



2025:DHC:8213-DB



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

*Judgment reserved on: 03.09.2025*  
*Judgment pronounced on: 17.09.2025*

+ **W.P.(C) 2942/2023 & CM APPL. 11477/2023****SARBRAJ SINGH**

.....Petitioner

Through: Mr. Abhishek Sharma, Mr.  
Harpreet Singh Kohli and Mr. Gagandeep  
Kulyana, Advs.

Versus

**UNION OF INDIA & ORS.**

.....Respondents

Through: Mr. Jitesh Vikram Srivastava,  
SPC with Mr. Rahul Kumar Sharma, GP for  
BSF

**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

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**JUDGMENT****17.09.2025****OM PRAKASH SHUKLA, J.**

1. The present writ petition is filed under Article 226 of the Constitution of India assailing: (i) the order dated 25.01.2023 issued by the Directorate General, Border Security Force<sup>1</sup>, whereby the petitioner's statutory petition under Section 117(1) of the Border Security Force Act, 1968<sup>2</sup> read with Rule 167 of the Border Security Force Rules, 1969<sup>3</sup> and the petitioner's application under Section 130 of the Act for suspension of sentence dated 19.12.2022 were

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

<sup>2</sup> "BSF Act" hereinafter

<sup>3</sup> "BSF Rules" hereinafter



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dismissed; and (ii) the conviction and sentence recorded by the General Security Force Court<sup>4</sup> on 14.11.2022, as affirmed by the Additional Director General (Western Command)<sup>5</sup> on 24.11.2022.

2. The petitioner, a former Inspector (GD) (No. 11006886), was enrolled in the BSF as of 05.07.2005 as a Sub-Inspector (GD) under the Sports Quota. He was posted to 115 BN BSF on 28.10.2010 and was later attached to Frontier HQ BSF, Punjab, as a hockey coach under the 'Prahari Bal Vikash Yojna'.

3. It is pertinent to mention that the minor victim was about 12 years old at the time of the alleged incident. She joined the BSF Senior Secondary School, Jalandhar, upon her selection for hockey coaching, and was residing in the girls' hostel located inside the BSF campus.

4. The prosecution's story in brief is that on 20.12.2021 at around 5:40 a.m., the child victim, along with five other students, went to attend the hockey coaching session at Ashwini Stadium, being conducted by the petitioner. Since the hockey field was covered with heavy fog that day, after a short period of coaching, the petitioner directed the other students to move elsewhere and, taking advantage of the situation started coaching the victim on how to practice at home during her vacations. Next, the petitioner asked the child victim whether everything was well at home. He then placed his hand on her shoulder and requested her to kiss him on the lips, to which she

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<sup>4</sup> "GSFC" hereinafter

<sup>5</sup> "ADG (WC)" hereinafter



refused. It is further alleged that the petitioner repeated the request, stating that 'I am like your father', upon which she kissed him on the cheek, following which the petitioner allegedly pressed her left breast. Following this, the child victim did not say anything, and the petitioner continued with the hockey coaching that morning.

5. It is stated that upon reaching her hostel, the child victim informed a 10th class student staying in the same hostel about the incident. Thereafter, the child victim left for School, and upon her return to the hostel, the petitioner made three calls to the landline phone of the child victim's hostel. It is alleged that in the first call, he enquired whether the child victim's parents were coming to pick her up for vacation on that day. Thereafter, around 2:30 p.m., he called again to inform her that her father would not be coming that day and asked her to report to the ground at 4 p.m. for practice. In a third call, when the child victim showed unwillingness to attend practice due to packing, the petitioner requested her to come for 5 minutes, stating that he wished to speak with her. When the child victim did not report to the ground at 4 p.m., the petitioner approached her roommate to bring her to the ground, her roommate then accompanied the child victim to the ground. Once they reached, the petitioner sent the child victim's roommate away by asking her to go to the gymnastics hall for her training. It is alleged that the petitioner asked the child victim whether she felt upset about the alleged incident, to which she replied in the affirmative, and upon being asked if she intended to continue doing so in the future, the child victim refused. It is stated that the child victim returned to her hostel after the petitioner gave her instructions not to tell anyone about the incident.



