** Since I already held that the Code of Criminal Procedure, 1973 has no applicability in the trial of any personnel subject to BSF Act & Rules, I do not think it necessary to discuss the provisions of sections 218, 219, 220 and Section 222 of the CrPC as referred to by the learned counsel for the petitioner.

**33.** The remedy under Article 226 of the Constitution of India is in the nature of prerogative remedy and the extraordinary jurisdiction of the High Court is purely discretionary. The petitioner Dr. Ravichandran B.R. without any controversy is subject to BSF Act & Rules. The proceeding initiated against the writ petitioner being inconformity with the provisions of relevant BSF Act & Rules, it does not call for any interference.

**34.** Given these findings, I find no reason to exercise the discretionary jurisdiction of this Court under Article 226 of Constitution of India in favour of the writ petitioner.

**35.** The writ petition stands dismissed accordingly.

**36.** However, there shall be not order as to costs.

**JUDGE**