

**HIGH COURT OF M.P., BENCH AT INDORE**

**HON'BLE SHRI JUSTICE S.C. SHARMA**

**M.Cr.C. No.10037/2016 and**

**M.Cr.C. No.10039/2016**

Station Commander, Mhow Cantt.

Major General R.S. Shekhawat, SM, VSM

S/o Lieutenant Colonel Jai Singh

Vs.

State of Madhya Pradesh and others

-X-X-X-X-X-X-X-X-X-X-

Shri Deepak Rawal, learned Assistant Solicitor General for the petitioner.

Shri Himanshu Joshi, learned counsel for the respondents/State.

-X-X-X-X-X-X-X-X-X-X-

**ORDER**

(05<sup>th</sup> of October, 2016)

Regard being had to the similitude in the controversy involved in the present cases, these two petitions were analogously heard and by a common order, they are being heard and disposed of by this Court.

The present petition has been filed under Section 482 of Cr.P.C. by Station Commander, Major General R.S. Shekhawat, The Infantry School, Mhow, Indore against the State of Madhya Pradesh and its functionaries being aggrieved by the order dated 06/08/2016 passed by JMFC, Indore in respect of crime No.973/2015 and No.972/2015 for the offence punishable under Section 147, 148, 149, 395, 397, 353, 332,

307, 427 of IPC.

The facts of the case reveals that some altercation took place between the Police Officers and the Army Personnel at Vijay Nagar, Indore and thereafter Police Officers lodged a FIR at crime No.973/2015 and No.972/2015. It was stated that about 60-70 Army Personnel from the Infantry School, Mhow have reached to the Police Station-Vijay Nagar with the allegations that Police Officers have abused and beaten their fellow officers.

It is note-worthy to mention that the incident was also reported to Station Commander, Mhow as well as to the Commanding Officer, Infantry School, Mhow and the matter was reported to Army Police also and they have initiated the Court of Inquiry under the provisions of Army Act, 1950, meaning thereby, there is FIR involving 60-70 Army Officers registered at Police Station, Vijay Nagar, Indore and Military Police is also investigating the matter and the Army has initiated the Court of Inquiry in respect of the same incident. Matter was pending before two different Forums in respect of the same incident and, therefore, an application was preferred before the CJM, Indore under Section 475 of Cr.P.C. and Section 125 of Army Act readwith Criminal Court and Court Martial (Adjustment of Jurisdiction), Rules 1978 and a prayer was made that the entire matter be forwarded to the Commanding Officer/Station Commander enabling them to proceed further in the matter under the provisions of the Army Act, 1950 read with The Army Rules, 1954.

Learned JMFC after hearing the parties has dismissed

the application on the ground that as the charge-sheet has not been filed, therefore, the question of transferring the proceedings does not arise.

Shri Deepak Rawal, learned Assistant Solicitor General for the petitioner has urged before this Court that Section 125 of Army Act, 1950 permits the authorities for such a transfer of proceedings and his contention is that Criminal Court and Court Martial have jurisdiction in respect of the offences and it is the discretion of Army or Commandant to decide whether the matter will be taken before the Army Court or before the Criminal Court. He has further urged before this Court that the impugned order passed by learned JMFC is bad in law. Learned counsel placed reliance on a judgment delivered in the matter of **Chandra Mohan Shukla vs. State of Assam** **2007 Cri.L.J. 4516** and his contention is that in the similar circumstances, the High Court of Guwahati has transferred the proceedings to the Court of Martial.

Shri Rawal has drawn the attention of this Court towards the incident and stated that senior Officers were forcibly taken to Vijay Nagar Police Station and they were beaten-up by the Police Officers, as a result, they sustained fractures with multiple contusions and injuries were caused by blunt objects. They were admitted in Military Hospital, Mhow and some of them were admitted in the 'Intensive Care Unit' (ICU). Medical papers are also on record. In order to protest the cause of their Officers, the other Officers reached at Police Station-Vijay Nagar and the Army Officers informed about the incident to S.P., Collector, DIG and inspite of this, FIR was registered by

the Police only against the Army Personnels and inspite of best attempts made by Army Officers, no fruitful result has come out and no offence has been registered against the erring Police Officers.

