

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL. PETN. NO. 4 OF 2022

Ms Anupam, aged about 29 years, d/o Satypal Singh,
resident of Gagarwas, Sub District-Loharu, & PS- Loharu,
Bhiwani District, Haryana at present Type-IV Quarters,
MPTC, Pangei, Imphal East District, Manipur.

Also residing at Tamenlong District HQ, Tamenglong
District, Manipur - 795141.

.... Petitioner

- Versus -

1. The State of Manipur, Represented by it
Commissioner/Secretary (Home), Government of
Manipur, Secretariat Building, Babupara, Imphal West,
Manipur-795001.

2. Riflemen P.K. Pandey, D-Company, 12th Assam
Rifles, Khudengthabi, P.S. Tengnoupal, District-
Tengnoupal, Manipur.

3. Headquarters, Inspector General Assam Rifles
(South), Mantripurkhri represented by its Public Relation
Officer (PRO) Impleaded as Respondent. No. 3,
vide order dated 23.08.2023 passed in MC (Cril. Petn.)
No. 6 of 2023.

.... Respondents

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the Petitioner : Mr. D. Julius Raimei, Advocate
Ms. Kabamdailiu Pamei, Advocate
For the Respondent : Mr. Y. Ashang, Sr. Advocate
Mr. I. Denning, Advocate
Mr. BR Sharma, CGSC
Date of Hearing : 16.08.2024
Date of Judgment & Order : **28.02.2025**

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. D. Julius Raimei, learned counsel appearing for the petitioner assisted by Ms. Kabamdailiu Pamei; Mr. Y. Ashang, learned senior counsel appearing for the respondent No. 1; Mr. I. Denning, learned counsel appearing for the respondent No. 2 and BR Sharma, learned CGSC appearing for the respondent No. 3 at length.

[2] The petitioner has filed the present petition under Section 482 of the Cr.P.C, 1973 praying for quashing and setting aside of order dated 31.01.2022 passed in Cril. Revision No. 2 of 2021 Ref: Cril. Revn. No. 16 of 2020 by Additional Sessions Judge (FTC), Manipur West with the following prayers;

"i) *Pass an Order or direction quashing and setting aside the Order dated 31.01.2022 passed by the Court of Additional Sessions Judge (FTC), Manipur West in Criminal Revision No. 2 of 2021 ref: Cril. Revn. No. 16 of 2020; and*

- ii) *Pass an Order or direction quashing and setting aside the order dated 02.12.2020 passed by the Court of Judicial Magistrate, First Class, Moreh which erroneously handed over the case records of FIR No. 12 (1) 2020 MRH-PS u/s 341/353/354/354A/355/506 IPC lodged by the Petitioner against the Respondent No. 2; and*
- iii) *pass any other appropriate order/orders that this Hon'ble Court deems fit and proper in the facts and circumstances of the case;*

And

Pending the disposal of the present Petition this Hon'ble Court may be pleased to grant ex-parte ad-interim relief by staying the operation of the impugned order dated 31.01.2022 passed by the Court of Additional Sessions Judge (FTC), Manipur West in Criminal Revision No. 2 of 2021 ref: Cril. Revn. No. 16 of 2020 and the operation of order dated 02.12.2020 passed by the Court of Judicial Magistrate, First Class, Moreh which erroneously handed over the case records of FIR No. 12 (1) 2020 MRH-PS U/s 341/353/354/354A/355/506 IPC lodged by the Petitioner against the Respondent No. 2."

[3] The petitioner has filed the present petition being aggrieved by the order dated 31.01.2022 passed by the Court of Additional Sessions Judge (FTC), Manipur West in Criminal Revision No. 2 of 2021 ref: Cril. Revn. No. 16 of 2020 wherein the learned Additional Sessions Judge (FTC), Manipur West upheld the order dated 02.12.2020 passed by the Court of Judicial Magistrate, First Class, Moreh which erroneously handed over the case records to FIR No. 12 (1) 2020 MRH-Ps U/s 341/ 353/ 354/ 354A/ 355/ 506 IPC lodged by the Petitioner against the Respondent No. 2.

[4] The petitioner is a lady Indian Police Service (IPS) Officer of 2016 batch of Manipur cadre and is presently posted as Superintendent of Police (SP), Tamenglong District, Manipur. The case of the petitioner is that on 19.01.2020, when she was posted as Sub-

Divisional Police Officer, Yairipok, was returning from Moreh after completion of her official duty assigned to her upon direction from the Superintendent of Police (SP), Thoubal District dated 17th January, 2020, she was assaulted, manhandled, molested and outrage the modesty of the Petitioner by an Assam Rifles Jawan, namely PK Pandey, at Khudengthabi check post. Being aggrieved by such act of the said Jawan, the petitioner lodged a written report/complaint to the Officer in Charge, Tengnoupal Police Station which culminated into FIR being FIR No. 12 (1) 2020 Moreh PS U/s 341/353/354/354A/355/506 IPC.

[5] Learned counsel for the petitioner submits that the petitioner was intimidated by one Col. Rajesh Chaudhary, CO 12th Assam Rifles and Maj. Akhil of 12th Assam Rifles, not to lodge Police Complaint against the said Jawan, the petitioner lodged FIR No. 22 (2) 2020 TPL-PS U/s 212/506 IPC. The said FIR case was taken up before the Court of Judicial Magistrate First Class (JMFC), Moreh in Cril (P) Case No. 10 of 2020 and charge sheet was submitted. On 26.10.2020, the learned JMFC, Moreh gave an opportunity under **section 475 CrPC read with Sections 102 and 103 of the Assam Rifles Act 2006 and Regulation 303 (a) (v) of the Assam Rifles Regulation 2006**. He further submits that on 26.11.2020 Col. SPS Rautela officiating as Deputy Inspector General, 26th Assam Rifles addressed a letter to the Judicial Magistrate First Class, Moreh Manipur requesting to hand over the case i.e. Cril. (P) Case No. 10 of 2020 as per Sections 102 and 103 of Assam Rifles Act, 2006 read with Paragraph 227 of Assam Rifles

Regulation 2016 and Section 475 CrPC. Thereafter, the learned Judicial Magistrate First Class, Moreh erroneously passed order 02.12.2020 in Cril. (P) Case No. 10 of 2020 handing over the charge sheet along with all relevant records to the Assam Rifles Authority.

[6] Learned counsel for the petitioner further submits that being aggrieved by the order dated 02.12.2020, the petitioner filed Criminal Revision Case No. 16 of 2020 before the Court of Session Judge, Imphal under sections 397 and 399 CrPC and the case was later transferred to the Court of Additional Sessions Judge (FTC) Manipur West and renumbered as Cril. Revision No. 2 of 2021. However, the learned Additional Sessions Judge (FTC) Manipur West erroneously passed the impugned order dated 31.01.2022 dismissing the Revision Petition and uphold the order dated 02.12.2020 passed by the Court of Judicial Magistrate First Class, Moreh.

[7] Learned counsel for the petitioner further submits that the Courts below completely failed to appreciate the case in hand that transferring of case to the Assam Rifles Authority cannot be done mechanically. Exercise of judicial discretion is required in such case and due consideration has to be made that what are the types of cases that is required to be transferred or what are the types or categories of cases that needs to be tried by the Court under the Code of Criminal Procedure against Assam Rifles personals. Due consideration also ought to have been given on under what circumstances can the cases against

Assam Rifles personals can be transferred. **He further submits that the language of Section 475 CrPC amply clear and profound that only in proper cases i.e. cases against Assam Rifles personnel has to be transferred for Court-Martial.** He further submits that a written application before the Court of Judicial Magistrate First Class, Moreh mandated by Section 375 (2) CrPC is condition precedent for passing an order for transfer of case and that too after giving due consideration of the nature of allegations, offence charged, compliance of principles of natural justice, etc.

[8] Learned counsel for the petitioner further submits that the Courts below failed to appreciate that the case was initiated on the report of the Police, Section 102 of the Assam Rifles Act, 2006 is not applicable but the section is applicable only at the stage of the institution of the case whereas in the present case the police have already filed charge sheet before the Criminal Court under CrPC. Therefore the Court of Judicial Magistrate First Class Moreh completely failed to appreciate the provision of Section 102 of Assam Rifles Act 2006 and erroneously exercise its power while passing the order dated 02.12.2020. He further submits that Section 103 of the Assam Rifles Act 2006 clearly states that the criminal court having jurisdiction can on its own opinion proceeds with the trial of the case before itself. He further submits that the Courts below has also failed to appreciate that combined reading of Rule 44 and Rule 45 of Assam Rifles Rules 2010 clearly implies that the present case has given the facts and

circumstances that the case would have to be tried by the Criminal Court under CrPC.

