A UNION OF INDIA THROUGH MAJOR GENERAL H.C. PATHAK

v.

MAJOR S.K. SHARMA

JUNE 29, 1987

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[R.S. PATHAK, CJ AND V. KHALID, J.]

Criminal Procedure Code, 1973—S. 475—Read with ss. 200 to 204 of the Code, and the provisions of the Army Act, 1950 and the Army Rules—When a Magistrate has taken cognizance of an offence C *committed by a member of the Armed Forces and thereafter transferred the case for trial under the Army Act and the Rules, it is not open to the Competent Authority to hold an inquiry for determining whether there is any case for trying the accused—It must proceed to hold the Court Martial or take such other 'effectual proceedings' as is contemplated by r. 7(1) of the Criminal Courts and Court Martial (Adjustment of Juris-* D *diction) Rules, 1978.*

An officer in the Army filed a complaint before a Magistrate alleging that another officer has assaulted him, that the Commanding Officer to whom he had complained earlier had failed to take satisfactory action and thus both of them had committed offences under the E **Indian Penal Code. The Magistrate examined the complainant under s. 200 Cr. P.C., took cognizance of the offences under s. 190(A) and, on being satisfied of the existence of a *prima facie* case, issued summons under s. 204(A) for the appearance of the accused. Upon applications being made by the appellants urging that the case be handed over to the Military Authorities for disposal, the Magistrate made an order direct-** F **ing that the case be transferred to the Army Authorities for disposal in accordance with the provisions of the Army Act, 1950 after trial by a Court Martial at any place within the jurisdiction of his Court and that the progress of the case be reported to him at intervals of two months. Upon the appellants making further applications praying for review of the said order on the ground that under the Army Act and the Army** G **Rules, it was not mandatory that all disciplinary cases against military personnel should culminate in a trial by Court Martial and submitting that the disciplinary action against the officers concerned would be initiated after an investigation of the alleged offences, the Magistrate, pointing out that the judicial process for ascertaining the *prima facie* existence of a case had already been completed, held that the trial of the** H **accused by Court Martial was mandatory under s. 475 Cr. P.C. and,**

therefore, it was not permissible for the Army Authorities to hold a preliminary investigation. However, having regard to s. 127 of the Army Act, the Magistrate directed that the progress of the case be intimated at intervals of four months. in the Revision filed by the appellants, the High Court interfered with the order of the Magistrate insofar only that it deleted the direction requiring the Army Authorities to inform the Magistrate of the progress of the case at intervals of four months and directed instead that the result of the Court Martial proceeding be communicated to the Magistrate, as soon as may be, in accordance with r. 7 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978.

Dismissing the appeal by Special Leave,

HELD: The Army Authority is not entitled to ignore the proceeding taken by the Magistrate and to invoke the provisions of r. 22 and related rules of the Army Rules. The Magistrate having held that there is a case for trying the two accused officers and having directed their appearance, the Army Authority must proceed to hold a Court Martial for their trial or take other effectual proceedings against them as contemplated by the law. [468G-H]

(i) It is open to a Magistrate under ss. 200-203, Cr. P.C. to inquire into a complaint of an offence alleged to have been committed by a military person, where it falls within his jurisdiction and to take proceedings for trial of the accused. Likewise, a duly constituted Army Authority has power under the provisions of r. 22 onwards of the Army Rules to investigate into a charge against a military person accused of an offence triable under the Army Act, and after such hearing to decide whether his trial by a Court Martial should be ordered. The provisions of the Army Rules run parallel to the provisions in the Cr. P.C. Inasmuch as there is always a possibility of the same offence being triable either by a Criminal Court or by a Court Martial, s. 475, Cr. P.C. empowers the Central Government to make rules as to cases in which persons shall be tried by a Court to which the Code applies or by a Court Martial, and the section provides that whenever a 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 the Code applies or by a Court Martial, such Magistrate must have regard to such rules and must, in proper cases, deliver the person together with a statement of the offence of which he is accused, to the Commanding Officer of the unit to which he belongs for the purpose of being tried by a Court Martial. The language used in s. 475 is significant. It refers to a person