He has further argued that the Police Officials have acted in a biased manner in the matter and matter has to be dealt with the provisions of Army Act, 1950 and Army Rules, 1954.

On other hand, learned counsel for the respondents/State has urged before this Court that Army Officers cannot be allowed to decide the dispute, which is against it's own Officers, therefore, learned JMFC was justified in dismissing the application preferred by the petitioner.

Heard learned counsel for the parties and perused the record. The matter is being disposed of with the consent of the parties, at the motion hearing stage itself.

In the present case, the question before this Court whether the Criminal Court or the Court Martial is having jurisdiction in the matter and whether the matter can be transferred to Court Martial or not, at the discretion of Commanding Officer ?

It is true that a dispute has taken place out-side the defence area and in the area of Indore City and learned counsel for Union of India has argued that dispute arose only because of Army Personnel were assaulted by Police Officers.

In the instant case most of the Officers at present have been transferred to guard the border of the Country, keeping in view the present scenario and their services are more

important for the nation. The leave of other Officers has also been cancelled, taking into consideration the situation prevailing in the Country.

Not only this, the other important aspect of the case is that on the basis of complaint, 60-70 Army Officers are involved in the matter and the 60-70 Army Officers shall be forced to attend the criminal court every month which the nation cannot afford, especially keeping in view the present situation.

This Court is also aware of the fact that there are about 1.3 million or 1325450 people serving the Indian Armed Forces, who defend and protect us, selflessly on a daily basis. In fact, we cannot forget those who have lost their lives and those who have left their families to guard our borders. A soldier scarifies everything for his country.

The relevant statutory provisions necessary for deciding the matter, reads as under :

**Section 475 of the Code of Criminal Procedure, 1973**

“475. Delivery to commanding officers of persons liable to be tried by Court- martial.

(1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950 ), the Navy Act, 1957 (62 of 1957 ), and the Air Force Act, 1950 (45 of 1950 ), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court- martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court- martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding

officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by a Court- martial.  
Explanation.- In this section-

(a) "Unit" includes a regiment, corps, ship, detachment, group, battalion or company,

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

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

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

**Section 125 of Army Act, 1950** reads as under :-

"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."

The aforesaid statutory provisions of law does permit for transfer of a criminal case registered at Crime No.973/2015 and No.972/2015 at Police Station-Vijay Nagar to the Competent Army Authority to initiate proceedings under the Army Act, 1950 and 1954.

The Kerala High Court, in a Reference case **Kerala High Court 1996 Cri.L.J. 1549** has held that a matter can

be transferred to Commanding Officer concerned.

The constitution validity of Section 125 of Army Act, 1950 has been upheld in the case of **Gurman Singh vs. Union of India 1984 CRI.L.J. 718** and the Calcutta High Court has held that in view of Article 33 of the Constitution of India, Section 125 of the Army Act, 1950 is not *ultra vires* of Part-III of Constitution. Section 125 does permit for such transfer of proceedings.

In the matter of **Ex. Havildar Gh. Mohd. Dar vs. Union of India 1983 CRI.L.J. 1899** the Jammu and Kashmir High Court has 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 readwith Army Rules, 1954

In the matter of **G.M. Rao vs. Union of India 2003 CRI.L.J. 4028**, 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.

This Court is of the considered opinion that the impugned order passed by learned JMFC, Indore dated 06/08/2016 deserves to be quashed and is accordingly hereby quashed. The application preferred by Station Commander/Commanding Officer in respect of Crime No.973/2015 and No.972/2015 is allowed. The Respondents/State are directed to transfer the complete

record and proceedings in respect of crime No.973/2015 and No.972/2015 registered at Police Station-Vijay Nagar, Indore to petitioner under the relevant provisions of Army Act, 1950 readwith Army Rules, 1954.

The exercise of transferring the entire proceedings be concluded within a period of 10 days from today.

With the aforesaid, petition stands allowed.

C.C. as per rules.

**(S.C. Sharma)**  
**Judge**

**Aiyer\***