

**Gnr. Mangelal Vs. Union of India and Others**

**Gnr. Mangelal Vs. Union of India and Others**

**SooperKanoon Citation :** [sooperkanoon.com/1117040](http://sooperkanoon.com/1117040)

**Court :** Armed forces Tribunal AFT Principal Bench New Delhi

**Decided On :** Dec-08-2010

**Judge :** S.S. Kulshrestha, Member & the Honourable Mr. Lt. Gen. S.S. Dhillon, Member

**Appeal No. :** TA NO. 457 OF 2009 (Writ Petition (Civil) No.2098 of 1999)

**Appellant :** Gnr. Mangelal

**Respondent :** Union of India and Others

**Judgement :**

1. This writ petition has been brought by the appellant contesting the order of 21.12.1995 passed by Lt. Col. V.V Raghavan, Commanding Officer, 98 Field Regiment, wherein the appellant was sentenced to be dismissed from service. On formation of this Tribunal, the writ petition was transferred and is being disposed of by this judgment treating it as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. In order to appreciate the facts of the case, a brief narration of the circumstances is warranted. The appellant and Gnr. Ram Kumar were both posted in 98 Field Regiment on 23.11.1995 on the date of occurrence of the incident. Both, Gnr. Ram Kumar and the appellant, were on duty in an insurgency area at that point of time i.e. 23.11.1995. Both these soldiers, while allegedly on patrolling duty, are alleged to have taken three girls of Village Amlangbra, viz. Miss Archana

Nunisa, Miss Polja Nunisa and Miss Deepali Nunisa, to an isolated spot in the jungle on the pretext of searching them. Thereafter, Gnr. Ram Kumar pushed one of the girls, viz. Miss Archana Nunisa, to the ground and asked her to remove her clothes. Simultaneously, Gnr. Ram Kumar opened his trousers and lowered them to his knee level. Gnr. Ram Kumar supposedly told the appellant to do the same thing to the other two girls, which the appellant did not do. In the meantime, the girls managed to raise an alarm and sensing trouble; the two soldiers left the location and went away. Consequent to this incident, both soldiers were tried separately by SCM. The charge against the appellant was framed under Army Act Section 66 as under:

AA Sec 66

ABETMENT OF AN OFFENCE SPECIFIED IN SECTION 46(a) OF THE ARMY ACT, IN CONSEQUENCE OF WHICH ABETMENT OF SUCH OFFENCE WAS COMMITTED.

in that he,

at 1330 h on 23 Nov 95, abetted by intentionally aiding No 14401800P Gnr (Opr) Ram Kumar of the same Regiment in taking Miss Archana Nunisa aged 14 yrs of village Amlangbra to an isolated place and exhibiting his private parts by lowering his trousers and underwear.

3. Counsel for the appellant argued on various points of law by stating that from the charge sheet it appeared that the appellant had also exhibited his private parts by lowering his trouser and underwear. This misrepresentation of facts had vitiated the complete trial because, in actual fact, it was only Gnr. Ram Kumar who has lowered his trouser till the knee level and the appellant has done no such act. In order to substantiate this fact, counsel drew the attention of the Court to the four prosecution witnesses who appeared in the summary of evidence. Miss Archana Nunisa, aged 14, daughter of Solu Chandra Munisa (PW 1) has stated that they were chased by these two jawans and were supposedly taken at gun point to an isolated place. Thereafter, the witness has categorically stated that it was only Gnr. Ram Kumar who opened the buttons of his trouser and lowered his trouser.

The specific reference to the testimony of this witness is as given below:

He (Gnr. Ram Kumar) opened and lowered his trouser upto knee level. He was wearing a red colour underwear. Gnr. Ram Kumar then told the other jawan, Gnr. Mangelal, to do the same thing to other two girls what he was doing with me. However, he did not do anything and kept standing there.

Ms. Polja Nunisa, aged 18, daughter of Kaman Singh Nunisa of Amlangbra Village (PW 2) has also made an identical statement and the specific testimony pertaining to the incident is as given below:

Immediately after that Gnr. Ram Kumar started removing his trousers. He lowered his trouser upto knee level. Thereafter Gnr. Ram Kumar told the other jawan Gnr. Mangelal (appellant) to do the same thing to myself and Miss Deepali Nunisa what he was doing with Miss Archana Nunisa. However, he (appellant) did not do anything and kept standing there.