6. It is stated that the child victim told her mother about the incident when her mother arrived at the hostel to pick her up the next day at around 5 p.m. After they arrived at their house in Gurdaspur, she gave her mother a detailed account of the entire incident, and her mother subsequently told her father. The following day, the whole family of the child victim went to the BSF camp in Jalandhar to report the incident to the principal of the BSF Senior Secondary School. The incident was then reported to the IG (BSF) Punjab Frontier. The statement of the child victim was recorded by Dr. Suman Sharma (PW-8) on the same day, wherein the child victim stated that when the alleged incident occurred, they were walking on the ground, and she was unable to see the other students due to dense fog and because they were 200 meters away. Consequently, the child victim's father, Head Constable Ram Kishan of 8 BN BSF (*presently attached with 25 Bn BSF*), lodged a complaint alleging that the petitioner had sexually harassed his daughter.

7. Subsequently, disciplinary proceedings were initiated against the petitioner. The charge was heard by the petitioner's Commandant under Rule 45B of the BSF Rules for an alleged civil offence under Section 46 of the BSF Act. By Frontier IG HQ BSF, Punjab vide Order dated 14.01.2022, Dr. Neha Kaul, CMO (SG), 58 Bn BSF, was designated as the Recording Officer to prepare the Record of Evidence<sup>6</sup>. The RoE was completed where 06 prosecution witness was examined and was submitted vide letter dated 25.01.2022. Following, submission of the RoE, the Inspector General, Frontier HQ

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<sup>6</sup> "RoE" hereinafter



BSF, Punjab, referred the matter for judicial verdict by convening a GSFC vide order dated 06.06.2022 and directing that the petitioner be tried on the following charge:

<b><u>BSF Act, 1968</u></b> <b><u>Section - 46</u></b>	<b><u>COMMITTING A CIVIL OFFENCE THAT IS TO SAY AGGRAVATED SEXUAL ASSAULT PUNISHABLE UNDER SECTION 10 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT 2012</u></b>  In that he, as Ashwani Stadium (Training area), Ftr HQ BSF, Punjab on 20.12.2021 at about 0540 hrs. while performing duty as hockey coach under 'Prahari Bal Vikash Yojna' touched left shoulder and pressed left breast of xxxx (Original name withheld), a minor girl (age 12 years), daughter of No.00009782 HC Ram Kishan of 81 Bn BSF ( <i>Presently attached with 25 Bn BSF</i> ), who was undergoing Hockey Training under 'Prahari Bal Vikash Yojna' with sexual intent and thereby, committed aggravated sexual assault.
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8. Subsequently, after being arraigned by the GSFC, the petitioner was tried, where he pleaded 'Not Guilty' to the charge. However, following an evaluation of the evidence by the GSFC, the petitioner was found 'Guilty' of the charge *vide* order dated 28.06.2022 and was sentenced to 'rigorous imprisonment for five years and was dismissed from service'. That the said finding was sent for revision by the confirming authority, and the revision Court adhered to its earlier finding vide order dated 14.11.2022. The ADG (WC) confirmed the Security Force Court's findings and sentence vide order dated 24.11.2022.

9. As a result, the petitioner filed a petition post confirmation by



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ADG (WC), dated 19.12.2022, before the DG (BSF) under section 117(2) of the BSF Act seeking setting aside of the sentence imposed by GSFC and reinstatement in service within two weeks of receiving his representation. On the same day, the petitioner filed a second petition praying for suspension of sentence under Section 130 of the BSF Act before the DG (BSF). It is hereby noted that while the pendency of the above petitions, the petitioner filed a writ petition before this Court, seeking directions to the respondents to adjudicate these petitions for reinstatement and suspension of sentence. This Court vide order dated 06.01.2023 passed in W.P (C) No.133/2023, disposed of the petition by directing the respondents to adjudicate the above mentioned post-confirmation statutory petition and the application seeking suspension of sentence in a time bound manner within a period of 6 weeks.

**10.** Thereafter, in compliance with the order dated 06.01.2023 of this Court, the DG (BSF), after due consideration, rejected both the petitioner's post confirmation petition and the application for suspension of sentence vide order dated 25.01.2023. While rejecting, the DG (BSF) observed that the petitioner had a preconceived intention to take advantage of the child victim, and such an offence on a minor girl leaves a long-lasting scar on the innocent mind. It was further recorded that the child had given consistent statement, while petitioner deviated from his statement. Regarding the application for suspension of sentence, it was observed that a minimum punishment of five years was awarded and considering the nature of the offence, the case did not warrant any leniency.