For convenience sake and for easy reference Section 102, 103 of Assam Rifles Act, 2006 and Rule 44, 45 of the Assam Rifles Rules 2010, Section 397 Cr.P.C., Section 399 of Cr.P.C. and Section 475 of Cr.P.C. are extracted herein below;

Section 102 of Assam Rifles Act, 2006:

"102. Choice between criminal court and Assam Rifles Court.- When a criminal court and an Assam Rifles Court each have jurisdiction in respect of an offence, each shall be in the discretion of the Director-General, or the Inspector-General or the Deputy Inspector-General within whose command the accused person is serving or such other officer as may be prescribed, to decide which court proceedings shall be instituted, and if that officer, decides that they shall be instituted before the Assam Rifles Court, to direct that accused person shall be detained in Force custody."

Section 103 of Assam Rifles Act, 2006:

"103. Power of Criminal Court to require delivery of offender –

- (1) When a Criminal Court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 102 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings, pending a reference to the Central Government.
- (2) In every such case, the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted, for the determination of the Central Government whose order upon such reference shall be final."

Rule 44 and 45 of the Assam Rifles Rules 2010:

"44. Trial of cases either by Force Court or Criminal Court –

(1) When an offence is triable both by a criminal court and a Force Court, an officer referred to in Section 102 may:-

(i) (a) Where the offence is committed by the accused in the course of performance of his duty as a member of the Force; or

(b) Where the offence is committed in relation to property belonging to the Government or the Force, or a person subject to the Act; or

(c) Where the offence is committed against a person subject to the Act, direct that any person subject to the Act who is alleged to have committed such an offence, be tried by a Force Court; and

(ii) in any other case, decide whether or not it would be necessary in the interest of discipline to claim for trial by a Force Court any person subject to the Act who is alleged to have committed such an offence.

(2) In taking a decision to claim an offender for trial by a force Court an officer referred to in Section 102 may take into account all or any of the following factors, namely,-

(a) the offender is on active duty or has been warned for active duty and it is felt that he is trying to avoid such duty;

(b) the offender is a young person undergoing training and the offence is not a serious one and the trial of the offender by a criminal court would materially affect his training;

(c) the offender can, in view of the nature of the case, be dealt with summarily under the Act.

45. Cases which may not be tried by Force Court-

Without prejudice to the provisions of sub-rule (1) of rule 44, an offender may not ordinarily be claimed for trial by a Force Court –

- (i) *Where the offence is committed by him along any other person not subject to the Act whose identity is known; or*
- (ii) *Where the Offence is committed by him while on leave or during absence without leave."*

Section 397 of Cr.P.C.- Calling for records to exercise powers of revision. –

- (1) *The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such execution of any sentence, or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*

Explanation - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

- (2) *The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.*
- (3) *If an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by any of them.*

399. Sessions Judge's power of revision. –

- (1) *In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any other powers which may be exercised by the High Court under sub-section (1) of Section 401.*
- (2) *Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-section (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceedings and references in the said sub-section to the High Court shall be construed as reference to the Sessions Judge.*

- (3) *Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.*

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 person 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 offences of which he is accused, 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 endeavor to apprehend and secure any person accused of such offence.*
- 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.*

[9] Learned counsel for the petitioner further submits that the Courts below completely misconstrued the provision of law while passing the order transferring the case in hand to the Assam Rifles Court. Further submits that **the Additional Session Judge (FTC), Manipur West while passing the impugned order erroneously appreciated the provision of Army Act instead of appreciating the Assam Rifles Act and Rules.** He further submitted that the Court below failed to appreciate that the principle of Natural Justice is completely overloaded while passing the impugned order as the allegation of a commission of offence is against Assam Rifles personal, **the Assam Rifles Authority are taking interest in the case as can be evident from the content of FIR No. 22(2) 2020 TPL-PS U/s 212/506/34 IPC. It is well settled that the same person or authority cannot be the prosecutor and the judge simultaneously.**

[10] Learned counsel for the petitioner further submits that the Court below failed to appreciate the facts and circumstances of the case, the nature of allegation made against the respondent No. 2 by the petitioner, who is a lady IPS Officer is a fit case to be tried in the Criminal Court under CrPC. **Further, the Courts below also failed to appreciate that transferring the case to the Assam Rifles Court would subject the petitioner, a lady IPS Officer to continuous proceedings of Court Martial, which is not in the interest of justice, not in consistent with the criminal jurisprudence. He also submits that the Assam Rifles has also made several false accusations against the petitioner on several social media platforms such as**

Instagram, Twitter and other newspaper websites and also in the print media by way of making press release containing false defamatory allegations against the petitioner, in order to save its image before the general public and for which a suit for defamation instituted by the petitioner is also pending.

[11] On 08.04.2022, learned counsel for the respondent No. 1 submits affidavit-in-opposition on behalf of respondent No. 1 by denying all the allegations and averments made in the criminal petition except those which are specifically admitted. The learned counsel submitted that the petitioner has lodged a written report to the Officer-in-Charge, Tengnoupal Police Station and registered FIR No. 12(1)2020 TPL-PS u/s 341/353/354/354-A/355/506 IPC and the same was transferred to Moreh Police Station as the place of occurrence (PO) falls under the jurisdiction of Moreh Police Station and the FIR case was investigated and Charge sheeted by the Moreh Police Station. **He further submits that on 22.02.2020, the petitioner lodged another written complaint to the OC/TPL-PS against Colonel Rajesh Chaudhary, CO, 12 Assam Rifles and Major Akhil of 12 Assam Rifles stating that the said CO and Major criminally intimidated the petitioner and threatened and obstructed from lodging FIR against Rifleman PK. Pandey, 12 Assam Rifles while she was writing an FIR against the said rifleman for molesting, harassing, humiliating her etc. on her way back from Moreh with her Escort Party.** Another case under FIR No. 22(02)2020 TPL-PS U/S 212/506/34 IPC was registered for investigation.

[12] Learned counsel for the respondent No. 2 filed affidavit-in-opposition on behalf of respondent No. 2 narrating the story/brief facts of the case. The learned counsel submitted that on 19.01.2020, the petitioner has lodged a complaint against the respondent No. 2 i.e. Riflemen/General Duty PK Pandey vide memo No. 14/TPL-PS-2020 at Tengnoupal Police Station alleging physical assault and molestation and the same was converted into FIR No. 12(1)2020 TPL-PS u/s 341/353/354/354-A/355/506 IPC on the same day by Moreh Police Station. It is further submitted that the petitioner had also filed a complaint with Manipur State Commission for Women (MSCW) alleging harassment by the respondent no. 2. In this regard, a Preliminary Investigation was ordered by Headquarter Inspector General Assam Rifles (South), subsequently, on 21.01.2020, on the opinion of the Preliminary Investigation, **a Staff Court of Inquiry was ordered to investigate the veracity of allegations leveled by the petitioner.** Various summons and letters through proper Magistrate were issued by Presiding Officer of the Court of Inquiry to the petitioner and her five escorts and driver did not honour the same. Instead, she has repeatedly alleged that the Court of Inquiry is unfair, biased and has no trust and she did not participate in the investigation at all. Further, it is also submitted that the copy of the FIR filed by the petitioner was received only on 08.02.2020 after repeated request to Moreh Police Station and Ld. Judicial Magistrate First Class, Chandel on 21.01.2020, 22.01.2020 and 03.02.2020.

[13] Learned counsel for the respondent No. 2 further submitted that as per the provisions laid down in Assam Rifles Act, 2006 (Sections 102 and 103), Assam Rifles Regulation, 2016 (paragraph 227) and Code of Criminal Procedure, 1973 (Section 475), Assam Rifles authorities approached the Ld. Judicial Magistrate First Class, Moreh to hand over the case to Assam Rifles authority as per concurrent Jurisdiction. **However, on 05.06.2020, the Ld. Judicial Magistrate First Class, Moreh rejected the representation/prayer on the ground that no charge sheet has been submitted to the Court and therefore the case cannot be handed over to Assam Rifles authorities as yet.** Later, the Ld. JMFC, Moreh vide order dated 26.10.2020 deliberated upon the charge sheet submitted by the Police and after taking into consideration all relevant provisions, the case was handed over to Assam Rifles authorities on 02.12.2020. Being aggrieved by the Judgment and Order dated 02.12.2020 passed in Cril. (P) Case No. 10 of 2020, the petitioner filed Criminal Revision No. 2 of 2021 [ref: Cril. Revision Case No. 16 of 2020] against State of Manipur and Rifleman/General Duty PK Pandey before the Court of Additional Sessions Judge (FTC), Manipur West however, the same was dismissed vide order 31.01.2022 as no merit was found by the Ld. Additional Sessions Judge (FTC), Manipur West. Again being aggrieved by the order dated 31.01.2022, the petitioner filed the present Cril. Petition No. 4 of 2022 before the Hon'ble High Court of Manipur for quashing

and setting aside of order dated 31.01.2022 passed in Criminal Revision No. 2 of 2021 ref: Cril. Revn. No. 16 of 2022.