Miss Deepali Nunisa, aged 15 years, daughter of Loso Joy of Amlangbra Village (PW 3) has also given an identical statement and her testimony with regard to the incident is extracted below:

She (Mss Archana Nunisa) fell flat on the ground. As she fell on the ground, Gnr. Ram Kumar started removing his trouser. He lowered his trouser upto knee level. He was wearing a red colour underwear. He then told the other jawan, Gnr. Mangelal (appellant) to do the same thing with me and Miss Polja Nunisa. But he did not do anything and kept standing there.

PW 4 was Gnr. Ram Kumar, who has categorically stated that they had only attempted to search the baskets of the girls since one of the girls was carrying country liquor. Counsel for the appellant, therefore, argued that whatever indecent or immoral act had been done was by Gnr. Ram Kumar and not by the appellant. The appellant had gone on the patrol duty with the intention of searching the girls and had done no indecent or immoral act with any of these girls. In fact, all the three girls have specifically stated however, he (appellant) did not do anything and kept standing there. In such circumstances, when the appellant has not done any

immoral act to charge him in the manner as stated in the charge sheet gives a totally distorted impression of his act. In fact, his inaction cannot be construed as abetment. The entire incident had occurred in a period of a few seconds and that period was too little for the appellant to admonish Gnr. Ram Kumar or prevent him from doing any such act. The entire incident has been perpetuated and executed by Gnr. Ram Kumar and the appellant has not committed any crime by his inaction. Therefore, for this supposed inaction on his part, to dismiss him from service when he had barely six years of service was against the principles of natural justice. The witnesses, who have been examined, have not spoken anything about any immoral act done by the appellant and the sentence given to him is highly disproportionate to the allegations made against him.

5. Counsel for the appellant also stated categorically that the appellant has not pleaded guilty and he has not signed the plea of guilt in the SCM and neither has he signed the mandatory certificate for compliance of Army Rule 115(2). In fact, the certificate has not been signed even by the Commanding Officer. It was argued by counsel for the appellant that the CO threatened the appellant to admit the offence; otherwise he would also be given imprisonment and a much harsher sentence in addition to dismissal from service. Therefore, to rely solely on the plea of guilt on the unsigned plea of guilt is illegal and cannot be the basis for conviction. In fact, the respondents have admitted that the entire prosecution evidence is based on the plea of guilt and not on the statements of the witnesses. Therefore, in such circumstances, when the appellant had done nothing immoral and had all along pleaded his innocence, for the Commanding Officer to rely on his so called admission of guilt is gross perversity and traversity of justice. The appellant cannot be convicted solely on the so called admission of guilt and by his own statement. The prosecution has failed miserably in establishing any case against him and have merely taken recourse to the plea of guilty, which has been obtained from the appellant under threat and inducement.

6. Counsel for the respondents argued that such incidents, which occurred in a counter insurgency area, show the Army in a poor light and the Army authorities cannot tolerate any such incident as it is counter to the overall conduct of the Army in such areas. He argued that the abetment of offence did not get nullified primarily

because the appellant did not open his trousers, but because he assisted Gnr. Ram Kumar in chasing helpless girls, taking them at gun point to an isolated area in the jungle and then, on the pretext of searching them, making one of them remove her clothes was a heinous offence by itself. In fact, if he was a disciplined soldier, he would not have chased three helpless girls into the forest at the point of the gun and permitted Gnr. Ram Kumar to carry out the indecent act that he did. He should, in fact, have prevented Gnr. Ram Kumar from carrying out any indecent act and it was for that he was being punished. PW 4 Gnr. Ram Kumar has himself stated: thereafter myself and Gnr. Mangelal (appellant) told the girls to remove their clothes. One of the girls identified as Miss Archana Nunisa removed her clothes below the waist. Therefore, in such circumstances, the abetment charge holds good, in that the appellant assisted Gnr. Ram Kumar in chasing the girls to an isolated area in the forest and permitting Gnr. Ram Kumar to execute the indecent act.

7. With regard to the signatures on the plea of guilt, counsel for the respondents argued that at the summary of evidence, the appellant has not made any statement, whatsoever, thereby accepting his guilt and even at the SCM he has stated: I am guilty and will accept the punishment to be awarded. Keeping this in mind, non-obtaining of the signatures on the plea of guilt or on the compliance certificate of Army Rule 115(2) should be considered as an honest omission and not as a traversery of justice.