A who "is brought before a Magistrate and charged with an offence." In other words, he must be a person respecting whom the Magistrate has taken the proceedings envisaged by ss. 200 to 204 of the Code. He will be a person in respect of whom the Magistrate has found that there is a case for trial. It is for that reason that s. 475 goes on to say that when such person is delivered to the Commanding Officer of the unit to which B he belongs, it will be "for the purpose of being tried by a Court Martial". When he is so delivered, a statement of the offence of which he is accused will also be delivered to the Commanding Officer. The relevance of delivering such statement can be easily understood, for it is to enable the Army Authority to appreciate the circumstances in which a Court Martial is required by the law. [464C-D; 465E-H]

C

(ii) It is clear from r. 7(1) of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 framed under s. 475 of the Cr. P.C. that when the accused is made over by the Magistrate under s. 5 or 6 thereof to the competent military or other authority, it is for the purpose of trial by a Court Martial or other "effectual proceed- D ings" to be taken or ordered to be taken against him inasmuch as the competent authority must, as soon as may be, inform the Magistrate, whether the accused has been tried by a Court Martial or other effectual proceedings have been taken or ordered to be taken against him and the communication of such information is mandatory. When the Magistrate is informed that the accused has not been tried or other E effectual proceedings have not been taken or ordered to be taken against him, he is obliged to report the circumstances to the State Government and the State Government, in consultation with the Central Government, may take appropriate steps to ensure that the accused person is dealt with in accordance with law. The policy of the law is clear. Once the Criminal Court determines that there is a case for trial, F and pursuant to the aforesaid rule, delivers the accused to the competent military or other authority, the law intends that the accused must either be tried by a Court Martial or some other effectual proceedings must be taken against him. [467B-E]

(iii) The policy of our Constitutional Polity is that no person G should be regarded as being above the law. Military, navel or air force personnel are as much subject to the law as members of the civil population. It is significant that r. 8 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 empowers the Magistrate, on coming to know that a person subject to the military, naval or air force law or any other law relating to the Armed Forces has committed an H offence and proceedings in respect of which ought to be instituted

before him and that the presence of such person cannot be procured except through military, navel or air force authorities, to require the Commanding Officer of such person either to deliver such person to a Magistrate for being proceeded against according to law or to stay the proceedings against such person before the Court Martial if since instituted, and to make a reference to the Central Government for determination as to the Court before which the proceedings should be instituted. [467G-H; 468A-B]

(iv) Section 127 of the Army Act provides that a person convicted or acquitted by a Court Martial, may, with the previous sanction of the Central Government, be tried against by a Criminal Court for the same offence or on the same facts which is an exception to the rule contained in Art. 20 of the Constitution that no person shall be prosecuted and punished for the same offence more than once. It is to enable the operation and application of s. 127 of the Act that r. 7(1) of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 requires the competent military or other authority to inform the Magistrate whether the accused has been tried by a Court Martial or other effectual proceedings have been taken against him. [468B-D]

(v) Section 125 of the Army Act, which provides that when a Criminal Court and a Court Martial have each jurisdiction in respect of an offence, it will be in the discretion of the Commanding Officer of the accused to decide before which Court the proceedings shall be instituted, is of no assistance in deciding whether it is open to the Army Authority to take proceedings for determining *prima facie* whether there is substance in the allegations made against the accused and decline to try him by a Court Martial or take other effectual proceedings against him even where a Magistrate has taken cognizance of the offence and finds that there is a case for trying the accused. [468E-F]

(vi) There is nothing in the provisions of the Army Rules relating to Courts of Inquiry which can support the contention that notwithstanding the proceeding taken by the Magistrate it is open to the Army Authority to hold a Court of Inquiry and determine whether there is any case for trying the accused by a Court Martial. If, it is not open to the Army Authority to have recourse to r. 22 of the Army Rules and investigate the charge directed against the accused officer in this case, for the same reason, it is not open to it to hold a Court of Inquiry and supersede the proceeding already taken by the Magistrate. [469B-D]

A CRIMINAL APPELLATE ORIGINAL JURISDICTION: Criminal Appeal No. 271 of 1987.

From the Judgment and Order dated 3.7.1986 of the Gauhati High Court in Crl. Revn. No. 229 of 1986.