[14] Learned counsel for the respondent No. 2 further submits that the order dated 02.12.2020 passed by the Ld. Judicial Magistrate First Class, Moreh in Cril. (P) Case No. 10 of 2020 and the Court order dated 31.01.2022 passed by the Court of Ld. Additional Sessions Judge (FTC), Manipur West in Criminal Revision No. 2 of 2021 (ref: Cril. Revn. No. 16 of 2020) are by virtue of Concurrent Jurisdiction and provisions laid down in Assam Rifles Act, 2006 (Sections 102 and 103), Assam Rifles Regulation, 2016 (paragraph 227) and Code of Criminal Procedure, 1973 (Section 475). It is further submitted that during the investigation stage, the Assam Rifles authorities may intervene with the concurrence of the Police and Magistrate, and claim the accused for trial by Force Court as per Government of India, Ministry of Home Affairs Notification, SRO No. 709 dated 17th April 1952.

[15] Learned counsel for the respondent No. 2 further submits that a conscious decision in writing as to why it is ought to be considered and desirable to try the offender by Assam Rifles Court and not by a Civil (Criminal) Court was made and the same was submitted to Ld. JMFC, Moreh on 05.06.2020. It is further mentioned that Assam Rifles Act and Rules have been enacted on the lines of Army Act and Rules and **Section 102 and 103 of the Assam Rifles Act is pari materia to Section 125 and 126 of the Army Act.**

Section 102 and 103 of Assam Rifles Act read as follows:

"102. Choice between criminal court and Assam Rifles Court. - When a criminal court and an Assam Rifles Court each have jurisdiction in respect of an offence, each shall be in the discretion of the Director-General, or the Inspector-General or the Deputy Inspector-General within whose command the accused person is serving or such other officer as may be prescribed, to decide which court proceedings shall be instituted, and if that officer, decides that they shall be instituted before the Assam Rifles Court, to direct that accused person shall be detained in Force custody.

103. Power of Criminal Court to require delivery of offender –

- (1) When a Criminal Court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 102 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings, pending a reference to the Central Government.
- (2) In every such case, the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted, for the determination of the Central Government whose order upon such reference shall be final."

Section 125 and 126 of Army Act reads as follows:

"Section 125. Choice between criminal court and court martial. - When a criminal court and a court martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and if that officer decides that they should be instituted before a Court martial, to direct that the accused person shall be detained in military custody."

"Section 126. Power of Criminal Court to require delivery of offender –

- (i) When a Criminal Court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or

to postpone proceedings pending a reference to the Central Government.

(ii) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted, for the determination of the Central Government whose order upon such reference shall be final."

Further, submitted that on conjoint reading of the Provisions contained in Sections 125 and 126 of the Army Act, 1950, Section 475 of the Code of Criminal Procedure, 1973 and the Criminal Courts and Court martial (Adjustment of Jurisdiction) Rules, 1978, clearly shows that when a criminal court and court-martial both have jurisdiction in respect of an offence it shall be in the discretion of the officer specified in section 125, to decide, in the first instance, as to the court in which the proceedings shall be instituted before a court-martial, he shall direct that the accused be detained in military custody. But, when such an accused is brought before the Magistrate, he shall not proceed to try such an accused or commit him to the Court of Sessions without having been moved thereto by the competent authority under the Army Act. Further, submitted that law with respect to power of the Court to transfer the case to the competent authority to proceed against the individual in accordance with the provisions of Army Act and Rules/Assam Rifles Act and Rules has been well settled by the Hon'ble Apex Court and various High Courts viz; AIR 1972 SC 2546 - (Delhi Special Police Establishment, New Delhi Vs Lt. Col S K Loraiya), AIR 1987 SC 1878 - (Union of India through Major General H C Pathak Vs Major S K Sharma), (1995) 1 SCC 90 - (Balbir Singh Vs State of Punjab), AIR

1986 SC 1965 - (Superintendent and Remembrancer of Legal Affairs, West Bengal Vs Usha Ranjan Roy Choudhury), AIR 1971 SC 1120 - (Lt. Col SK Kashyap Vs State of Rajasthan), AIR 1961 SC 1762 - (Major E G Barsay Vs State of Bombay), and (1982) Cr. LJ 2082 (Raj.) - (Murairilal Vs Kaneja).

In support of his case, learned counsel for the respondent No. 2 relied upon the following judgments:

1. ***AIR 1965 SC 247 (Ram Sarup v. Union of India and another)*** - Hon'ble Supreme Court of India upheld the validity of Section 125 of Army Act.
2. ***1983 CRI.L.J. 1899 – (Ex Havildar Gh. Mohd. Dar v. Union of India)*** - the Jammu and Kashmir High Court held that GOC/Army Officer is competent to decide whether the accused can be tried by Court Martial or by Criminal Court, meaning thereby, there is not even an iota of doubt that a case can be transferred from civil authorities to army authorities under the provisions of Army Act, 1950 read with Army Rules, 1954.
3. ***2003 CRI.L.J. 4028 (G.M. Rao v. Union of India)*** - it has been held that it is the discretion of Army Authorities under Sections 125 and 126 to decide whether particular accused should be tried by Court Martial or by Criminal Court.
4. ***2016 SCC Online MP 6855 (Major General R S Shekhawat v. State of Madhya Pradesh and others)*** - Madhya Pradesh High Court directed the respondents to transfer the case i.e., Crime No. 974/2015 registered at Police Station Vijay Nagar,

Indore to the Competent Military under the relevant provisions of the Army Act, 1950 read with the Army Rules, 1954. It was also held that the case can be transferred to the Military authorities even if charge-sheet has not been filed by the police authorities.

5. **2007 CriLJ 4516 (Chandra Mohan Shukla v. State of Assam)**, the petitioner, who was an officer subject to the Army Act, 1950, by making application under section 482 of the Code of Criminal Procedure, 1973, prayed for setting aside the judgment and order dated 02 April 2007 passed in Criminal Revision No. 18/2007, by the learned Sessions Judge, Cachar, Silchar whereby the revision was dismissed and the order date 05 April 2007, passed, in G.R. Case NO. 889/2005 (corresponding to Lakhipur Police Station Case No. 73/2005), transferring the said case to the Army authorities for the purpose of trial of the accused-petitioner under the Army Act was upheld. The High Court of Guwahati held that Chief Judicial Magistrate committed no illegality in directing that the relevant records be handed over to the Army authority concerned and the learned Sessions Judge has rightly refused to interfere with the directions so given by the learned Chief Judicial Magistrate.

[16] **Learned counsel for the respondent No. 2 further submits that the Assam Rifles had not made any false accusation against the petitioner on any social media platform, however, only an official press release was made on behalf of Assam Rifles based on the Preliminary Investigation report. The petitioner herself has approached both local and national newspapers, Manipur State**

Commission for Women (MSCW), National Commission for Women etc., social and print media and issued defamatory and malicious content against the entire Assam Rifles.

[17] Mr. BR Sharma, learned CGSC appearing for the respondent No. 3 submits that the petitioner has concealed the very fact that the Deputy Inspector General, 26 Sector Assam Rifles, in exercise of his discretion under Section 102 of the Assam Rifles Act, 2006, has filed a petition before the Ld. JMFC under Section 475 CrPC r/w Section 102 of Assam Rifles Act, 2006, requesting for handing over the trial of the said F.I.R. case to the Assam Rifles Court and the same is found recorded in the order dated 26.10.2020 passed by the JMFC, Moreh (Annexure – P/5).

[18] The learned counsel for the respondent No. 3 further submits that the petitioner in challenging the order dated 02.12.2020 (Annexure-P/7) has alleged that the Ld. JMFC, Moreh, failed to apply his mind and passed the impugned order without judiciously considering the facts and provisions of applicable laws. On the contrary, the Ld. JMFC in its order dated 26.10.2020, has discussed and considered all the aspects on facts and laws and decided that the case can only be transferred by virtue of Section 102 of the Assam Rifles Act, 2006, after the charge sheet in the case is filed by the prosecution, in the light of the Hon'ble Supreme Court's judgments. Hence, the Ld. JMFC, Moreh has observed that when the charge sheet is filed, the

Assam Rifles authorities will be given notice and an opportunity of being heard.

The Assam Rifles authority was given notice of filing of the charge sheet by the prosecution and subsequently, the application dated 26.11.2020, for handing over the case for trial by the Assam Rifles Court, was submitted to the concerned JMFC by the competent authority, authorizing Major Rajiv Kumar of 43 Assam Rifles to receive the case documents when handed over by the JMFC, Moreh.

On 02.12.2020, as per the order dated 26.10.2020 passed by the JMFC, Moreh, the Ld. Court after giving opportunity of being heard to the said authorized officer of Assam Rifles and the Ld. APP for the State, the Ld. JMFC, Moreh, considering the submissions of the parties and observations and findings made in the order dated 26.10.2020, decided to hand over the case in exercise of power under Section 475 CrPC, 1973, to the Assam Rifles Court as per Section 102 of the Assam Rifles Act, 2006 for trial.

