



2025:DHC:6617-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 10.07.2025*  
*Date of Decision: 08.08.2025*

+ W.P.(C) 1024/2010

**ANIL KUMAR UPADHAYA** .....Petitioner  
Through: Mr. Ankur Chhibber, Mr. Karn  
Deo Baghel and Mr. Shivam Choudhary,  
Advocates

versus

**UOI AND ORS** .....Respondents  
Through: Mr. Bhagwan Swarup Shukla,  
CGSC with Mr. Shravan Shukla, Mr. Yash  
Baraliya, Advs. with Mr. Paramveer Singh,  
Law Officer, BSF

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**  
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

### **J U D G M E N T**

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#### **AJAY DIGPAUL, J.**

1. The petitioner, Anil Kumar Upadhyay, was recruited into the Border Security Force<sup>1</sup> on 01.01.1991 as a Constable (Radio Operator). He was subsequently promoted to the rank of Naik (Radio Operator) in 1992 and then to Head Constable (Radio Operator) in 1997. He served in various postings and, at the time of the relevant events in 2003, he was attached to the 126<sup>th</sup> Battalion, BSF, which was stationed at Nalkata, Tripura.



2. On 18.08.2003, the Petitioner was officially diagnosed with acute psychosis and placed in a low medical category for a period of six weeks as per the order of the Commandant, 126<sup>th</sup> Battalion, BSF.
3. On 27.08.2003, the Petitioner was examined by a Psychiatrist at the Government Hospital, Agartala, who prescribed medication and advised close observation. The OPD slip dated 27.08.2003 mentioned to keep a close observation to avoid self-harm or injury to others.
4. On 18.09.2003, Constable Narendra Kumar Yadav, also of the 126<sup>th</sup> Battalion, submitted a written complaint to the Commandant of the unit. The complaint alleged that on the night of 16.09.2003, at approximately 11:10 p.m., while the complainant was on patrolling duty, an unidentified person entered his residence, misbehaved with his wife, Mamta Yadav, and took away some money. The complainant further stated that his wife identified the petitioner as the person involved after seeing him pass by the house the following morning.
5. The petitioner, when approached by the Battalion Havildar Major (BHM), stated that he had remained in the barracks during the night of the incident and had not left his bunk. Nevertheless, on 23.09.2003, the Commandant ordered Vikram Singh, who was the Assistant Commandant to prepare a Record of Evidence<sup>2</sup> under Rules 45 and 48 of the Border Security Force Rules, 1969<sup>3</sup>, based on the aforementioned complaint. The RoE was initiated to examine the petitioner on three charges:

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<sup>1</sup> hereinafter "BSF"

<sup>2</sup> hereinafter "RoE"

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- (i) under Section 46 of the Border Security Force Act, 1968<sup>4</sup> read with Section 354 of the Indian Penal Code, 1860<sup>5</sup> for using criminal force with an intent to outrage the modesty of a woman;
- (ii) under Section 41(f) of the BSF Act for committing an offence against a civilian in the area of deployment; and
- (iii) under Section 40 of the BSF Act for conduct prejudicial to discipline.

6. On 25.09.2003, the Assistant Commandant commenced the process of recording the RoE by examining witnesses for both the prosecution and the defence. Upon conclusion of the proceedings, the RoE was compiled and submitted to the Commandant for further action.

7. Around October-November 2003, the 126<sup>th</sup> Battalion was relocated from Tripura to Dabla, Jaisalmer. During this period, the petitioner was referred for psychiatric assessment due to concerns about his mental health. On 16.12.2003, the petitioner was diagnosed with schizophrenia by medical personnel at the BSF Hospital, SHQ Jaisalmer, and was further examined by a psychiatric specialist at the District Hospital, Jaisalmer. Based on their findings, the BSF Medical Board placed the petitioner in a low medical category (SHAPE 3) for

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<sup>3</sup> hereinafter “BSF Rules”

<sup>4</sup> hereinafter “BSF Act”

<sup>5</sup> hereinafter “IPC”



a period of 24 weeks, effective up to 16.06.2004. He was prescribed psychiatric medication and advised rest.

**8.** On 16.01.2004, a formal charge-sheet was issued against the petitioner by the Commandant. The charges were framed under Section 46 of the BSF Act for committing civil offences:

- (i) theft in a dwelling house under Section 380 IPC; and
- (ii) use of criminal force with intent to outrage the modesty of a woman under Section 354 IPC.