B A.K. Ganguli, R.P. Srivastava, P. Purameswarn and Ashok K. Srivastava for the Appellant in Crl. A. No. 271 of 1987 and Respondent in W.P. (Crl.) No. 664 of 1986.

R.K. Jain, Gaurav Jain, Abha Jain and R.P. Singh for the Respondent in Crl. A. No. 271 of 1987 and Petitioner in W.P. (Crl.) No. 664 of 1986.
C

The Judgment of the Court was delivered by

PATHAK, CJ. Special Leave is granted.

D The respondent Major S.K. Sharma addressed a letter dated 21 December 1985 to Brigadier S.S. Randhawa, Commander, HQ 41 Sub Area alleging that on 15 December, 1985 he was manhandled by Col. Mir Usman Ali in the HQ 41 Sub Area Officers Mess at Jorhat. It was stated that the incident took place in the presence of Major M.M. Subbaiah. Major Sharma was attached to B Camp. Signal Regiment E while Col. Ali belonged to HQ 41 Sub Area. Brigadier Randhawa wrote to the Officer Commanding, B. Comp. Signal Regiment on 14 January 1986 seeking clarification from Major Sharma on some of the allegations. It appears that correspondence was exchanged in the matter but apparently Major Sharma, having met with no satisfactory response, filed a complaint 21 January 1986 in the Court of the Addi- F tional Chief Judicial Magistrate, Jorhat alleging that Col. Ali had criminally assaulted him and further that Brigadier Randhawa did not report the matter to the higher authorities and was attempting to protect Col. Ali. It was alleged in the complaint that Col. Ali had committed the offences under sections 323, 352 and 355 of the Indian Penal Code and Brigadier Randhawa had committed the offence under G section 217 of the Indian Penal Code. The Additional Chief Judicial Magistrate examined the complaint, and taking cognizance of the offences alleged to have been committed by Col. Ali and Brigadier Randhawa it directed that summons be issued to them for their appearance before him on 7 March, 1986.

H On two applications moved by Major Sharma before him the

Chief Judicial Magistrate made an order dated 25 January, 1986 directing that the venue of a Court of Inquiry instituted in respect of certain complaints made against Major Sharma by his Commanding Officer be shifted from Mohanbari, where it was convened, to a place within the jurisdiction of his Court and it was directed further that Major Sharma should not be moved out of the jurisdiction of the Court during the pendency of the case. Major Sharma had complained that the Court of Inquiry had been ordered by Brigadier Randhawa at Mohanbari as a measure of retaliation because of the institution of the criminal case by Major Sharma before the Additional Chief Judicial Magistrate.

On 7 February 1986 the Union of India moved an application before the Chief Judicial Magistrate along with an application dated 3 February 1986 addressed to the Court by Major General T.S. Chaudhri informing the Chief Judicial Magistrate that the General Officer Commanding was of opinion that Col. Ali should be dealt with in accordance with the procedure laid down under the Army Act and the Army Rules and the Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978, and that therefore, the case may be handed over to the Military Authorities. It was pointed out by Major Chaudhri in his letter that the complaint before the Additional Chief Judicial Magistrate against Col. Ali should, in his opinion, be disposed of under the procedure laid down in Army Rule 22 of Army Rules, 1954 and that under s. 125 of the Army Act 1950 read with Army Rule 197A of the Army Rules and the Criminal Court and Court Martial (Adjustment of Jurisdiction) Rules 1978, Major General Chaudhri was the competent Military authority to claim the case. He requested that the case should be handed over to the Military authorities for further necessary action. On 12 February 1986 the Union of India moved another application before the Chief Judicial Magistrate along with an application dated 3 February 1986 addressed to the Chief Judicial Magistrate by Major General T.S. Chaudhri as General Officer Commanding requesting that the case against Brigadier Randhawa should similarly be handed over to the Military authorities for necessary action. On 17 February 1986 the Chief Judicial Magistrate, Jorhat made an order disposing of the two requisitions made by Major General Chaudhri. He noted that the cognizance of the offences had been taken by the Additional Chief Judicial Magistrate and necessary process had been issued against both accused to compel their presence, and that in the light of Rule 3 of the Criminal Court and Court Martial (Adjustment of Jurisdiction) Rules 1978 the prayer for trial by a Court martial by the competent authority was allowed. In this connection he made reference to *Delhi Special Police Establish-*