**11.** Thus, aggrieved, the petitioner has filed the present writ petition under Article 226 of the Constitution of India, seeking the following relief(s):

*“i. Issue a writ of certiorari or any other appropriate writ, order or direction, thereby call the records and quash the impugned order dated 25.01.2023 passed by the Directorate General of the Border Security Force, impugned order dated 14.11.2022 passed the General Security Force Court after the revision and the confirmation order dated 24.11.2022 passed by the ADG BSF, (Western Command) and the order dated 28.06.2022 passed by the General Security Force Court.*

*ii. Issue a writ of Mandamus or any other appropriate writ, order or direction to the respondent for reinstate the petitioner in the service with all consequential benefits.*

*iii. Pass any other order in the interest of Justice.”*

**12.** Mr. Abhishek Sharma, the learned Counsel appearing on behalf of the petitioner, argued that there has been a blatant violation of Rule 45B(1)(c) of the BSF Rules, 1969, whereunder it is mandatory to afford the accused an opportunity of cross-examination before RoE. In the instant case, the petitioner was neither informed about the RoE nor afforded an opportunity to be present during the RoE, thereby depriving him of his right to cross-examine the prosecution witnesses, and as such, the said omission hindered the right of the petitioner to a fair hearing.

**13.** It is argued that procedural compliance, particularly in disciplinary proceedings within the armed forces, is not a mere formality but a mandatory requirement. Hence, non-compliance with Rule 45B(1)(c) renders the proceedings arbitrary and legally unsustainable, vitiating the entire proceedings and causing prejudice to the petitioner.



**14.** The learned Counsel submits that non-compliance with Rule 45 vitiates the entire proceeding. It is pointed out that the petitioner was neither afforded an opportunity to cross-examine nor was furnished the certificate required under Rule 45 at the time of the Recording of Evidence (RoE), thereby rendering the process illegal. Further, it has been submitted that in the impugned order dated 25.01.2023, the respondents themselves state that only Rule 48 was complied with, which amounts to a specific admission of non-compliance with Rule 45. It is further added that even the confirming authority, ADG (WC), remanded the matter to the GSFC, observing non-compliance with Rule 93(2) inasmuch as the petitioner was not given an opportunity to explain the differences between his statement at trial and during the RoE.

**15.** It is further argued that respondents claimed in paragraph 17 of their counter-affidavit that the RoE was completed in accordance with Rule 45 of the BSF Rules. However, Respondent 2 admitted in paragraph 19(a) of their order dated 25.01.2023 that no certificate under Rule 45 was provided. Therefore, the certificate that the respondent have purported to file on file with the stamp dated May 18, 2023, is manufactured.

**16.** The learned Counsel for the petitioner submits that, in terms of the rulebook issued by Eastern Command, BSF, read with the Director General, BSF's order dated 11.01.2016, whenever a sexual-harassment complaint is filed against a person subject to the BSF Act, the Internal Sexual Harassment Committee must conduct the inquiry





strictly in accordance with the procedure prescribed in the BSF Rules.

**17.** It is submitted that Ashwani Stadium, where the alleged incident occurred, is the petitioner's workplace and therefore, the petitioner is subject to the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>7</sup>. However, despite the alleged incident having taken place at the petitioner's workplace, the matter was not referred to the internal sexual harassment committee, and the conciliation proceedings could not take place causing prejudice to the petitioner.

**18.** Further reliance has been placed on the definition of "aggrieved woman" which states, "*in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent*". In light of this definition, it has been contended that the child victim is covered under its ambit and therefore the POSH Act is applicable in present case.

**19.** It is contended by the counsel for petitioner that Section 27 of Protection of Children from Sexual Offences Act, 2012<sup>8</sup>, mandates medical examination of the child irrespective of the contents of the FIR. Further, the learned counsel for the petitioner submits that, in the instant case, no FIR was registered against the petitioner, nor was the victim subjected to any medical examination. It is urged that the omission to conduct a medical examination undermines the prosecution's case.

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<sup>7</sup> "POSH Act" hereinafter

<sup>8</sup> "POSCO" hereinafter



**20.** Further, the GSFC did not consider the statement of PW-8, namely Dr. Suman Sharma who, clearly stated that the petitioner was not called during cross-examination and the report, thereby violating the petitioner's right of *audi alteram partem*. It was highlighted that the petitioner was not afforded an opportunity to cross-examine at the stage of RoE.