Further, with regard to Rule 44 and 45 of the Assam Rifles Rules, 2010, which provides the rules for trial of cases either by Assam Rifles Court or Criminal Court are reproduced for easy reference:

(I) Rule 44 -

"44. Trial of cases either by Assam Rifles Court or criminal court-

(1) Where an offence is triable both by a criminal court and a Assam Rifles Court, an officer referred to in section 102 may

—

- (i) (a) where the offence is committed by the accused in the course of performance of his duty as a member of the Force; or

(II) Rule 45 –

"45. Case which may not be tried by Assam Rifles Court- Without prejudice to the provisions of sub-rule (1) of rule 44, an offender may not ordinarily be claimed for trial by a Assam Rifles Court –

- (i) *where the offence is committed by him along with any other person not subject to the Act whose identity is known; or*

- (ii) *where the offence is committed by him while on leave or during absence without leave."*

[19] After reading the above rules, it is crystal clear that the JMFC, Moreh, has passed the order dated 26.10.2020 strictly in the light of the provisions of the Assam Rifles Act and Rules and subsequently, when the charge sheet was filed in the case, the case was handed over to the Assam Rifles Court for trial by passing the impugned order dated 02.12.2020, after giving opportunity of being heard to the parties.

[20] The ground that the impugned orders dated 02.12.2020 and 31.01.2022 are bad in the eye of law as the authority has failed to fulfill the mandate of moving a formal application under Section 475 CrPC before the JMFC, Moreh, is untenable. In fact, a petition under Section 475 CrPC was filed by the competent authority of the Assam Rifles and the same is found recorded in the order dated 26.10.2020 passed by the JMFC, Moreh. Further, the order dated 26.10.2020, which has in detail discussed and considered all the aspects on facts and laws while considering the petition under Section 475 CrPC filed by

the competent authority, Assam Rifles, has not been challenged in the present petition.

[21] The learned counsel for the respondent No. 3 states that the Learned JMFC, Moreh and the Additional Sessions Judge (FTC), Manipur West, have passed the impugned orders dated 02.12.2020 and 31.02.2022, respectively, strictly as per law and there exists no illegality or irregularity in the impugned orders, as claimed by the petitioner. As such, the ground for preferring the above referred Cril. Petition No. 4 of 2022, is untenable and hence the present petition is not maintainable.

[22] So far as regard to the period of limitation, it is to state that the prescribed period of three years as provided in Section 89 of the Assam Rifles Act is with regard to commencement of the trial and not for conclusion of the trial. Mention may be made that the case was handed over by the JMFC, Moreh to the Assam Rifles Court for trial as early as on 02.12.2020 and the Assam Rifles Court has been making endeavor to conclude the trial but for the petitioner, could not be concluded till date. Assuming but not admitting that the trial has to be completed within three years as submitted by the petitioner, it is to state that the prescribed period of limitation is yet to expire by an excess of 60 days, as the proceedings of the Assam Rifles Court is stayed by the order dated 16.10.2023 passed by this Hon'ble Court, however, this Hon'ble Court took an undertaking on 07.10.2023, from the respondent Assam Rifles that the proceedings before the Assam Rifles Court shall not be proceeded till 16.10.2023 and the same

is reflected in its order dated 07.10.2023. Hence, the proceeding of the case before the Assam Rifles Court has not proceeded with the intervention of this Hon'ble Court since 07.10.2023. Therefore, the assumption of the petitioner that during the short span of about two months, the proceedings before the Assam Rifles Court will never be completed is untenable in as much as Assam Rifles Court or Court Martial proceedings are held on day to day basis, whenever so required.

[23] The learned counsel for the respondent No. 3 submits that the Hon'ble Court may be pleased to direct the petitioner to cooperate with the Assam Rifles Court as the delay so caused in continuing the trial before the Assam Rifles Court is due to her avoidance and non-cooperation. Further, it may be worth mentioning that in-spite of multiple summons being served upon the petitioner through possible means including through Magistrate of competent jurisdiction, she is evading the trial proceedings.

[24] Again on 11.11.2022, the petitioner filed rejoinder affidavit by denying all the allegations, averments and contentions made by the Respondent no. 2 in his affidavit-in-opposition.

[25] Learned counsel for the petitioner vehemently denies each and every allegations, averments and contentions made therein which are inconsistent to the averment and contention made by the Deponent in the petition. It is submitted that the facts of the case narrated by the Respondent No. 2 re-manifest the collusion of the Assam Rifles

authorities and its personnel's in attempting to malign the Deponent. It is also submitted that the reputation of the deponent was defamed and there were several personal allegations against the deponent which are unbecoming the discipline like of the Assam Rifles. **The contents of personal allegations, slender and malice were even uploaded in social media and the Deponent was subjected to "trolling" in the social media. The Deponent was therefore constraint to file a suit for defamation against two officers then serving in the Assam Rifles in Original Suit No. 32 of 2021 in the court of Senior division, Imphal East, Manipur. In the said Original Suit, that is defamation suit, the Assam rifles authorities files Judicial Misc. case No. 161 of 2021 seeking to implead itself as defendant therein and sought to delete two officers name who are defendant therein.** The Court of the Ld. Senior Judge dismissed the Judicial Misc. Case No. 161 of 2021 by its order dated 29.10.2021. The matter came up before the Hon'ble High Court of Manipur at Imphal in CRP (CRP. Art.227) No. 46 of 2021 wherein the Hon'ble High Court of Manipur passed its final order on 06.05.2022 directing that the Assam Rifles authorities i.e. Headquarters, Inspector General (Assam Rifles General) represented by its public General Officer be impleaded as Defendant No. 3 in Original Suit No. 32 of 2021. The unfolding of the entire episode manifests the malifide intention of the officers of the Assam rifles and their attempt to cover up the misdeeds, illegal acts of the officers and personnel's including the Respondent No. 2 herein. It is also submitted that Assam Rifles has made several false accusations against the Deponent on

several social media platforms such as Instagram, Twitter and other newspaper websites and also in the print media by way of making press release containing false defamatory allegations against the Deponent, in order to save its image before the general public and for which a suit for defamation instituted by the Petitioner is also pending.

In support of his case, learned counsel for the petitioner relied upon the following Judgment:

1. (2016) 14 SCC 536 - Extra-Judicial Execution Victims Association.
2. (2022) 7 SCC 287 – State of Sikkim Versus Jasbir Singh.
3. (2011) 8 SCC 38 – P.D. Dhinakaran Versus Judges Enquiry.
4. (2002) 4 SCC 388 – Rupa Ashok Hura Versus Ashok Hura.

[26] Both the learned counsels for the petitioner and respondent No. 3 have submitted their written arguments and the same are perused. Respondent no. 3 relied upon the following judgment in support of his case;

1. ***AIR 1969 SC 414 – (Som Datt Datta Vs. Union of India & Ors).***

"4. The first question to be considered in this case is whether the Court Martial had jurisdiction to try and convict the petitioner of the offences under Sections 304 and 149 of the Indian Penal Code. It was contended by Mr Dutta on behalf of the petitioner that the Court Martial had no jurisdiction having regard to the mandatory provisions contained in Section 125 of the Army Act and having also regard to the fact that Maj. Agarwal had, in

the first instance, decided to hand over the matter for investigations to the civil police. In order to test whether this argument is valid it is necessary to scrutinize the provisions of the Army Act in some detail. Section 2 of the Army Act, 1950 (Act 46 of 1950), hereinafter called the "Army Act", describes the different categories of army personnel who are subject to the Army Act. Section 3(ii) defines a "civil offence" to mean "an offence which is triable by a criminal court"; Section 3(vii) defines a "court martial" to mean "a Court Martial held under this Act"; Section 3(viii) defines "criminal court" to mean "a court of ordinary criminal justice in any part of India other than the state of Jammu and Kashmir"; Section 3(xvii) defines "offence" to mean "any act or omission punishable under this Act and includes a civil offence"; and Section 3(xxv) declares that "all words and expressions used but not defined in this Act and defined in the Indian Penal Code shall be deemed to have the meanings assigned to them in that code". Chapter VI is comprised of Sections 34 to 70. The heading of the chapter is "Offences". As we have already noticed, the word "offence" is defined to mean not only any act or omission punishable under the Army Act, but also a civil offence. Sections 34 to 68 define the offences against the Act triable by Court Martial and also indicate the punishments for the said offences. Section 69 states as follows:

.....
.....
Section 125 presupposes that in respect of an offence both a Criminal Court as well as a Court Martial have each concurrent jurisdiction. Such a situation can arise in a case of an act or omission punishable both under the Army Act as well as under any law in force in India. It may also arise in the case of an offence deemed to be an offence under the Army Act. Under the scheme of the two sections, in the first instance, it is left to the discretion of the officer mentioned in Section 125 to decide before which court the proceedings shall be instituted, and, if the officer decides that they should be instituted before a court Martial, the accused person is to be detained in military custody; but if a Criminal Court is of opinion that the said offence shall be tried before itself, it may issue the requisite notice under Section 126 either to deliver over the offender to the nearest Magistrate or to postpone the proceedings pending a reference to the Central Government. On receipt of the said requisition, the officer may either deliver over the offender to the said court or refer the question of proper court for the determination of the Central Government whose order shall be final. These two sections of the Army Act provide

a satisfactory machinery to resolve the conflict of jurisdiction, having regard to the exigencies of the situation in any particular case."