ment v. *Lt. Col. S.K. Loraiya,* AIR 1972 SC 2548. He directed that the case be transferred to the Army authorities pursuant to the requisitions, and for disposal in accordance with the provisions of the Army Act, 1950 after trial by a court-martial at any place within the jurisdiction of his Court, He directed further that the progress of the case should be reported to his Court at intervals of two months and ultimately intimating the result thereof, for the purpose of determining whether a successive trial was necessary as provided for in the Army Act. While making the order the Chief Judicial Magistrate noted that the Army authorities had not shifted the venue of the Court of Inquiry mentioned earlier to any place within the jurisdiction of his court as required by his order dated 25 January, 1986, and this prima facie amounted to contempt for which it was open to Major Sharma to apply to the High Court for necessary action. He also directed that Major Sharma should be permitted to proceed on leave to enable him to apply to the Gauhati High Court for filing a writ petition or taking other legal proceedings.

On 21, March 1986 the Union of India through the General Officer Commanding filed an application before the Chief Judicial Magistrate for modification of the order dated 17 February 1986. In that application it was contended that under the Army Act and the Army Rules it was not mandatory that all disciplinary cases against military personnel should culminate in a trial by the Court Martial and that the directions made by the Chief Judicial Magistrate with regard to the trial of Brigadier Randhawa and Col. Ali by Court Martial were in contravention of the Army Act and the Army Rules and the Criminal Court and Court Martial (Adjustment of Jurisdiction) Rules 1978. It was asserted that the proposed disciplinary action would be initiated by the General Commanding Officer after an investigation of the alleged offences in accordance with Army Rule 22. It was prayed that the order dated 17 February 1986 be reviewed by deleting the direction for a trial by Court Martial at a place within the jurisdiction of the Court of the Chief Judicial Magistrate and of the direction further that the progress of the case should be intimated to the Chief Judicial Magistrate at intervals of two months. On 7 April 1986 the Union of India filed another application making more detailed submissions for modification or the other dated 17 February 1986. A third application was moved by the Union of India on 30 April 1986 to the Chief Judicial Magistrate requesting that the records of the case be handed over to the Army authorities. These applications were disposed of the Chief Judicial Magistrate by his order dated 8 May 1986. In that order he noted that the Addititional Chief Judicial Magistrate had, on receipt of

the complaint examined the complainant Major S.K. Sharma under s. 200 of the Cr. P.C. and had taken cognizance of the offence under s. 190(A) of the Code and on being satisfied of the existence of a prima facie case process had been issued by him under s. 204(A) of the Code. He noted that the judicial process for ascertaining the prima facie existence of a case had thereby been completed. He held that in the circumstances the trial of the accused officers by a court martial appeared to be mandatory under the provisions of s. 475 of the Code. He observed that the preliminary investigations by a departmental court of inquiry did not seem permissible in the case. However, having regard to s. 124 of the Army Act which conferred absolute power on the Army authorities to choose the venue of trial and keeping in view the administrative convenience of the Army authorities he decided to accept the request of the General Officer Commanding for deleting the direction in respect of the venue of the trial. The Chief Judicial Magistrate also directed that instead of intervals of two months the Army authorities should, having regard to the provision of s. 127 of the Army Act, inform his Court as to the progress of the case at intervals of four months.

On 14 June 1986 the Union of India through the General Officer Commanding filed a revision petition before the High Court at Gauhati, which was disposed of by the High Court by its order dated 3 July 1986. The High Court interfered with the order of the Chief Judicial Magistrate in so far only that it deleted the direction requiring the Army authorities inform the Chief Judicial Magistrate of the progress of the case at intervals of four months, and it directed instead that the result of the Court Martial proceedings should be communicated to the Chief Judicial Magistrate as soon as may be in accordance with Rule 7 of the Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978.

It may be mentioned that according to the order of the High Court the only submission raised on behalf of the appellant in the revision petition was that the Magistrate had no jurisdiction to direct the Court Martial to submit reports relating to the progress of the case, including the result thereof, at intervals of four months. Thereafter a special Leave Petition was filed by the Union of India, out of which the present appal arises.