**21.** It is submitted that GFSC had placed reliance on the testimony of the father of the child victim, however, the same is merely hearsay evidence since the alleged incident was narrated to him by his wife and hence, it cannot be relied upon for conviction.

**22.** It is further submitted that the first person to whom the child victim disclosed the alleged incident was the class 10<sup>th</sup> student, and subsequently to her mother, and as such, both were vital witnesses to the prosecution's case, but neither was cited as witness or examined at any stage of the proceedings. The non-examination casts doubt on the credibility of the prosecution's case and invites an adverse inference under Section 114(g) of the Indian Evidence Act, 1872 i.e., Section 119(g) of the Bhartiya Sakshya Adhiniyam, 2023. It is further submitted that there are glaring contradictions in the evidence of witnesses as to the time, place and nature of the alleged incident adversely impacting their credibility and poke holes in the root of the prosecution case.

**23.** It is submitted that Section 50 of the BSF Act puts a restriction on combining the punishment of dismissal with certain other orders



prescribed under Section 48 of the said Act, wherein the punishment of dismissal from service cannot be clubbed with imprisonment. However, in the present case, the petitioner is sentenced to dismissal along with five year of rigorous imprisonment.

**24.** It was also argued before this Court that the prosecution's case is an afterthought and concocted, especially since the father of the minor girl, knowing about the alleged incident sufficiently lodged a very brief complaint leaving out the details of the incident, such as the place, time of incident or name of the petitioner despite knowing the petitioner.

**25.** Lastly, reliance was placed on *Amar Nath Gupta v Union of India*,<sup>9</sup> where the Supreme Court suspended the sentence of the petitioner and in *Vijay Pal Singh v Union of India*<sup>10</sup>, wherein this Court had suspended the sentence of the petitioner on the ground that the provisions of law and BSF Rules had not been followed during the trial process.

**26.** Per Contra, Mr. Jitesh Vikram Srivastava, learned Senior Panel Counsel<sup>11</sup>, submits that the victim was a minor girl studying in a BSF school and came under the purview of the BSF Act and Rules and does not warrant invocation of POSH Act. The matter at hand is not suitable to be referred to an internal sexual harassment committee as per the POSH Act. It is further submitted that, as the petitioner's identity and the nature of the offence committed were known, referral

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<sup>9</sup> SLP No. 427 of 2023 dated 13.01.2023

<sup>10</sup> W.P. (C) No. 15608 of 2022

<sup>11</sup> "SPC" hereinafter



to the internal committee was unwarranted.

**27.** Moreover, it is submitted under the POSH Act, the process must be set in motion by the aggrieved woman herself or her guardian. However, in the instant case the child victim's guardians (*who are BSF Personnel themselves*) consciously opted to lodge a complaint with the BSF authorities. It is submitted that the petitioner has no right to dictate the victim's choice of forum for lodging the complaint. Presently, the victim is a minor girl who was a student at the BSF school and not an employed woman in her workplace as envisaged in the POSH Act. It was contended that the petitioner is pressing for recourse to proceedings under POSH Act to settle the matter by way of monetary relief.

**28.** Further, the learned SPC submits that all requirements mentioned under Rule 45B of BSF Rules, 1969 were complied with by the respondents as on 14.01.2022 by Sh. A.S. Johal, Commandant, and that the certificate to that effect stands duly annexed. It is further submitted that even assuming non-compliance, the question whether of such a deficiency vitiates the proceedings lies with the competent authorities and is not a matter of right. Further, there was procedural compliance with Rule 93(2) after the matter was remanded by the confirming authority.