2. (2011) 15 SCC 492 – (S.K. Jha Commodore Vs. State of Kerala and Anr).

"2. It is clear to us that the judgment of the High Court is in conformity with the judgment of the Constitution Bench of this Court in Som Datt Dutta v. Union of India. The Constitution Bench while construing Rule 3 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1952 read with Section 549 CrPC, 1898 (now Section 475 CrPC, 1973) held that the option as to whether the accused be tried before the criminal court or by a Court Martial could be exercised only after the police had completed the investigation and submitted the charge-sheet and that the provisions of the Rule could not be invoked in a case where the police had merely started an investigation against a personnel subject to military, naval or air force law."

Chapter – VII [Choice of jurisdiction between Force Court and Criminal Court]

"44. Trial of cases either by Force Court or Criminal Court –

(1) Where an offence is triable both by a criminal court and a force court, an officer referred to in section 102 may, -

- (i) (a) where the offence is committed by the accused in the course of performance of his duty as a member of the Force; or*
- (b) where the offence is committed in relation to property belonging to the Government or the Force; or a person subject to the Act; or*
- (c) where the offence is committed against a person subject to the Act, direct that any person subject to the Act who is alleged to have committed such an offence, be tried by a Force Court; and*

(ii) in any other case, decide whether or not it would be necessary in the interest of discipline to claim for trial by a Force Court any person subject to the Act who is alleged to have committed such an offence.

(2) In taking a decision to claim an offender for trial by a Force Court an officer referred to in section 102 may take into account all or any of the following factors, namely, -

(a) the offender is on active duty or has been warned for active duty and it is felt that he is trying to avoid such duty;

(b) the offender is a young person undergoing training and the offence is not a serious one and the trial of the offender by a criminal court would materially affect his training;

(c) the offender can, in view of the nature of the case, be dealt with summarily under the Act.

45. Cases which may not be tried by Force Court –

Without prejudice to the provisions of sub-rule(1) of rule 44, an offender may not ordinarily be claimed for trial by a Force Court–

(i) where the offence is committed by him along with any other person not subject to the Act whose identity is known; or.

(ii) where the offence is committed by him while on leave or during absence without leave.

[27] On perusal of Sections 102 & 103 of the Assam Rifles Act, 2006, Rule 44 & 45 of the Assam Rifles Rules, 2010; Sections 397 & 399, 475 of Cr.P.C. & provision of Cr.P.C. and Sections 125 and 126 of Army Act, it has emerged and is evident that the choice between Criminal Court and Assam Rifles Court (Court-martial), the discretion is given to the Director General or Inspector General or the Deputy Inspector General.

Section 102 of Assam Rifles Act speaks about choice between Criminal Court and Assam Rifles Court, the discretion is given to the Director General, Inspector General, Deputy Inspector General to decide.

Section 103 – Even if the Criminal Court having jurisdiction desires to take proceedings before itself, it requires to give notice to the officers referred in Section 102 to have its option, the question as to which Court the proceedings are to be instituted in respect of any alleged offence by making reference to the Central Government or to postpone proceedings, pending a reference to the Central Government.

[28] On perusal of the order dated 26.10.2020 of the Ld. JMFC, Moreh, it is evident and apparent that the Ld. JMFC passed the said order after due consideration of the relevant Sections of the FIR cases; Section 65, 102 of the Assam Rifles Act, 2006; Rule 44 of the Assam Rifles Rules, 2010; Regulation 227 of the Assam Rifles Regulations 2016 and on the basis of a petition dated 05.06.2020 filed by one Sunil Sheoran, Brigadier, Inspector General 26 Assam Rifles under Section 475 of Cr.P.C. read with Section 102 and 103 of Assam Rifles Act, 2006 read with Regulation 303 (a) (v) of the Assam Rifles Regulations, 2016 to hand over the FIR case to the Assam Rifles authorities to obviate parallel inquiries in both Civil Court and Assam Rifles Court, passed the following order:

"Therefore, it would be most appropriate to communicate the submission of this charge-sheet and the information of taking of cognizance of the offences under Sections 354 and 354A of IPC by this Court to the concern Assam Rifles authorities for giving them an opportunity to exercise the provision given under the relevant provisions of the Assam Rifles Act, 2006, Assam Rifles Rules, 2010 and Assam Rifles Regulations, 2016.

Now, since the post of 12th Assam Rifles had shifted from Tengnoupal, this order would be communicated to the Commander, 12 Assam Rifles and to the Inspector General, HQ 26 Sector (Assam Rifles) for doing the needful under 102 of the Assam Rifles Act on or before the next date of hearing."

Meaning thereby, the Ld. JMFC, Moreh does not opt for Section 103 of the Assam Rifles Act, but resorted to Section 102 only.

[29] On further perusal of the Rule 44 & 45 of Assam Rifles Rules as reproduced herein above, it is imperative that the incident occurred while both the petitioner and the respondent No. 2 were on their official duties.

[30] At this stage, it may be mentioned in the above context that concerning the facts and circumstances of the present case, as per the Act and Rules as mentioned above and as the designated officers of the battalion in which, the respondent No. 2 was working, desired to have the trial before the Assam Rifles Court, there is no option for this Court to interfere with handing over the present case for Court-martial, until and unless the Ld. JMFC, Moreh commits irregularities or malafide in the process.

[31] For this matter, I have gone through the relevant Acts, Rules, provision of Cr.P.C. along with the orders passed by the Ld. JMFC, Moreh and the order dated 31.01.2022 passed by the Ld. Additional Sessions Judge (FTC), Manipur West in Criminal Revision No. 2 of 2021.

[32] On perusal of the order dated 26.10.2020 of the Ld. JMFC, Moreh, the Ld. JMFC, Moreh passed the said order comprehensively in detail narrating all the facts and circumstances and come to the conclusion that as per the Assam Rifles Rule and Regulation the offences committed by the person of the Assam Rifles can be triable both by the Criminal Court and Assam Rifles Court and considering the fact that the choice between the two Courts are to be made by the officials given under Section 102 of the Assam Rifles Act, 2006 and as the Brigadier, Deputy Inspector General 26 Sector filed a petition before the Court, the Ld. JMFC, Moreh complying the provisions laid down in the Acts & Rules handed over the case record to the Assam Rifles for Court-Martial.

[33] Thereafter, vide order dated 31.01.2002 of the Ld. Additional Sessions Judge, the Ld. Court considered the rival contentions of the parties and elaborately discussed the Sections, Rules of the Assam Rifles and provision of Cr.P.C. and rightly passed the following –

"45. In the matter G.M. Rao v. Union of India 2003 CRI. L.J 4028, it has been held that it is the discretion of Army Authorities under Section 125 and 126 to decide whether particular accused should be tried by Court Marital or by Criminal Court.

46. There is therefore no legal impediment, on the part of the military authority, to obtain from the Judicial Magistrate First Class, Moreh, the records of the case from the Criminal Court to enable them to try the accused by a Court Martial.

47. *The Ld. Judicial Magistrate First Class, Moreh committed no illegality in directing that the relevant records be handed over to the Army authority concerned.*

48. *Because of what have been discussed and pointed out above, I do not find that the impugned order suffer from any infirmity, factual or legal. The revision is, therefore, wholly without merit and the same shall accordingly stand dismissed."*

[34] **The issue here is whether the Ld. JMFC while passing the orders dated 26.10.2020, 02.12.2020, wherein the case was transferred to the Assam Rifles Court for Court martial commits irregularities and malafide. this Court is of the view that there is no such irregularity as well as malafide was committed by the Ld. JMFC and there is no question of violation of natural justice.**

For deciding this issue, I have gone through the petition of the petitioner, counter affidavit, written arguments filed by both parties, documents filed therewith the citations submitted by both parties in support of their cases.