Although it appears that the only point raised before the High Court on the revision petition related to the direction that the Army authorities should report periodically to the Chief Judicial Magistrate

A in regard to the progress of the case, learned counsel for the appellants has raised a more fundamental question before us. That question is whether it is open to the Army authorities to constitute a Court of Inquiry, enter upon an investigation of the charges under Rule 22 of the Army Rules and determine whether there is a case for trial by a Court Martial. Learned Counsel contends that the proceedings B already taken by the Additional Chief Judicial Magistrate must be ignored for the purpose and the Army authorities are not bound to try the accused by a Court Martial. Although the point was not taken before the High Court we have permitted it to be raised before us and it has been argued by learned counsel at length.

C It is apparent from the provisions of the Code of Criminal Procedure that it is open to a Magistrate to inquire into a complaint of an offence alleged to have been committed by a military person, where it falls within its jurisdiction, and to take proceedings either for his trial or for committing the case to the Court of Sessions for trial. Likewise, there is power under the Army Act in a duly constituted Army D authorities to investigate into a charge against a military person accused of an offence triable under the Army Act, and after such hearing to decide whether his trial by a Court Martial should be ordered. In the former case, ss. 200 to 203 of the Code of Criminal Procedure provide the procedure to be followed by Magistrates taking cognizance of an offence on a complaint. The Magistrate is required to E examine on oath the complaint and the witnesses present and reduce the substance of such examination to writing to be subsequently signed by the complainant and the witnesses and by the Magistrate. That is the procedure except when the complaint is made in writing by a public servant or the Magistrate makes over the case for trial or inquiry to another Magistrate. The Magistrate may either inquire into the case F himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Where, however, it appears to the Magistrate that the offence complained of its triable exclusively by the Court of Session no such direction for investigation can be made by him. For the purpose of inquiry be may take evidence G of witnesses on oath. If the Magistrate is of opinion that the offence complained of is triable exclusively by the Court of Session he must call upon the complainant to produce all his witnesses and examine them on oath. If after considering the statement on oath of the complainant and of the witnesses and the result of the inquiry or investigation directed by him the Magistrate is of opinion that there is no H sufficient ground for proceeding he must dismiss the complaint. Where

the Magistrate is of opinion that there is sufficient ground for proceeding he must adopt the procedure setforth in sections 204 onwards. He must issue process for the attendance of the accused. In certain cases he may dispense with the personal attendence of the accused and permit him to appear by his pleader. Where, however, the proceeding is taken by an Army authority under the Army Act reference must be made to the provisions of Rule 22 onwards of the Army Rules. The Rules provide for the hearing of a charge, in which the accused has liberty to cross examine any witness against him and to call any witnesses and make any statement in his defence. If the Commanding Officer investigating the charge finds no offence has been committed he must dismiss the charge. He may also do so if, in his discretion, he is satisfied that the charge has not to be proceeded with. If the charge is to be proceeded with he may pass any of the orders detailed in Rule 22(3). They include proceedings for trial by a Court Martial. It is clear that these provisions of the Army Rules run parallel to the provisions of the Code of Criminal Procedure adverted to earlier.

Now inasmuch as there is always a possibility of the same offence being triable either by a Criminal Court or by a Court Martial the law has attempted to resolve the competings claims of the civil authority and the military authority in such cases. Section 475 of the Code of Criminal Procedure empowers the Central Government to make rules as to cases in which persons shall be tried by a Court to which the Code applies or by a Court Martial, and the section provides that whenever a 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 the Code applies or by a Court Martial such Magistrate must have regard to such rules and must, in proper cases, deliver the person together with a statement of the offence of which he is accused to the Commanding Officer of the unit to which he belongs for the purpose of being tried by a Court Martial. The language used in s. 475 is significant. It refers to a person who "is brought before a Magistrate and charged with an offence." In other words, he must be a person respecting whom the Magistrate has taken the proceedings envisaged by ss. 200 to 204 of the Code. He will be a person in respect of when the Magistrate has found that there is a case for trial. It is for that reason that s. 475 goes on to say that when such person is delivered to the Commanding Officer of the unit to which he belongs it will be "for the purpose of being tried by a Court Martial". When he is so delivered, a statement of the offence of which he is accused will also be delivered to the Commanding Officer. The relevance of delivering such statement can be easily understood, for it is to enable the Army authority to appreciate the

A circumstances in which a Court Martial is required by the law.