**29.** Moreover, as regards the argument of the learned Counsel for the petitioner that the petitioner having been not afforded an opportunity to cross-examine during RoE and as such the same being in violation of Rule 45B(1)(c) is concerned, the learned SPC relies on



the judgement of the Apex Court in *Union of India v Dev Singh*<sup>12</sup> to submit that irregularities preceding the initiation of court-martial proceedings do not vitiate the court-martial proceedings if the trial itself was conducted in accordance with law and the opportunity of cross-examination is afforded therein, the relevant extract is mention hereinafter:

*“3. Learned counsel then argued that the respondents having suffered court-martial proceedings in regard to which he has no grievance, it is not open to him to content that there has been violation of mandatory rules as the preliminary stage. For this purpose, he relied on the judgement of this court in **Union of India v Major A. Hussain** as also on Rule 149 of the Army Rules. We do not think that the law laid down by this Court in Hussain Case applies to the facts of the present case. In Hussain Case no objection was taken as to the violation of the mandatory Rule 22 at the time when the court-martial proceedings were initiated. The officer concerned went through the court-martial proceedings and cross-examined the witnesses at that stage, therefore, this court relying upon Rule 149 came to the conclusion that whatever irregularity was there before the stage of initiation of Court Martial, the same did not vitiate the court-martial proceedings because the said proceedings were in accordance with law and the officer in that case had cross-examined the witnesses. Therefore, replying on Rule 149 this Court held that the irregularity, if any, in the preliminary proceedings would not prejudice the delinquent officer.”*

**30.** Furthermore, the learned SPC submits that there is no obligation on the complainant to register an FIR in order for a disciplinary action to be initiated against a BSF personnel since such personnel are not placed on the same footing as an accused civilian. In the instant matter, proceedings were initiated after a complaint was lodged with the BSF authorities, and the petitioner was charged under Section 46 of the BSF Act, registration of an FIR is not required to set the law in motion.

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<sup>12</sup> (2007) 15 SCC 709



31. Furthermore, the learned SPC submits that non-production, as a prosecution witness, of the female student to whom the child victim first narrated the incident, does not impair the credibility of the prosecution evidence. The same was done in accordance with Rule 86 of the BSF Rules, 1969. It is submitted that the prosecution was given the opportunity to examine the victim herself along with her father and other BSF authorities including the principal of the BSF Senior Secondary School, to whom the complaint was made at the first instance. As far as the examination of the minor student is concerned, it is submitted that she was exempted on the request of her father as her father opined that exposure to the present case may have adverse impacts on her psychologically. It is further pointed out that the defence was given a notice regarding the same and they were at liberty to call the student as a defence witness, an option they did not choose to exercise.

32. Lastly, the learned SPC distinguishes the present case from the judgments cited by the petitioner i.e., *Amar Nath Gupta* (supra) and *Vijay Pal Singh* (supra), which have a different quantum of punishment as compared to the petitioner. The imprisonment in the abovementioned cases was not severe, rendering them eligible for suspension of their sentences. Whereas, in the instant matter, the quantum of punishment is five years rigorous imprisonment and the petitioner has only served about 10 months which does not make the petitioner fit for suspension of sentence on merits or on grounds of mercy.



33. Having heard the learned Counsel for both the parties, and upon consideration of the material on record, we are of the view that at the threshold, the scope and extent of interference of this Court under Article 226 of the Constitution of India in trials conducted by the GSFC as per the BSF Act and Rules framed therein must be understood. Recently, this Bench had an occasion to examine the said scope & extent of the same in ***Prakash chand sharma v Union of India & Ors***<sup>13</sup>. The relevant text for the same is produced

*“25. Having heard the learned Counsel for the parties, this Court has given anxious thoughts to the entire gamut of facts and the various documents referred by them during the course of hearing. This Court is of the view that before embarking on the path of deciding the present writ petition, the scope and extent of interference of this Court under the provisions of Article 226 of the Constitution of India in trials conducted by the GSFC as per BSF Act and rules framed therein, must be understood, in order to appreciate the adversarial controversy raised in this petition between the parties concerned. Recently, this Bench had an occasion to examine the said scope & extent in the case of “Kiran Kumar v Union of India” (Supra) vide judgment dated 25.07.2025. This Court in the said judgment, relied on the Judgment of the Apex Court in the case of ‘B.C. Chaturvedi v UOI & Ors and an earlier judgment dated 13.07.2025 passed by a Coordinate Bench of this Court in the matter of Deshraj v Directory Gen. BSF & Anr which had extensively relied on a judgement passed by a Division Bench of the Gauhati High Court in Director General, BSF & Ors. v Iboton Singh (KH).*