The original charges framed during the RoE under Sections 41(f) and 40 of the BSF Act were not included in the final charge-sheet.

**9.** On 13.02.2004, the petitioner was informed that he would be tried by a Summary Security Force Court on 16.02.2004. He was also placed under close arrest on the same day. Along with this communication, he was provided with copies of the RoE and the charge-sheet. The petitioner was informed of his right to be assisted during the trial by any person, including a legal practitioner, acting as a 'friend of the accused'.

**10.** On the same date, 13.02.2004, the Commandant directed the Medical Officer of the 126<sup>th</sup> Battalion to conduct a medical examination of the petitioner and submit a certificate of physical fitness by 9 AM on 16.02.2004. The medical examination was conducted on the morning of 16.02.2004, approximately one hour before the commencement of the Summary Security Force Court proceedings, and the petitioner was certified as medically fit to stand



trial.

**11.** The Summary Security Force Court was formally constituted by the Commandant on 14.02.2004. The trial was conducted on 16.02.2004. During the trial, the petitioner pleaded not guilty to both charges. A total of eight prosecution witnesses, two defence witnesses, and the petitioner himself were examined. One additional defence witness (Lance Naik S.A. Mondal) named by the petitioner was not called or examined during the proceedings.

**12.** Upon conclusion of the trial, the Summary Security Force Court found the petitioner guilty on both charges. On the same day, the Commandant issued an order promulgating the sentence under Rules 106(8) and 159 of the BSF Rules. The petitioner was sentenced to dismissal from service. Pursuant thereto, the Commandant passed an order under Section 11(2) of the BSF Act and Rule 177 of the BSF Rules, directing the petitioner's immediate dismissal from service and striking off his name from the rolls of the Unit.

**13.** In accordance with Rule 161 of the BSF Rules, the proceedings were forwarded to the Deputy Inspector General<sup>6</sup>, SHQ Jaisalmer, for confirmation. By order dated 12.03.2004, the Reviewing Officer confirmed the conviction on the second charge under Section 354 IPC, but set aside the conviction on the first charge under Section 380 IPC, on the ground that the finding was not supported by the weight of evidence. However, the sentence of dismissal was upheld in full.



**14.** Prior to the issuance of the confirmation order, the petitioner submitted a pre-confirmation petition dated 13.03.2004 under Section 117(1) of the BSF Act to the Reviewing Officer. The confirmation order was passed without alteration of sentence.

**15.** Thereafter, the petitioner submitted two statutory petitions under Section 117 of the BSF Act, dated 26.04.2004 and 28.05.2004, before the Inspector General (Communications) and the Director General, BSF, respectively. These petitions were rejected by communication dated 27.07.2004.

**16.** Aggrieved by the rejections, the petitioner approached the High Court of Judicature at Allahabad by filing Civil Misc. Writ Petition No. 35996 of 2004. On 12.11.2009, the High Court disposed of the petition on the ground that it lacked territorial jurisdiction, while granting the petitioner liberty to approach the appropriate court.

**17.** A correction application was filed to rectify the petitioner's name in the Allahabad High Court's order. By order dated 01.12.2009, the High Court clarified that the petitioner was free to seek appropriate legal remedies before the competent forum.

**18.** Pursuant thereto, the petitioner has filed the present writ petition before this Court, wherein the following reliefs are sought:

“(a) issue a writ of, or in the nature of, certiorari or any other appropriate writ, order or direction calling for the records and proceedings pertaining to the Summary Security Force Court trial against the Petitioner and after ascertaining the legality thereof



quash and / or set aside the same,

(b) issue a writ of, or in the nature of, certiorari or any other appropriate writ, order or direction calling for the records and proceedings pertaining to the various orders passed on 16.02.2004, order dated 12.03.2004 and order dated 27.07.2004, and after ascertaining the legality thereof quash and / or set aside the same;

(b) issue a writ of, or in the nature of, mandamus or any other appropriate writ, direction, or order directing the Respondent authorities to reinstate the Petitioner in the service with regular back pay and allowances with interest thereon and with his seniority of rank intact as on the date of his dismissal and any promotion to which the Petitioner would have been entitled but for his dismissal from service,

(c) award costs of the proceedings in favor of the Petitioner, and

(d) issue any such further and other writ, order or direction as the nature and circumstances of the case may require”