We now turn to the Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978. These Rules have been framed under s. 475 of the Code of Criminal Procedure. When a person subject to military, naval or air force law or any other law relating to the B Armed Forces is brought before a Magistrate and charged with an offence for which he is also liable to be tried by a Court Martial, the Magistrate will not proceed to try such person or to commit the case to the Court of Session unless (a) he is moved to that effect by a competent military, naval or air force authority or (b) he is of opinion for reasons to be recorded, that he should so proceed or to commit without being moved thereto by such authority. Rule 3, in our opinion, C comes into play at the point where the person has been brought before a Magistrate and charged with an offence. That is the stage adverted to earlier where the accused is directed to appear before the Magistrate and is charged with an offence after the Magistrate has determined that there is a case for trial. Before proceeding further with the case D and either proceeding to try the accused or to commit the case to the Court of Session the Magistrate must, under Rule 4, give written notice to the Commanding Officer of the accused and refrain for a period of 15 days from doing any of the acts or making any of the orders in relation to the trial of the accused specified in Rule 4. In the event of the Magistrate entering upon the trial of the accused or com- E mitting the case to the Court of Session at the instance of the military, naval or air force authority it is open to such authority or the Commanding Officer of the accused to give notice subsequently under Rule 5 to such Magistrate that, in the opinion of such officer or authority the accused should be tried by a Court Martial. Upon such notice, the Magistrate, if he has not taken any action or made any order referred F to specifically in Rule 4 before receiving such notice, must stay the proceedings and deliver the accused together with the statement referred to in s. 475(1) of the Code to the Officer specified in that subsection. In the other kind of case, where the Magistrate intends to proceed to try the accused or to commit the case to a Court of Session without being moved in that behalf by the military, naval or air force G authority, and he has given notice under Rule 4 to the Commanding Officer or the military, naval or air force authority of his intention to do so, Rule 6 empowers the Commanding Officer or the competent authority to give notice to the Magistrate within the aforesaid period of 15 days or in any event before the Magistrate takes any action or makes any order referred to in that Rule, that in the opinion of such H officer or authority the accused should be tried by a Court Martial.

Upon such notice the Magistrate must stay the proceedings and deliver the accused together with the statement referred to in s. 475(1) of the Code to the officer specified in that sub-section. It is clear that when the accused is made over by the Magistrate to the Commanding Officer or the competent military, naval or air force authority it is for the purpose of trial by a court martial or other "effectual proceedings" to be taken or ordered to be taken against him. For Rule 7(1) provides that when an accused has been delivered by a Magistrate under Rule 5 or 6 the Commanding Officer or the competent military, naval or air force authority must, as soon as may be, inform the Magistrate whether the accused has been tried by a Court Martial or other effectual proceedings have been taken or ordered to be taken against him. The communication of such information is mandatory. When the Magistrate is informed that the accused has not been tried or other effectual proceedings have not been taken or ordered to be taken against him, he is obliged to report the circumstance to the State Government and the State Government, in consultation with the Central Government may take appropriate steps to ensure that the accused person is dealt with in accordance with law. The policy of the law is clear. Once the Criminal Court determines that there is a case for trial, and pursuant to the aforesaid rule, delivers the accused to the Commanding Officer or the competent military, naval or air force authority, the law intends that the accused must either be tried by a Court Martial or some other effectual proceedings must be taken *against* him. To ensure that proceedings are taken against the accused the Rules require the Commanding Officer or the competent authority to inform the Magistrate of what has been done. Rule 7(2) appears to envisage the possibility that the Commanding Officer or the competent military, naval or air force authority may not try the accused or take effectual proceedings against him even where the Magistrate has found a case for trial. To cover that exigency it provides that the State Government in consultation with the Central Government, on a report from the Magistrate to that effect, may take appropriate steps to ensure that the accused does not escape the attention of the law. The policy of our Constitutional polity is that no person should be regarded as being above the law. Military, naval or air force personnel are as much subject to the law as members of the civil population. It is significant that Rule 8 empowers the Magistrate, on coming to know that a person subject to the military, naval or air force law or any other law relating to the Armed Forces has committed an offence and proceedings in respect of which ought to be instituted before him and that the presence of such person cannot be procured except through military, navel or air force authorities, to require the Commanding Officer of