[35] The contentions of the petitioner are that while passing the order dated 02.12.2020 of the Ld. JMFC, Moreh and the order dated 31.01.2022 of the Ld. Additional Sessions Judge (FTC), Manipur were passed erroneously and by violating natural justice with the above mentioned facts and relying on the relevant Sections:

Section 102, 103 of Assam Rifles Act (supra); Rule 44, 45 of Assam Rifles Rule, 2010; Section 475 Cr.P.C.; the learned counsel for the petitioner submits that as the case at hand was initiated on the police report Section 102 of the Assam Rifles is not applicable; but on

perusal of Section 102, it is evidently clear that the choice whether to conduct trial by the Assam Rifles Court and Criminal Court is given to the Director General, or Inspector General, or Deputy Inspector General. In the case at hand, the Deputy Inspector General rank officer, approached Ld. JMFC, Moreh to hand it over the case to the Assam Rifles Court for trial. As such, the submission made above by the learned counsel appearing for the petitioner is not acceptable. Further, the learned counsel appearing for the petitioner submits that Section 103 of Assam Rifles Act clearly states that the criminal court having jurisdiction can on its own proceed with the case before itself. However, on further perusal of the Section 103, here again, the option for trial is given to the officer referred in Section 102 and again, it is also observed that this Section 103 is not applicable in the instant case, as the Ld. JMFC himself has given option to the officer of the Assam Rifles as evident in its order dated 26.10.2020 and subsequently, confirmed regarding the trial to be conducted by the Assam Rifles Court by order dated 02.12.2020.

Even though the petitioner filed for revision of the Ld. JMFC's order, the Ld. Additional Sessions Judge (FTC) confirmed the order of the Ld. JMFC, Moreh vide its order dated 31.01.2022.

[36] Further, the learned counsel for the petitioner submits that the Ld. JMFC failed to appreciate the contents of Rule 44 and 45 of Assam Rifles Rule, 2010 saying that the facts and circumstances of the

case were tried by the Criminal Court under the Cr.P.C. **But, on careful perusal of both Rule 44 and 45 of Assam Rifles Rule, the contention made herein above by the petitioner goes against the petitioner as nowhere in both Rule 44 and 45 of Assam Rifles Rule mentioned about it.**

[37] The learned counsel for the petitioner further submits that the Courts below failed to appreciate the principle of natural justice by stating that the allegation of a commission of offence is against the Assam Rifles personnel, the Assam Rifles authorities are taking interest in the case as can be evident from the contents of FIR. This contention of the learned counsel for the petitioner cannot be taken as true as this contention is a kind of apprehension only when the trial is ensued in the Court of Assam Rifles and only when the petitioner came across the violation of natural justice by the Assam Rifles Court only then the petitioner can approach the Court again citing the violation.

[38] The learned counsel for the petitioner further submits that the letter dated 26.11.2020 addressed to the Chief Judicial Magistrate First Class, Moreh which was submitted before the same Court in pursuance of the order dated 26.10.2020 is not an application envisaged under Section 475 Cr.P.C. For convenient sake, the contention of the letter is reproduced herein below:

"Headquarter
26 Section Assam Rifles
P/S 932500
..... 26 Nov 2020

..... 1012 OS(Op) 2020/2209
Chief Judicial Magistrate First Class
Moreh (Manipur)
PIN -7951....1

CONCURRENT JURISDICTION ASSAM RIFLES

1. Please refer Court Order dt. 26 October 2020 in the Court of Judicial Magistrate First Class, Moreh on the Cril (P) Case No. 10 of 2020.
2. You are requested to hand over to the Assam Rifles as per provision of Section 102 and 103 of Assam Rifles Act 2006 read with Paragraph 227 of Assam Rifles Regulations, 2016 and Section 475 of the Criminal Procedure, 1973.
3. No. IC75891P Rank Maj Name Rajiv Kumar of 43 AR whose specimen signature is appended below has been authorized by the concerned authority to take over the case documents.
4. For information and necessary action please.

(SPS Rautel)
Colonel
Officiating Deputy Inspector General
26 Sector Assam Rifles"

[39] On going through the above mentioned letter, it clearly referred to about the order dated 26.10.2020 of the Ld. JMFC, Moreh, and on further perusal of the order of the Ld. JMFC referred to above, it clearly mentioned about the facts and circumstances of the case leading to resorting to Section 475. As such, the allegation of an application is not acceptable.

[40] Further, the learned counsel for the petitioner submits that the order dated 02.12.2020 of Ld. JMFC, Moreh was passed without assigning any reasons and cannot be said to be a speaking order. But, on careful perusal of the order of Ld. JMFC, Moreh, the

order was passed in continuation of the order dated 26.10.2020 and in which order the Ld. JMFC passed the said order with due consideration of the facts and circumstances of the case and relying upon the relevant Acts and Rules of the Assam Rifles and provision of Cr.P.C. and relying on the observations made by the Hon'ble Apex Court. In this circumstance, the Ld. JMFC's order dated 02.12.2020 cannot be said to without assigning any reason and cannot be that of a speaking order.

[41] On perusal of orders of Ld. JMFC, Moreh and Ld. Additional Sessions Judge (FTC), this Court is of the view that both the orders were passed after considering the facts and circumstances and the relevant Rules and Acts of Assam Rifles and Cr.P.C. and also after due consideration the Hon'ble Supreme Court's orders.

[42] Apart from the narration and observation made above, after considering the facts and circumstances of the parties, this Court relied upon the observations of the Hon'ble Supreme Court which are reproduced hereunder:

S.K. Jha Commodore v. State of Kerala & Anr. [(2011) 15 SCC 492 : (2012) 4 SCC (Cri) 630 : 2011 SCC OnLine 151] –

"2. *It is clear to us that the judgment of the High Court is in conformity with the judgment of the Constitution Bench of this Court in Som Dutta v. Union of India. The Constitution Bench while construing Rule 3 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1952 read with Section 549 CrPC, 1898 (now Section 475 CrPC, 1973) held that the option as to whether the accused be tried before the criminal court or by a Court Martial could be exercised only after the police had completed the investigation and submitted the charge-sheet and that the provisions of the Rule could not be invoked in a*

case where the police had merely started an investigation against a personnel subject to military, naval or air force law.

4. *We see from the facts that the observations of the Constitution Bench in Som Datt Dutta case apply fully to the facts herein. The stage at which the option can be exercised by the Commanding Officer (as to whether the accused should be tried before a Court Martial or a criminal court) cannot be examined at this stage as the investigation has not been completed and a charge sheet has yet to be submitted."*

In the case, the Ld. JMFC after application of mind of the facts and circumstances of the case and after consideration of the relevant Acts, Rules handed over the case after receiving the charge sheet.

Som Datt Dutta v. Union of India & Ors. [1968 SCC OnLine SC 73 : (1969) 2 SCR 177 : AIR 1969 SC 414 : 1969 Cri LJ 663 : (1969) 1 SCJ 835] -

"4. *The first question to be considered in this case is whether the Court Martial had jurisdiction to try and convict the petitioner of the offences under Sections 304 and 149 of the Indian Penal Code. It was contended by Mr. Dutta on behalf of the petitioner that the Court Martial had not jurisdiction having regard to the mandatory provisions contained in Section 125 of the Army Act and having also regard to the fact that Maj. Agarwal had, in the first instance, decided to hand over the matter for investigations to the civil police. In order to test whether this argument is valid it is necessary to scrutinize the provisions of the Army Act in some detail. Section 2 of the Army Act, 1950 (Act 46 of 1950), hereinafter called the "Army Act", describes the different categories of army personnel who are subject to the Army Act. Section 3(ii) defines a "civil offence" to mean "an offence which is triable by a criminal court"; Section 3(vii) defines a "court martial" to mean "a Court Martial held under this Act"; Section 3(viii) defines "criminal court" to mean "a court of ordinary criminal justice in any part of India other than the state of Jammu and Kashmir"; Section 3(xvii) defines "offence" to mean "any act or omission punishable under this Act and includes a civil offence"; and Section 3(xxv) declares that "all words and expressions used but not defined in this Act and defined in the Indian Penal Code shall be deemed to have the meanings assigned to them in that code". Chapter VI is comprised of Sections 34 to 70. The heading of the chapter is "Offences". As we have already noticed, the word "offence" is defined to mean not only any act or omission punishable under the Army Act, but also a civil offence. Sections 34 to 68 define*

the offences against the Act triable by Court Martial and also indicate the punishments for the said offences. Section 69 states as follows:

"69. Subject to the provisions of Section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a Court Martial and, on conviction, be punishable as follows:

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned."

Section 70 provides:

"A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicidal not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a Court Martial, unless he commits any of the said offences –

- (a) while on active service, or*
- (b) at any place outside India, or*
- (c) at a frontier post specified by the Central Government by notification in this behalf.*

Explanation- In this section and in Section 69, "India" does not include the State of Jammu and Kashmir."