### ***Submissions on behalf of the petitioner***

**19.** We have heard Mr. Ankur Chhibber, learned Counsel for the petitioner, who submitted that petitioner was medically diagnosed with acute psychosis, later confirmed to be schizophrenia, and was accordingly placed in a low medical category (SHAPE 3) by both civil and BSF medical authorities for extended periods between August 2003 and June 2004. Despite this undisputed psychiatric condition, the Commandant proceeded to convene a Summary Security Force Court trial, relying on a general medical certificate issued 45 minutes prior to trial by a non-specialist, and without undertaking the mandatory procedures contemplated under Section 99 of the BSF Act read with Rule 127 of the BSF Rules.

**20.** It is submitted that the said certificate of fitness, issued on 16.02.2004 by a general duty medical officer, was wholly perfunctory



and could not override the findings of the BSF Medical Board which had earlier placed the petitioner in a non-deployable category unfit for regular duties. In particular, no independent psychiatric evaluation was carried out prior to trial, nor was any opinion recorded by the Commandant as to the petitioner's capacity to understand the proceedings or defend himself, in breach of the express requirement of law.

21. The Petitioner placed reliance on the judgment of this Court in *Vasudev Panchal v. Union of India & Ors.*<sup>7</sup>, wherein the dismissal of a BSF personnel suffering from a psychiatric disorder was set aside on the grounds of disproportionality of punishment and failure to adhere to the principles of natural justice. The Court in that case had also drawn support from the decision of the Hon'ble Supreme Court in *Ravinder Kumar Dhariwal v. Union of India & Ors.*<sup>8</sup>, wherein it was held that dismissal from service of a person with mental illness, without exploring reasonable accommodation or considering the causal link between the misconduct and the disability, amounts to discrimination based on disability. It was submitted that the facts of the present case stand on an even stronger footing, as the Petitioner was already diagnosed with acute psychosis by both civil and BSF medical authorities, yet was subjected to a Summary Security Force Court proceeding without due evaluation of his fitness to stand trial or adherence to the procedural safeguards mandated under the BSF Act and Rules.

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<sup>7</sup> 2024 SCC OnLine Del 1588

<sup>8</sup> (2021) 13 SCC 94

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**22.** It is submitted that the petitioner's right to be defended during the trial was effectively denied. On 13.02.2004, the petitioner was simultaneously placed under close arrest, served the chargesheet, provided the RoE, and directed to nominate a defence representative by the next day. Given his psychiatric condition, custodial status, and the extreme proximity of the trial date, the petitioner was unable to effectively exercise his rights.

**23.** It is further submitted that the Summary Security Force Court proceedings were conducted and concluded between 1000 and 1330 hours on 16.02.2004, and the sentence of dismissal from service was promulgated and enforced on the same day, without any reasoned order or deliberation. The conduct of the trial was devoid of any meaningful judicial application, and in complete disregard of the requirement under Rule 161(1) of the BSF Rules that any sentence awarded by the Summary Security Force Court shall be subject to confirmation by the Reviewing Officer.

**24.** A further attention was drawn to the order dated 12.03.2004 passed by the Reviewing Officer (DIG, SHQ, Jaisalmer), who set aside the conviction on the first charge (theft under Section 380 of IPC) on the ground that the same was contrary to the weight of evidence. However, the conviction on the second charge (outraging modesty under Section 354 of IPC) was affirmed, despite the fact that both charges were founded solely upon the oral testimony of the complainant's wife. It was submitted that once the witness was disbelieved in part, the same testimony could not be selectively relied



upon for sustaining the remaining charge, and such partial acceptance was arbitrary and illogical.

**25.** It is also submitted that the invocation of Section 80 of the BSF Act, which bestows discretion upon the Director General, Inspector-General, or DIG to decide whether proceedings should be instituted before a criminal court or a Security Force Court, was exercised arbitrarily and without jurisdiction in the present case. While Section 80 of the BSF Act permits such discretion in cases of concurrent jurisdiction, Rule 41 of the BSF Rules imposes limitations on its unqualified exercise by prescribing specific criteria to be borne in mind. In the instant case, the alleged offence under Section 354 of IPC was not committed during the course of duty, did not occur on BSF premises, and did not involve any individual subject to the BSF Act. As such, the matter lacked the requisite service nexus, and the exercise of discretion under Section 80, without regard to the safeguards embedded in Rule 41, amounted to an abuse of authority. The decision of the Commandant, to subject the Petitioner to a Summary Security Force Court trial on 16.02.2004 and simultaneously invoke Section 80 as a shield against scrutiny constituted a manifestly unjust exercise of jurisdiction, defeating the very object of fairness, justice, and discipline intended under the statute.