8. The Court having examined the documents finds that the plea of guilty or the compliance certificate under Army Rule 115(2) has not been signed by the appellant. In such circumstances, for the Commanding Officer to conduct the trial as if he had pleaded guilty was against the fundamental tenets of natural justice. It would only have been appropriate for the Commanding Officer to have converted the plea of guilty to not guilty and thereafter proceeded with the trial. It, therefore, appears that the appellant was not informed about the general effect of the plea of guilt or about the difference in procedure which is involved in the plea of guilt. Furthermore, his not making any statement at the SCM cannot be construed to be an admission of guilt. Therefore, the finding based on the alleged plea of guilt would have no meaning at all. This view finds force from the decision of the Delhi

High Court in LNK Gurdev Singh v. Union of India (W.P (C) No. 776 of 1995 dated 1.2.2008), which was followed by this Tribunal in Ex. Nk. Subhash Chand v. Union of India and others (T.A No. 723 of 2009 dated 27.4.2010). The observations made by Delhi High Court in LNK Gurdev Singhs case (supra) are extracted below:

Though the petitioner has allegedly admitted the charge by pleading guilty, his signatures nowhere appear on the purported plea of guilt. When an accused person pleads guilty, it would be necessary to obtain his signatures to lend authenticity to such proceedings. This basic requirement was not even adhered to, the absence whereof lends credence to the allegation of the petitioner that he was not even present at the time of recording of the summary court martial proceedings and he never pleaded guilty.

In our recent judgment pronounced on 17.01.2008 in LPA no.254/2001 entitled The Chief of Army Staff and Ors. Vs. Ex.14257273 K.Sigmn Trilochan Behera, we have concluded that such court martial proceedings would be of no consequence and would not stand the judicial scrutiny. In forming this opinion, we had referred to the judgment of the Jammu and Kashmir High court in the case of Prithpal Singh Vs. Union of India and Ors., 1984 (3) SLR 675 (JandK). We had also take note of the instructions issued by the respondents themselves in the year 1984, based on the aforesaid judgment of the Jammu and Kashmir High Court, mandating that signatures of the accused pleading guilty of charge be obtained and if there is an infraction of this procedural requirement, it would violate the mandatory procedural safeguard provided in Rule 115(2) of the Army Rules and would also be violative of Article 14 of the Constitution of India.

Faced with this, an innovative justification was sought to be given by the respondents, namely, the said guidelines were issued by Northern Command whereas the petitioner was tried by the unit in Eastern Command. We feel that the law of the land has uniform application across the country and there cannot be one law for a particular command and different law for another command under the Army. We may note that even this Court has taken similar view in Lachhman (Ex Rect) vs. Union of India and Ors., 2003 II AD (Delhi) 103 wherein it was held as

under:-

The record of the proceedings shows that the plea of guilty has not been entered into by the accused nor has it been recorded as per Rule 115 in as much neither it has been recorded as finding of court nor was the accused informed about the general effect of plea of guilt nor about the difference in procedure which is involved in plea of guilt nor did he advise the petitioner to withdraw the plea if it appeared from the summary of evidence that the accused ought to plead not guilty nor is the factum of compliance of sub-rule (2) has been recorded by the Commanding Officer in the manner prescribed in sub rule 2(A). Thus the stand of the respondents that the petitioner had entered into the plea of guilt stands on highly feeble foundation.

Same view was taken by the Allahabad High Court in Uma Shanker Pathak Vs. Union of India and Ors., 1989 (3) SLR 405. The Jammu and Kashmir High Court has reiterated its opinion in a recent judgment in Sukanta Mitra vs. Union of India and Ors. 2007 (2) 197 (JandK), wherein the Court held as follows:

This apart the fact remains that the appellant has been convicted and sentenced on the basis of his plea of guilt. The plea of guilt recorded by the Court does not bear the signatures of the appellant. The question arising for consideration, therefore, is whether obtaining of signatures was necessary. In a case Union of India and Ors. Vs. Ex-Havildar Clerk Prithpal Singh and Ors. KLJ 1991 page 513, a Division Bench of this Court has observed:

The other point which has been made basis for quashing the sentence awarded to respondent-accused relates to clause (2) of rule 115. Under this mandatory provision the court is required to ascertain, before it records plea of guilt of the accused, as to whether the accused undertakes the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea and in particular of the meaning of charge to which he has pleaded guilty. The Court is further required under this provision of law to advise the accused to withdraw that plea if it appears from summary of evidence or otherwise that the accused ought to plead not guilty. How to follow this procedure is the main crux of the question involved in this case. Rule 125 provides that the court shall date and sign the

sentence and such signatures shall authenticate of the same. We may take it that the signature of the accused are not required even after recording plea of guilt but as a matter of caution same should have been taken.

9. Considering the fact that the trial has not been done in accordance with the laid down Army Act and the Rules, we have no hesitation in setting aside the SCM proceedings. The appellant shall be deemed to be in service till such time that he attains minimum service required for pension, after which he will be entitled to pension and other pecuniary and retiral benefits in accordance with law. No order on backwages. The appeal is allowed to this extent.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**