Shortly stated, under this Chapter there are three categories of offences, namely, (1) offences committed by a person subject to the Act triable by a Court Martial in respect whereof specific punishments have been assigned; (2) civil offences committed by the said person at any place in or beyond India, but deemed to be offences committed under the Act and, if charged under Section 69 of the Act, triable by a Court Martial; and (3) offences of murder and culpable homicide not amounting to

murder or rape committed by a person subject to the Act against a person not subject to the military law. Subject to a few exceptions, they are not triable by Court Martial, but are triable only by ordinary criminal courts. The legal position therefore is that when an offence is for the first time created by the Army Act, such as those created by Sections 34, 35, 36, 37 etc. it would be exclusively triable by a Court Martial; but where a civil offence is also an offence under the Act or deemed to be an offence under the Act, both an ordinary Criminal Court as well as a Court Martial would have jurisdiction to try the person committing the offence. Such a situation is visualized and provision is made for resolving the conflict under Sections 125 and 126 of the Army Act which state:

125. When a Criminal Court and a Court Martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if officer decides that they should be instituted before a Court Martial, to direct that the accused person shall be detained in military custody.

126. (1) When a Criminal Court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in Section 125 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final."

Section 125 presupposes that in respect of an offence both a Criminal Court as well as a Court Martial have each concurrent jurisdiction. Such a situation can arise in a case of an act or omission punishable both under the Army Act as well as under any law in force in India. It may also arise in the case of an offence deemed to be an offence under the Army Act. Under the scheme of the two sections, in the first instance, it is left to the discretion of the officer mentioned in Section 125 to decide before which court the proceedings shall be instituted, and, if the officer decides that they should be instituted before a Court

Martial, the accused person is to be detained in military custody; but if a Criminal Court is of opinion that the said offence shall be tried before itself, it may issue the requisite notice under Section 126 either to deliver over the offender to the nearest Magistrate or to postpone the proceedings pending a reference to the Central Government. On receipt of the said court or refer the question of proper court for the examination of the Central Government whose order shall be final. These two sections of jurisdiction, having regard to the exigencies of the situation in any particular case."

[43] In this regard, the learned counsel appearing for the petitioner relied on the decision of the Hon'ble Supreme Court in ***Extra Judicial Execution Victims Association [(2016) 14 SCC 536]***. In paragraph 246, the Hon'ble Supreme Court held that –

"246. The result of the interplay between Section 4 and Section 5 Cr.P.C. and Sections 125 and 126 of the Army Act makes it quite clear that the decision to try a person who has committed an offence punishable under the Army Act and who is subject to the prosecution of the Army Act does not always or necessarily lie only with the Army – the criminal court under CrPC could also try the alleged offence in certain circumstances in accordance with the procedure laid down by CrPC."

[44] Mention is made here that the Section 102 and 103 of the Assam Rifles Act and Section 125 and 126 of Army Act, are integra to each other. In the instant case, the Ld. JMFC, Moreh does opt for Section 103 i.e. Section 126 of Army Act, hence handed over the case for the Assam Rifles Court for Court martial by resorting to Section 102 of the Assam Rifles Act i.e. Section 125 of Army Act as such, the above mentioned paragraph of the Hon'ble Supreme Court does not have the petitioner's case at all.

[45] However, the same Court at paragraph No. 237 and 238 speaks against the petitioner herself and observation made therein is extracted hereunder:

"237. The Constitution Bench in Som Datt Datta, AIR 1969 SC 414 then considered the provisions of Section 125 and Section 126 of the Army Act in this context. It was held that Section 125 presupposes that in respect of an offence both a criminal court and a court martial have concurrent jurisdiction. Section 125 of the Army Act read with Section 126 thereof gives discretion to the officer mentioned in Section 125 to decide before which forum the proceedings shall be instituted. If it is decided that the proceedings should be instituted before a court martial then the accused is taken into military custody. However, if the criminal court is of opinion that the offence should be tried before itself then it must follow the procedure laid down in Section 126 of the Army Act pending a reference to the Central Government. It was held that these two sections of the Army Act provide a satisfactory machinery to resolve a conflict of jurisdiction, having regard to the exigencies of the situation, in any particular case.

238. At this stage, it may be mentioned in the above context that in Ram Sarup v. Union of India, AIR 1965 SC 247, a Constitution Bench of this Court held that the exercise of discretion by the competent authority under Sections 125 and 126 of the Army Act is not unguided and does not violate Article 14 of the Constitution."

The observation of the Hon'ble Supreme Court goes against the petitioner.

[46] The learned counsel further relied on ***State of Sikkim V. Jasbir Singh [(2022) 7 SCC 287]*** at paragraph 48 wherein the Hon'ble Supreme Court on the interplay of the provisions under the Army Act and CrPC at para 48 inter alia held that the language of Section 69 is a clear indicator that it does not ipso jure oust the jurisdiction of ordinary criminal court. Per contra, the Hon'ble Supreme Court in the same judgment at para No. 16, 19, 20, 27, 33, 49 observed that –

"16. Section 125 deals with a situation where both a criminal court and a court martial have jurisdiction in respect of an offence. In such a case, it is the discretion of the Commanding Officer, of the unit where the accused person is serving to decide before which court the proceeding shall be instituted, and if that officer decides that the proceedings should be instituted before a court martial, he may direct that the accused be retained in military custody. Section Officer to decide whether the accused should be tried by a court martial or by the regular criminal court.

19. Section 475 CrPC has empowered the Central Government to make rules consistent with CrPC and the Army Act, the Navy Act, Armed Force Act, 1950 and any other law relating to the Armed Forces of the Union, as regards the cases in which persons subject to military, naval or air force law or such other law, shall be tried by a court to which CrPC applies or by a court martial. The first part of Section 475(1) recognizes the rule making power of the Central Government. The latter part of Section 475(1) contemplates an eventuality in which a person is brought before a Magistrate and is charged with offences for which that person is liable to be tried either by a court to which CrPC applies or by a court martial. In such a situation, the Magistrate is to have regard to the rules and shall in proper cases deliver the person together with a statement of the offences of which he is accused to the Commanding Officer of the unit of the nearest military, naval or air force station, for the purpose of being tried by a court martial.

20. In exercise of the powers which have been conferred by Section 475 CrPC, the Central Government framed the Criminal Courts and Court Martial (Adjustment of jurisdiction) Rules, 1952 which were superseded by the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 and explained under Rules 3, 4 and 5 of the same.

27. Hence in view of the Constitution Bench in *Ram Sarup v. Union of India*, AR 1965 SC 247, there are a wide variety of circumstances which may be relevant in deciding whether an accused should be tried by a court martial or by an ordinary criminal court. Due to this, the choice of making this decision is entrusted to the military officer under whom the accused was serving. The Court also noted that under Section 549 of the Code of Criminal Procedure, 1898 (equivalent to Section 475 CrPC), the final choice about the forum of the trial of a person accused of a "civil offence" rests with the Central Government, whenever there is a difference of opinion between a criminal court and the military authority.

33. In the above observation, the Court clarified that Sections 125 and 126 have made provisions to avoid a conflict of jurisdiction between ordinary criminal courts and a court

martial in respect of an offence which could be tried by both the criminal court and by a court martial. The court observed that section 125 leaves the discretion, in the first instance, with the competent officer and its only when he so exercises the discretion and decides that the proceedings should be instituted before a court martial that section 126 would come into operation. If the Designated Officer does not exercise this discretion to institute proceedings before a court martial, the Army Act would not interdict the exercise of jurisdiction by the ordinary criminal court.....

49. Moreover, Section 125 has a conjunctive requirement which is amplified by the expression "and, if that officer decides that they should be instituted before a court martial". Thus, the conjunctive requirement under Section 125 is that the competent officer has the discretion to decide before which court the proceedings shall be instituted and if the officer exercises that discretion to institute proceedings before a court martial, then the officer will direct that the accused be detained in military custody. Section 125, in other words, not only recognizes that an element of discretion has been vested in the Designated Officer, but is also postulates that the Designated Officer should have decided that the proceedings be instituted by the court martial in which event the court martial would take place."

This observation of the Hon'ble Supreme Court goes against the petitioner.

[47] Regarding the 3rd and 4th citations i.e. **(2011) 8 SCC 38 [P.D. Dhinkaran v. Judges Enquiry] and (2002) 4 SCC 388 [Rupa Ashok Hura v. Ashok Hura]**, the discussions made therein and observation made by the Hon'ble Supreme Court are not at all applicable in the present facts and circumstances of the case.

In this regard, reference is made to the discussion and observation made at para No. 33.

[48] Over and above, the Hon'ble Supreme Court in Criminal Appeal No. 1456 and 1457 of 2015 dated 31.08.2023, 2023 **LiveLaw (SC) 731 : 2023 INC 779 [Abhishek v. State of Madhya Pradesh]** regarding the exercise of the extraordinary power under Article 226 of the inherent powers under Section 482 of the Code by the High Court observed at para No. 17 and the same is extracted herein below:

"17. In Bhajan Lal (supra), this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

'102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

[49] After going through the facts and circumstances of the case in hand after due consideration to the discussion and observation made above and in the line of the Hon'ble Supreme Court's observation as extracted and discussed above, this Court is of the view that the present case of the petitioner does not make out the case for which this Court to exercise the inherent power under Section 482 of the Cr.P.C.