**26.** It is further submitted that the very initiation of Summary Security Force Court proceedings against the petitioner was without jurisdiction, as the charge in question, was an offence under Section 354 of the IPC. This constituted a serious civil offence which, by



operation of Rule 47 of the BSF Rules, was expressly barred from being tried summarily.

27. It is argued that Section 46 of the BSF Act, when read together with Rule 47, restricts the power of the Security Force Court from summarily trying serious civil offences except for those expressly exempted, like offences of simple hurt or theft. Since the charge against the petitioner related to an offence of outraging the modesty of a woman, which does not fall within the permitted exceptions, the trial could not have been lawfully conducted before the Summary Security Force Court. Further, in terms of Section 2(d) of the BSF Act, a “civil offence” is defined as an offence “triable by a criminal court,” and therefore, in the absence of jurisdiction under the BSF’s summary framework, the matter ought to have been tried before an ordinary criminal court of competent jurisdiction. The petitioner contends that the respondents misapplied Section 46 of the BSF Act to empower the Summary Security Force Court with authority it did not possess, rendering the entire trial process *void ab initio*.

28. A further reliance was placed on the decision of the High Court of Orissa in ***Kalipada Acharya v. Union of India & Ors.***<sup>9</sup>, wherein it was categorically held that the Summary Security Force Court does not possess jurisdiction to try serious civil offences such as those under Section 354 of the IPC. It was contended that in light of the conjoint reading of Section 46 of the BSF Act with Rule 47 of the BSF Rules, only civil offences involving simple hurt or theft are amenable to summary trial by the Summary Security Force Court. The



High Court of Orissa in *Kalipada Acharya* held that civil offences like Section 354 of IPC fall outside the scope of summary jurisdiction under the BSF framework and must instead be tried by a criminal court as defined under Section 2(g) of the BSF Act, consistent with the definition of a “civil offence” under Section 2(d). It was argued that this interpretation applies with equal force to the present case and supports the contention that the Summary Security Force Court had no jurisdiction to try the petitioner.

***Submissions on behalf of the respondents***

**29.** We have also heard Mr. Bhagwan Swarup Shukla, learned CGSC appearing on behalf of the respondents submitted that the present writ petition is devoid of merit and does not warrant interference under Article 226 of the Constitution of India. It was contended that the Summary Security Force Court trial conducted against the petitioner was in accordance with the procedure established under the BSF Act and the Rules framed thereunder, and no right of the petitioner had been violated.

**30.** The respondents submitted that prior to the Summary Security Force Court trial, the petitioner was served with a copy of the RoE proceedings on 13.02.2003, within the prescribed time under Rule 157 of BSF Rules. The petitioner was also informed of his right to nominate a “friend of the accused” including a legal practitioner, and accordingly nominated Subedar Tech Bharat Singh Rana, who assisted him during the trial.



**31.** The respondents also maintain that due opportunity was provided to the petitioner to defend himself, including the liberty to summon and examine witnesses in his defence. It was submitted that following the close of prosecution evidence, the petitioner was explicitly asked whether he wished to produce any defence witnesses. The petitioner chose to summon HC Gurcharan Singh and Constable A. David, both of whom were duly examined during the Summary Security Force Court proceedings. The allegation that the petitioner was denied the opportunity to summon Lance Naik S.A. Mondal was specifically denied, asserting that the petitioner never made any such request during the trial and everything was done in accordance with the BSF Act and Rules.

**32.** It was further contended that although the petitioner had been placed under a low medical category for a certain duration, he was medically examined by the Battalion Medical Officer prior to the commencement of the Summary Security Force Court proceedings and found fit to stand trial. The respondents submitted that the petitioner was under treatment and medication but remained on duty and in service, and was neither declared insane nor recommended for invalidation on medical grounds. As such, it was submitted that the plea of unsoundness of mind, raised for the first time in the writ petition, is an afterthought and without merit.