*26. What is discernible from these Judgments is that the scope of this Court while exercising its power of Judicial Review under Article 226 of the Constitution of India is circumscribed and limited. Further, this Court cannot be oblivious to the fact that the entire procedure of a trial by GSFC is provided in the BSF Act and the Rules made thereunder and since the provisions contained therein require that the findings reached, and the sentence passed, against an accused by a GSFC, is available for re-consideration by a competent authority for the purpose of pre-confirmation by the Director General, BSF in terms of section 117(1) of the BSF Act and Post-confirmation by the Ministry of Home Affairs under*

<sup>13</sup> 2025:DHC:7429-DB





*Section 117(2) of the BSF Act, 1968. Therefore, there exists various layers of adjudication and it is only after these layers of confirmation of the findings and sentence are exhausted that the findings become final. Thus, this Court finds that the scope of judicial review in these kinds of cases, becomes severely restricted and can be exercised in exceptional cases only.*

*27. According to this court, this restricted exercise has to be for the limited purpose of determining as to whether the proceedings of the UGSFC have been conducted in accordance with the requirement of law or as to find out if there had been any violation of the principles of natural justice, while conducting the trial, so as to vitiate the proceedings. The test to be applied by this Court while examining the conduction of Trial is also limited, with a caveat that, even if the findings reached by the GSFC are found to be perverse and/or contrary to, or in violation of, the provisions of the law relevant thereto, this Court is only to interfere when the infraction has resulted, in the failure of justice. The rule being that, if the conclusion or finding be such as no reasonable person would have ever reached, this Court may interfere with the conclusion or the finding.*

*28. Further, this Court, while exercising its power of judicial review in GSFC orders, does not sit on the findings of a GSFC or on the proceedings of a GSFC as an appellate authority and re-appreciate the findings for the purpose of determining if the evidence were sufficient for the conclusion reached. The findings of facts arrived by the GSFC are final in nature as it being the master of the relevance, admissibility or weight of the evidence lead during the Trial. Thus, this Court, while exercising its power of judicial review is reminded of its self-imposed limitation of restrictive intrusion only when the conclusion arrived by GSFC is based on no evidence. Further, neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to these trials. So long as the findings are supported by some legal evidence, the adequacy or reliability of such evidence is not a matter which can be permitted to be canvassed before the High Court in proceeding for a writ under Article 226 of the Constitution, reliance in this regard can be placed on the judgement of State of Andhra Pradesh & Ors. v Chitra Venkata Rao of the Apex Court”.*

**34.** Therefore, it is safe to conclude from the above reading that the scope of judicial review in these types of cases is extremely limited and can only be used in exceptional cases involving violations of the





rule of law.

**35.** As far as the present case is concerned, it is our view that the plea of denial of cross-examination during the RoE under Rule 45B(1)(c) does not, by itself, vitiate the subsequent trial where full opportunity of cross-examination was afforded before GSFC. This also aligns with the submission of the learned SPC who relies on *Union of India v Dev Singh* (supra), to submit that the irregularities prior to initiation of court-martial proceedings do not vitiate the same if the trial is otherwise lawful and opportunity of cross-examination is awarded. A bare perusal of the record shows that the petitioner cross-examined witnesses during the GSFC trial, satisfying the requirement thereof that was omitted in the preliminary stage, and the same does not taint the trial proceedings, as the trial is done in accordance with law.

**36.** Moreover, the failure to refer the matter to the internal complaints committee under the POSH Act, 2013, does not, by itself, constitute a gross procedural lapse. Even if the child victim falls within the definition of an “aggrieved woman” under Section 2(a), the complaint mechanism under the POSH Act, 2013, is to be invoked by the choice of the aggrieved woman or her guardians. In the light of the present case, the child victim and her parents made a conscious decision not to refer the matter to the internal sexual harassment committee and instead chose to file a complaint with the BSF authorities, which cannot be faulted with nor it in any manner caused prejudice to the rights of the petitioner.



37. We also do not agree with the contention of learned counsel for the petitioner that Section 50 of the BSF Act puts a restriction on combining the punishment of dismissal with certain others prescribed under Section 48 of the said Act wherein the punishment of dismissal from service under Section 48 (1) (c) cannot be clubbed with imprisonment. A plain reading of both the sections express that the GSFC can lawfully award imprisonment together with dismissal from service. Section 50 allows dismissal to be awarded **in addition to** any other punishment and then to add any one or more of the punishment specified in clauses (e) to (l). In addition to this, Section 51 even assumes that a person can be sentenced to imprisonment combined with dismissal, which leaves no doubt that there is no such restriction on combining punishment of dismissal with certain other prescribed punishment under section 48 of the act. The above mentioned sections are reproduced below for perusal.