[50] The learned counsel for the petitioner further submits that as per Section 98 of the Assam Rifles Act, 2006, the period of limitation for commencement and completion of trial by an Assam Rifles Court or a Force Court is 3 years from the date of offence. As per the submission made by the counsel for the Assam Rifles Authority, the date of commencement of the offence that is 19.01.2020. And as such, the period of 3 years had already lapsed by 19.01.2023. However, this Hon'ble Court by its order dated 16.10.2023 has stayed the proceedings of the Force Court and by such time the period of limitation of 3 years had already been lapsed. Therefore, no purpose can be served in transferring the present case to the Force Court for Court martial proceedings, wherein the Force Court cannot exercise jurisdiction for lapsed of time. However, on the contrary justice will be done and seen to be done if the trial in the present case is done by the Court under the Cr.P.C.

For convenient sake, Section 98 of the Assam Rifles Act is reproduced herein below:

"98. Period of limitation for trial. –

(1) Except as provided by sub-section 92), no trial by an Assam Rifles Court of any person subject to this Act for any offence shall be commenced 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 the authority competent to initiate action, from 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, from 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. Provided that in computing any period under this Section, the period during which the proceedings of investigation has been stayed by any court in such offence by injunction or order, the day on which it was issued or made; and the day on which it was withdrawn, shall be excluded.*

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or for any of the offences mentioned in section 24 or an offence under Section 30.

(3) In computation of the period of three years under sub-section (1), any time spent by such person in evading arrest after the commission of the offence, shall be excluded."

Section 89 of the Assam Rifles Act is with regard to commence of the trial and not for the conclusion of the trial. It is to mention that the Ld. JMFC, Moreh handed over the trial of the case to Assam Rifles Court on 02.12.2020. In the instant case, the proviso to Section 1 is applicable. This Court vide order dated 16.10.2023 stayed the proceeding till 30.10.2023 and thereafter, the interim order was extended from time to time as such, the bar on limitation period is not called for.

[51] It is further submitted by the learned counsel appearing for the petitioner that in a defamation suit instituted by the petitioner against the two officers of Assam Rifles arising out of the same incident, the Assam Rifles authority before this Hon'ble Court in CRP (CRP Article 227) No. 46 of 2021 categorically admitted that the acts of

the two Officers Assam Rifles were done in their official capacity. It further states that Assam Rifles Authority would not shy away from owning or taking up responsibility. The same is recorded in the order dated 06.05.2022 in CRP(CRP Article 227) No. 46 of 2021 which is part of the record and Annexure – P9 in the rejoinder affidavit dated 11.11.20-22 filed by the petitioner before this Hon'ble Court.

[52] It is further submitted by the learned counsel appearing for the petitioner that as the Assam Rifles Authority or the entire establishment of the Assam Rifles Authority is litigating/suiting against the petitioner. Thus, any proceedings before the Assam Rifles Authority against the petitioner cannot be said to be free from bias. The principle of fairness is paramount for all courts and judicial forums including the proceedings of the Court Martial under the Assam Rifles Act, 2006. The importance of the principle of natural justice in the adjudication of justice is held in the catena of cases. The Supreme Court of India in ***P.D. Dinakaran v. Judges Enquiry [(2011) 8 SCC 38]*** at para No. 50 held that it is of course, clear that any direct pecuniary or proprietary interest in the subject matter of proceedings, however small, operates as an automatic disqualification. In such a case the law assumes bias. In ***Rupa Ashok Hura v. Ashok Hura [(2002) 4 SCC 388]*** the Hon'ble Supreme Court of India creating a curative jurisdiction in para 49 held that to prevent abuse of process and to cure a gross miscarriage of a justice may consider its judgment in exercise of its power. Grounds for invoking the jurisdiction of a curative petition are laid down as para 51

of the said judgment wherein a violation of the principle of natural justice is the criteria or grounds for invoking the jurisdiction of a curative portion. In the present case, as the Assam Rifle authorities is actively litigating against the petitioner it can be safely assumed that the entire establishment of the Assam Rifles are suiting against the petitioner. A person or authority or the Tribunal established and manned by the Assam Rifles officials cannot be said to be free from bias. The Assam Rifles authorities cannot be a judge in a proceeding against the petitioner when it is a contesting respondent in the above Criminal Case, CRP (CRP Art. 227) No. 46 of 2021 before this Hon'ble Court and in OS No. 32 of 2021 in the Court of Civil Judge, Senior Division, Imphal East.

1. Justice P.D. Dinakaran vs. Hon'ble Judges Inquiry Committee and Ors., (2011) 8 SCC 380

32. *The traditional English Law recognised the following two principles of natural justice:*

- (a) *"Nemo debet esse judex in propria causa: No man shall be a judge in his own cause, or no man can act as both at the one and the same time - a party or a suitor and also as a judge, or the deciding authority must be impartial and without bias; and*
- (b) *Audi alteram partem: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.*

However, over the years, the Courts through out the world have discovered new facets of the rules of natural justice and applied them to judicial, quasijudicial and even administrative actions/decisions. At the same time, the Courts have repeatedly emphasized that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions, if any, applicable, nature of the right which may be

affected and the consequences which may follow due to violation of the rules of natural justice.

33. In Russel v. Duke of Norfolk (1949) 1 All ER 108, Tucker, L.J. observed: (All ER p. 118 D-E)

".....There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

35. In Union of India v. P.K. Roy, AIR 1968 SC 850, Ramaswami, J. observed: (AIR p. 858, para 11)

"11.the extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

36. In Suresh Koshy George v. University of Kerala, AIR 1969 SC 198, K.S. Hegde, J. observed: (AIR p.201, para 7)

"7.The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions."

2. Rupa Ashok Hura vs. Ashok Hura and Ors., (2002) 4 SCC 388

This matter is regarding the issue of whether a writ petition under Article 32 of the Constitution can be maintained to question the validity of a judgment of this Court after the petition for review of the said judgment has been dismissed. It is a matrimonial dispute between the parties. It was held that the Supreme Court after review can reconsider a judgment on the ground that it is vitiated being in violation of principles of natural justice or scope for apprehension of bias due to a judge or on account of abuse of the process of the court.

45. In Antulay's case (supra), (1988) 2 SCC 602, the majority in the seven-Judge Bench of this Court set aside an earlier judgment of the Constitution Bench in a collateral

proceeding on the view that the order was contrary to the provisions of the Act of 1952; in the background of that Act without precedent and in violation of the principles of natural justice, which needed to be corrected ex debito justitiae.

51. Nevertheless, we think that a petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of principles of natural justice in that he was not a party to the lis but the judgment adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.

[53] It is to mention that as discussed and narrated above and observation of this Court, this Court is of the view that the submission made above by the learned counsel for the petitioner does not help the case of the petitioner at all to get the relief sought for and the citations/judgments relied upon hereinabove by the learned counsel appearing for the petitioner instead of supporting her case goes against the case of the petitioner.

[54] In addition to the discussion and observation made above, the submissions made by the learned counsel appearing for the respondents No. 2 & 3 are reasonable and supports the facts and circumstances of the case and citations relied upon by both the learned counsels in support of their cases are applicable in the present case.

[55] Given the totality of the facts and circumstances, this Court is of the view that the Deputy Inspector General, 26 Sector Assam Rifles duly exercised his discretion under Section 102 of the

Assam Rifles Act, 2006 and filed petition before the Ld. JMFC, Moreh under Section 475 Cr.P.C. read with Section 102 of the Act requesting for handing the trial of the present FIR case before the Assam Rifle Court.

[56] And, the Ld. JMFC, Moreh duly applied his mind and passed the impugned order dated 02.12.2020 after considering facts and circumstances of the case and provisions of applicable laws and thereafter, passed the transfer order after receiving the charge sheet filed by the prosecution and after giving due notice to the parties of the case in accordance with the Hon'ble Supreme Court's judgment and accordingly, handed over the case for trial before the Assam Rifle Court to the duly authorized officer.

[57] Considering the facts and circumstances of the case and the provision of law as laid down in the Acts and Rules and laws laid down by the Hon'ble Supreme Court, the orders passed by the Ld. JMFC, Moreh and Addl. Sessions Judge (FTC), Manipur West passed the impugned order 02.12.2020 and 31.01.2022 by strict compliance with provision of law and law laid down by the Hon'ble Supreme Court.

As narrated and discussed above regarding the limitation of transferring the case for trial to the Assam Rifle Court, nothing more is to be discussed as there is no bar in transferring the case to the Assam Rifle Court.

[58] With the above observation, the present petition filed by the petitioner is dismissed and the impugned orders 02.12.2020 and 31.01.2022 passed by the Ld. JMFC, Moreh and Ld. Additional Sessions Judge (FTC), Manipur West are hereby upheld.

JUDGE

FR/NFR

Lucy/Bipin