**33.** The respondents also pointed out that the petitioner filed three petitions dated 16.04.2004, 26.04.2004, and 28.05.2004 against his conviction before the Director General, BSF. These representations



were duly considered and rejected after detailed scrutiny, and the petitioner was informed of the rejection *vide* letter dated 27.07.2004.

**34.** With respect to Section 80 of the BSF Act, the respondents submitted that its application in the present case was valid and in accordance with the statute laid down under the BSF Act and Rules. It was contended that the discretion conferred upon the competent authority under Section 80 to determine the forum of trial, i.e., whether before a Security Force Court or a criminal court, was exercised lawfully by them. The respondents specifically refuted the petitioner's reliance on Section 80 and Rule 41, stating that the said provisions were not applicable in the present case. It was clarified that, when a BSF personnel commits an offence under the BSF Act, the disciplinary authority initially conducts a hearing under Rule 45 of the BSF Rules. Thereafter, based on the gravity and nature of the offence, the authority may remand the accused for preparation of RoE. Upon scrutiny of the RoE, and depending on the seriousness of the charges, the disciplinary authority is empowered to proceed with a trial under a Security Force Court. In the instant case, the Unit Commandant, acting as the disciplinary authority, exercised this prerogative and chose to try the petitioner through the Summary Security Force Court as per the procedure prescribed under Rule 51 of the BSF Rules.

**35.** The respondents categorically denied the petitioner's allegation that the Summary Security Force Court trial was conducted in undue haste. They submitted that the proceedings were carried out in a fair, free, and unbiased manner, offering the petitioner sufficient opportunity to be heard and defend himself. It was emphasized that



the punishment awarded is commensurate to the gravity of the offence committed.

**36.** The respondents also contended that the petitioner had not raised the plea of unsoundness of mind at the time of trial, nor did the Medical Board recommend his release on grounds of mental incapacity. They stressed that mere classification into a low medical category, without a corresponding finding of insanity or incapacity to stand trial, cannot invalidate proceedings duly conducted under the statute.

**37.** The respondents have further argued that the invocation of Section 46 of the BSF Act, which defines and penalises civil offences triable under IPC, was both legally sound and factually justified in the present case. It was submitted that the petitioner had been charged under Sections 354 and 380 of the IPC, read with Section 46 of the BSF Act, and these charges fell squarely within the domain of offences triable by a Security Force Court. According to the respondents, the applicability of Section 46 does not oust the jurisdiction of the Summary Security Force Court merely because the offence in question is a civil offence, since such offences committed by BSF personnel may be tried under the statutory framework of the BSF Act.

**38.** Regarding Rule 47 of the BSF Rules, the respondents strongly refuted the petitioner's interpretation. It was submitted that Rule 47 prohibits disposal of certain charges summarily, but it does not bar trial by Summary Security Force Court. The respondents maintained



that the petitioner had erroneously equated “dealt with summarily” with “tried by Summary Security Force Court,” despite the clear distinction between the two processes laid down in the BSF Act and Rules. Further reliance was placed on Rule 59(1)(ii) of the BSF Rules to demonstrate that the law envisages different pathways for handling offences summarily and through full-fledged Security Force Court trials.

**39.** The respondents submit that the conduct of the Summary Security Force Court trial was fully in conformity with the BSF Act and Rules, 1969. It is submitted that the discretion vested under Section 74(1) of the BSF Act permits the Summary Security Force Court to try any offence under the Act, subject to the conditions in Section 74(2). In the present case, the respondents affirm that before initiation of the Summary Security Force Court trial, due reference was made to the DIG as mandated under Section 74(2). There was, therefore, full procedural compliance and no breach of statutory prescription.

**40.** To reinforce the legality of the Summary Security Force Court trial, the respondents placed reliance on the judgment of this Court in *Daya Shanker Rai v. Union of India & Ors.*<sup>10</sup>, where the Court, while considering the scope of Section 74 and Rule 47, affirmed the competency of the Summary Security Force Court to try charges under Section 20(a) of the BSF Act. Specifically, in Paragraph 8 of the said judgment, the Court referred to its earlier decision in *Constable*

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<sup>10</sup> **W.P.(C) 3747/2013**  
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*Bhisham Singh v. BSF*<sup>11</sup>, and held that although Rule 47 bars summary disposal of certain charges, it does not prohibit the trial of such charges by Summary Security Force Court. The Court clarified that as long as the procedure under Section 74 is followed, including the reference to the appropriate authority under sub-section (2), the Summary Security Force Court retains jurisdiction to try such offences. It was thus contended that the petitioner's challenge to the jurisdiction of the Summary Security Force Court under Section 74(2) is devoid of merit.