*“48.(1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following, that is to say:-*

*(c) dismissal from the service;*

*50. A sentence of a Security Force Court may award **in addition to**, or without any one other punishment, the punishment specified in clause (c) of sub-section (1) of section 48, and any one or more of the punishments specified in clauses (e) to (l) (both inclusive) of that sub-section.*

*51. **When on active duty any enrolled person has been sentenced by a Security Force Court to dismissal or to imprisonment whether combined with dismissal or not**, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of imprisonment if any”.*

38. As far as the submission of the petitioner is concerned that



every prosecution witness in the present case is a hearsay witness, and such hearsay evidence is inadmissible and any conviction resting solely on hearsay evidence is liable to be set aside unless it falls within a well-recognised exception. It is to be noted that the main prosecution witness here is the victim, whose testimony is direct and does not constitute hearsay evidence. Additionally, her father, her school Principal where the incident occurred and other BSF authorities were also examined to corroborate the prosecution's case. As to the petitioner's contention that there are contradictions regarding material particulars such as time, place, and sequence of events rendering the case unreliable, the material on record does not disclose such glaring inconsistencies warranting the dismissal of the prosecution case altogether. In offences of sexual assault, the consistent position of law is that the testimony of the victim alone can suffice for conviction provided it gains the confidence of the Court and remains materially unshaken and corroboration of the same is not a sine qua non and minor inconsistencies do not erode reliability. The Hon'ble Apex Court in the case of *State of Punjab Vs. Gurmit Singh*<sup>14</sup>, while dealing with the case of rape of a minor, had held that the evidence of the victim of sexual assault is sufficient for conviction and does not require any corroboration unless there are compelling reasons for seeking the same. To the same effect is the judgment of *Ganesan v State*<sup>15</sup>, wherein the Supreme Court, while dealing with a case of sexual assault of a minor, held that the sole testimony of the victim, if found worthy of credence and reliable, requires no corroboration and may be sufficient to invite conviction of the accused.

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<sup>14</sup> (1996) 2 SCC 384

<sup>15</sup> (2020) 10 SCC 573



39. Further, this Court cannot be oblivious to the provision of Section 29 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), which creates a presumption of guilt against the accused once the foundational facts of the case stand established. A 3-Judge Bench of the Supreme Court in *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*<sup>16</sup>, has held that Section 29 comes into play once such foundational facts are proved. The Hon'ble Court held as follows:-

“35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the Pocso Act. Section 5 of the Pocso Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the Pocso Act defines what penetrative sexual assault is...”

40. In the present case, from a perusal of the evidence brought on record, there is no dearth of doubt that the prosecution was successful in establishing the foundational facts of the case, whereas the petitioner neither produced any relevant witness nor anything was brought on record during the cross-examination, which could unsettle or create a dent to the foundation built by the prosecution. Both the child victim (PW-02) and her father (PW-01) have testified against the culpability of the petitioner and their version cannot be doubted. Most of the objections raised by the petitioner are technical in nature and has nothing to do with the quality of evidence, which has come on record against him. Further, this Court finds that the heinous act of sexual harassment of a girl student (who is also a minor) by a sports

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<sup>16</sup> (2025) 2 SCC 399



teacher would figure quite high in the list of offences of grave nature since it has far-reaching consequences, which impact more than just the parties to the proceeding and the said gravity stands multiplied in the case of a disciplined force like the BSF.

**41.** In our considered view, the present petition is liable to be dismissed as no grounds are made out under Article 226 for interference with the GSFC's findings of guilt, sentence or with respect to the findings in the post confirmation petition. The alleged lapses in the ROE under Rule 45B(1)(c) do not vitiate a subsequently lawful GSFC trial where an effective opportunity of cross-examination was afforded to the petitioner. Moreover, the evidence of direct testimony of the victim cannot be displaced by the non-examination of an additional witness or by immaterial discrepancies.

**42.** Accordingly, the writ petition stands dismissed. All pending application(s), if any, are also disposed of.

**OM PRAKASH SHUKLA, J.**

**C. HARI SHANKAR, J.**

**SEPTEMBER 17, 2025/AT**