such person either to deliver such person to a Magistrate for being proceeded against according to law or to stay the proceedings against such person before the Court Martial if since instituted, and to make a reference to the Central Government for determination as to the Court before which the proceedings should be instituted. Reference may also be made to s. 127 of the Army Act. It is an important provision. It provides that a person convicted or acquitted by a Court Martial, may, with the previous sanction of the Central Government, be tried again by a Criminal Court for the same offence or on the same facts. This provision is an exception to Article 20 of the Constitution which provides that no person shall be prosecuted and punished for the same offence more than once. The provision has been made possible by reason of Article 33 of the Constitution which confers power on Parliament to modify any Fundamental Right in its application to the members of the Armed Forces. It is to enable the operation and application of s. 127 of the Act that Rule 7(1) of the Criminal courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 requires the Commanding Officer or the competent military, naval and air force authority to inform the Magistrate whether the accused has been tried by a Court Martial or other effectual proceedings have been taken against him.

Our attention has been drawn by learned counsel for the appellants to s. 125 of the Army Act. Section 125 provides that when a Criminal Court and a Court Martial have each jurisdiction in respect of an offence it will be in the discretion of the Commanding Officer of the accused to decide before which Court the proceedings shall be instituted. This provision is of no assistance in deciding whether it is open to the Army authority to take proceedings for determining prima facie whether there is substance in the allegations made against the accused and decline to try him by a Court Martial or take other effectual proceedings against him even where a Magistrate has taken cognizance of the offence and finds that there is a case for trying the accused.

On the aforesaid analysis we are of opinion that the Army authority is not entitled to ignore the proceeding taken by the Additional Chief Judicial Magistrate and to invoke the provisions of Rule 22 and related rules of the Army Rules. The Additional Chief Judicial Magistrate having hold that there is a case for trying the two accused officers and having directed their appearance, the Army authority must proceed to held a court martial for their trial or take other effectual proceedings against them as contemplated by the law. The

contention advanced by learned counsel for the appellants to the contrary must be rejected. A

We have also been referred to the provisions of the Army Rules relating to Courts of Inquiry, and learned counsel for the appellants urges that notwithstanding the proceeding taken by the Additional Chief Judicial Magistrate it is open to the Army authority to hold a Court of Inquiry and determine whether there is any case for trying the accused by a Court Martial. We have been taken through Rule 177 and the connected Rules which deal with the institution and conduct of Courts of Inquiry, but we see nothing in those provisions which can support the contention now raised before us. If, on the analysis detailed earlier, it is not open to the Army authority to have recourse to Rule 22 and investigate the charge directed against the accused officer in this case, for the same reason it is not open to it to hold a Court of Inquiry and supersede the proceedings already taken by the Additional Chief Judicial Magistrate. B C

We may mention that learned counsel for the parties placed a number of cases before us, but having carefully perused the judgments in those cases we do not find any declaration of law therein which is inconsistent with the view taken by us. D

Accordingly, the appeal is dismissed. E

In the Criminal Writ Petition Major S.K. Sharma prays for a number of reliefs. The material reliefs are that a direction be issued to the Army authorities to postpone the return of the petitioner to the Unit to which he has been posted and direct the Army authorities to stay all parallel proceedings against the petitioner until the hearing and disposal of their Special Leave Petition. F

So far as the first submission as concerned it refers to the mental and physical stress suffered by the petitioner, apparently necessitating his treatment at a hospital with sychiatric facilities. We do not think it necessary to issue any direction because, we think, it is a matter which can be adequately and humanely dealt with by the Army authorities. If indeed the petitioner should be given a posting where the requisite medical facilities are available we have no reason to doubt that the Army authorities will afford such posting to the petitioner. In doing so it will be open to the Army authorities to obtain the latest medical report respecting the condition of the petitioner. G H

A As regards the second relief, we have already disposed of the special leave petition today and, therefore, no order need be passed in respect of that relief.

In the result the writ petition is dismissed.

B H.L.C. Petition dismissed.