**41.** It was further submitted that the decision to proceed under the Summary Security Force Court was taken after proper examination of the RoE and in accordance with Rule 51(2)(iii) of the BSF Rules. The disciplinary authority, upon reviewing the gravity of the alleged misconduct, opted for Summary Security Force Court as the mode of trial, which is a permissible course under the BSF Act and Rules.

**42.** The respondents concluded that the petitioner's challenge to the jurisdiction of the Summary Security Force Court, based on Section 46, Rule 47, Rule 59(1)(ii), and Section 74 of the BSF Act and Rules, is entirely misconceived. They reiterated that all statutory requirements and safeguards had been complied with, including the preliminary proceedings under Rule 45 and the subsequent decision under Rule 51. Therefore, the conduct of the trial before the Summary Security Force Court was lawful and justified within the scope of the BSF's disciplinary framework.

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<sup>11</sup> 2002 (8) SLR 599



### *Analysis*

43. Having heard the learned counsel for the parties and upon perusal of the record, we find it appropriate to address the distinct legal questions that arise for adjudication in the present case. The said issues shall accordingly be considered and examined separately.

### **Jurisdiction of Summary Security Force Court**

44. At the outset, several legal questions arise for consideration. These include whether the alleged act constituted a civil offence triable exclusively by a criminal court, whether a prior reference to the higher authority under Section 74(2) of the BSF Act was a mandatory procedural requirement before convening an Summary Security Force Court, and whether the discretion vested in the disciplinary authority under Section 80 of the BSF Act to opt for trial by Summary Security Force Court instead of a criminal court was validly and lawfully exercised.

45. In examining the jurisdiction of the Summary Security Force Court to try the petitioner for the alleged offence, there is no dispute that the charge pertains to a “civil offence”, and thus, falls within the category of offences triable by a Security Force Court. However, the issue is not whether the petitioner could be tried by a Security Force Court generally, but whether the trial could have been conducted *specifically* by a Summary Security Force Court. At this juncture, we do not consider it necessary to enter into the interpretative controversy urged before us as to whether there exists a legal distinction between an offence being “dealt with summarily” and being “tried by a



Summary Security Force Court”. This is because, in our view, the issue of jurisdiction in the present case is most squarely governed by the framework of Section 74 of the BSF Act, which assumes central importance.

**46.** Section 74(1) of the BSF Act confers jurisdiction on a Summary Security Force Court to try “any offence punishable under this Act”. However, sub-section (2) of Section 74 qualifies this general power by stipulating that where there is *no grave reason for immediate action*, and *a reference can, without detriment to discipline, be made* to the officer empowered to convene a Petty Security Force Court, then the officer shall only try, with such reference. This provision, in our view, prescribes a procedural threshold that reinforces the seriousness of such offences and the expectation that higher-level approval be obtained prior to trial by a Summary Security Force Court, unless the exigencies of the situation mandate immediate action.

**47.** Thus, rather than conferring unrestricted jurisdiction upon the Summary Security Force Court in relation to all civil offences, Section 74(2) imposes a conditional requirement that must be satisfied before certain categories of offences, which include those under Section 46, and they may be tried summarily. The most important condition lies in the requirement of a reference to the officer competent to convene a Petty Security Force Court.

**48.** In the present case, it is not in dispute that *vide* chargesheet dated 14.01.2004, the DIG, BSF, SHQ Jaisalmer, recorded in express terms that the petitioner was “to be tried by a Summary Security Force



Court.” This endorsement constitutes the requisite reference under Section 74(2) of the BSF Act and satisfies the jurisdictional precondition for initiating trial before a Summary Security Force Court in respect of an offence falling under Section 46. In this regard, Rule 59(1)(ii) of the BSF Rules should also be referred to, which provides that upon receiving an application for convening a court, the superior officer shall scrutinise the charge and accompanying evidence. Upon such scrutiny, the superior officer may return the case to the Commandant either for being tried by the Summary Security Force Court or for being dealt with summarily, if he considers that the matter can be adequately resolved by such modes.

**49.** When Section 74(2) of the BSF Act and Rule 59(1)(ii) of the BSF Rules are read together, it reveals that once the superior officer, having applied his mind to the gravity and evidence of the offence, grants the necessary approval for the matter to be tried by the Summary Security Force Court, the Commandant may lawfully proceed to constitute a Summary Security Force Court. In the instant case, the Commandant acted pursuant to the reference made by the DIG, and hence, the procedural precondition under Section 74(2) stands duly complied with. Consequently, we are unable to accept the petitioner’s contention that the Summary Security Force Court lacked jurisdiction to conduct the trial for want of reference or for failure to meet the threshold of urgency stipulated under Section 74(2).

**50.** Additionally, we are of the view that the discretion exercised by the DIG, BSF in opting to initiate proceedings before the Summary Security Force Court, instead of referring the matter to an ordinary



criminal court, was lawful and well-founded. The contention of the petitioner that there existed no nexus with service discipline is clearly misconceived. The alleged offence pertains to the wife of Constable Narendra Kumar Yadav, who was posted in the same Battalion as the petitioner. The proximity of the alleged victim to the Force, being the immediate family member of a serving BSF personnel, brings the incident within the domain of service-related concerns. In such circumstances, the adverse impact on discipline and unit cohesion cannot be discounted. The exercise of discretion by the DIG under Section 80 of the BSF Act must, therefore, be viewed as a legitimate and reasoned decision. Therefore, the jurisdictional challenge to the proceedings, in our considered view, is thus liable to be rejected.

### **Assessment of Review Proceedings after the Trial**

**51.** The argument advanced by the petitioner, that the testimony of Mamta Yadav could not be partially accepted for upholding the conviction on the second charge after setting aside the first charge, does not merit acceptance. On a careful reading of the record and the trial proceedings, we find that both charges: theft under Section 380 of IPC and outraging modesty under Section 354 of IPC, arose from the same incident that allegedly occurred during the night of 16.09.2003. As per the testimony of Mamta Yadav, she discovered the following morning that a sum of Rs. 2100 was missing from her purse, which was lying on the floor along with her other belongings. The assertion that the theft occurred in close proximity to the alleged act of molestation reinforces the conclusion that both charges stemmed from a single transaction.



**52.** While the Reviewing Officer, *vide* order dated 12.03.2004, affirmed the conviction on the second charge and set aside the conviction on the first charge on the ground that it was “contrary to the weight of evidence”, the order does not provide adequate reasoning or analysis to justify such bifurcation. Notably, the Reviewing Officer chose not to interfere with the sentence imposed by the Court, which further diminishes the persuasive force of the petitioner’s argument.

**53.** In our view, the dismissal of the theft charge was itself questionable, and no fault can be found in the Court’s reliance on Mamta Yadav’s testimony for sustaining the second charge. Hence, the challenge to the selective acceptance of the witness’s deposition is wholly misplaced.

### **Contentions regarding Medical Issues**

**54.** The petitioner has raised serious concerns about the legality of the Summary Security Force Court proceedings, citing his psychiatric condition and medical history. It is contended that he had been diagnosed with acute psychosis and placed in a low medical category, thereby rendering him unfit for decision-making or competent defence during trial. This, according to the petitioner, vitiated the fairness and legality of the trial.

**55.** We do not dispute the fact that the petitioner was under medical treatment for psychiatric illness and had been placed in a low medical



category at various points. It is evident that he had been referred to both civil and BSF medical facilities, and had undergone treatment for psychosis. However, we are unable to accept the conclusion that such diagnosis, by itself, would render the entire Summary Security Force Court trial unlawful or *non-est* in the eyes of law.

**56.** It is clear that at no point during the relevant period to the Summary Security Force Court proceedings was the petitioner declared insane or incapable of understanding the nature of his acts. In fact, *vide* medical report dated 16.02.2004, he was declared “fit to stand trial” by the medical authorities prior to initiation of the proceedings. The respondents have submitted, and it has not been adequately rebutted, that the petitioner was examined by a medical officer prior to the trial and was found to be medically fit to face disciplinary proceedings under the BSF Act and Rules.

**57.** The standard for disqualifying a person from facing disciplinary trial on the ground of mental illness must be rooted in the determination that the concerned person was of unsound mind or incapable of comprehending the proceedings or defending himself. Merely being placed in a low medical category, without any medical opinion declaring the person unfit for trial, is not enough to make the proceedings invalid. The record indicates that no such opinion of insanity or mental incapacity was issued by any medical authority at the time of trial.

**58.** It is further relevant to note that the petitioner participated in the trial, cross-examined witnesses, and produced two defence witnesses



in support of his case. These proceedings were conducted in a manner consistent with prescribed procedure and do not reveal, on their face, any conduct by the petitioner that would suggest an inability to understand or respond to the charges framed against him. Thus, the arguments presented by the petitioner regarding his medical condition fail to persuade

**59.** In *Vasudev Panchal (Supra)*, the Coordinate Bench of this Court did set aside the order of dismissal of a Sashastra Seema Bal personnel on the grounds of disproportionality as per the facts of that case. However, the facts in *Vasudev Panchal* are clearly distinguishable from the present case. Notably, in *Vasudev Panchal*, there was no plea or record indicating that the petitioner therein was ever declared medically insane or incapable of understanding the nature of the proceedings. The judgment, while acknowledging the petitioner's mental illness, proceeded on the basis of procedural lapses and lack of proportionality in punishment rather than on a finding of medical unfitness at the time of trial.

**60.** *Per contra*, in the present case, the records clearly establish that the petitioner was examined and declared fit for trial by a competent medical authority on the very date of the proceedings. There is no medical opinion that contradicts this finding or suggests that the petitioner was incapable of participating in the proceedings due to any mental incapacity.

**61.** Further reliance was placed by the petitioner on the decision of the Hon'ble Supreme Court in *Ravinder Kumar Dhariwal (Supra)*. In





that case, the Court held that “*the duty of providing reasonable accommodation to persons with disabilities is sacrosanct*” and that “*all possible alternatives must be considered before ordering dismissal from service.*” In our view, this obligation was adequately discharged in the present case. The petitioner was kept under medical observation, treated by both civil and BSF hospitals, and only upon being found mentally fit was he subjected to disciplinary proceedings.

**62.** Accordingly, we are unable to accept the argument that the mere presence of a psychiatric diagnosis should have prevented the Summary Security Force Court proceedings altogether. Furthermore, the arguments advanced under Section 99 of the BSF Act and Rule 127 of the BSF Rules also stand dismissed.

### **Proportionality of Punishment**

**63.** A further issue that arises for consideration is whether the punishment of dismissal from service imposed upon the petitioner was excessive or disproportionate to the alleged misconduct.

**64.** Having regard to the nature of the offence for which the petitioner was convicted, namely outraging the modesty of the wife of a fellow Constable within the same Battalion, we cannot ignore the grave implications such conduct has on the integrity, discipline, and mutual trust essential to the functioning of any armed force. The incident in question strikes at the very foundation of brotherhood that binds members of the Force and is indispensable for maintaining morale and cohesion within units stationed. If such acts, committed



within the living quarters and directed towards the immediate family of a serving BSF personnel, are not met with the strictest disciplinary response, it would send an entirely wrong message and question the institutional discipline that the Force is mandated to uphold. The punishment of dismissal awarded by the Summary Security Force Court cannot, by any stretch, be said to be excessive or disproportionate. On the contrary, it is a justified and necessary consequence of the misconduct established on record, and therefore, we find no reason to interfere with the same.

**65.** For this, we also find it important to refer to the judgment rendered by the Hon'ble Supreme Court in *Union of India & Ors. v. P. Gunasekaran*<sup>12</sup>, wherein the Court held that interference with punishment from disciplinary authority is limited, and courts must refrain from substituting their own views unless the punishment shocks the conscience of the court. The relevant portion of the aforementioned judgment warrants reproduction on its own merits:

“**19.** Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is “moral uprightness; honesty”. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral

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<sup>12</sup> (2015) 2 SCC 610  
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values.”

### ***Conclusion***

**66.** In view of the discussions above, this Court finds no infirmity in the conduct of the Summary Security Force Court proceedings. The jurisdictional requirements were met, the plea of mental incapacity is without merit, and the punishment imposed does not warrant interference.

**67.** The writ petition is accordingly dismissed.

**68.** Pending applications, if any, do not survive, and are disposed of accordingly.

**69.** No orders as to costs.

**AJAY DIGPAUL, J.**

**C. HARI SHANKAR, J.**

**AUGUST 8, 2025/gs**