$~34

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

\+ W.P.(C) 6319/2023 & CM APPL. 24814/2023

KIRAN KUMAR .....Petitioner

Through: Mr. Tarun Rana, Mr. Rakesh Kumar Singh, Mrs. Reena Gupta and Mr. Sahir Gahlot, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Pratima N. Lakra, CGSC along with Mr. Chandan Prajapati & Mr. Shailendra Kumar Mishra, Advs.

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

JUDGMENT (ORAL)

% 25.07.2025

OM PRAKASH SHUKLA, J.

[The name of the complainant and her mother has been anonymized, for obvious reasons.]

1. The petitioner has filed the present petition assailing his dismissal from service and conviction under Section 376 and Section 468 of the Indian Penal Code, 1860[1] by the General Security Force Court[2] constituted under the Border Security Force Act, 1967[3], wherein initially he was sentenced to undergo rigorous imprisonment for a period of two years. However, subsequently on revision by the

[1] "IPC", hereinafter
[2] "GSFC", hereinafter
[3] "BSF Act", hereinafter

GSFC, the sentence was enhanced to rigorous imprisonment for a period of 10 years.

2. Shorn off unnecessary details, the facts as noted from the petition would be that the petitioner, an Ex Constable (GD) bearing No. 021215166 was enrolled in the Border Security Force[4] on 1st June, 2002 as Constable (GD) and after completion of his basic training (BRT) from BTC and BSF Hazaribagh, he joined 162 Battalion, BSF since 27th August, 2003, which had its headquarters at Thrissur, Kerala.

3. As per the substratum of the matter, while the petitioner was deployed under the Frontier Headquarter, BSF, Odisha, a complaint came to be filed by one *****, Mahila Constable 184 Battalion, BSF, (attached with SHQ, BSF, Trivandrum)[5]. The contents of the complaint alleged that on 26th November 2019, the petitioner, who at that point of time was deployed for campus security duty at SHQ BSF Trivandrum, had established physical relationship with the complainant by giving her false promises of marriage, while she was working as an Assistant in Establishment Branch of SHQ BSF Trivandrum.

4. As per the complaint, the petitioner, although married, provided a fabricated death certificate of his wife namely Smt. Nisha Verma to the complainant in furtherance of the said relationship. It is alleged that both of them spent a night together in a hotel at Kovalam (Kerala) and engaged in consensual sexual activities on 27th November, 2019

[4] "BSF", hereinafter
[5] "Complainant", hereinafter

and 12th October, 2019. Further, allegations of harassment, blackmail and threats of morphing of pictures were also made in the said complaint against the petitioner.

5. Although, the aforesaid complaint was initially inquired into by the Sexual Harassment Inquiry Committee of Sector HQ, BSF, Trivandrum, however, the Committee after conducting inquiry found that the incident did not constitute to be a case of sexual harassment of a woman at workplace and rather was a case of cheating on false promise of marriage as well as of cybercrime. Accordingly, the Committee recommended that the case either be transferred to a Cyber Cell to ascertain facts and suggest disciplinary actions against the petitioner or be transferred to the administrative authority which may take appropriate actions as it deemed fit. Apparently, the said inquiry proceedings were finalized with the remarks of the Inspector General, Odisha Frontier, BSF on 6th May, 2020 and as per his final remarks, the petitioner was found to have been indulged in cheating, forgery and extra-marital affair with a woman employee of the force, which tantamounts to an offence for which he was liable for disciplinary actions under the BSF Act and Rules.

6. Thus, the complaint came to be inquired into by a Court of Inquiry[6] constituted by the Commandant of 162 BN BSF *vide* an order dated 25th August, 2020 and on the basis of the opinion of the COI dated 8th October, 2020, disciplinary action was initiated against the petitioner under Section 45 of the Border Security Force Rules, 1969[7]. Subsequently, the Commandant *vide* an order dated 11th December

[6] "COI", hereinafter
[7] "BSF Rules", hereinafter

2020, remanded the petitioner for preparation of Record of Evidence[8], in accordance with the Rule 48 of the BSF Rules and charges under Sections 376, 463 and 468 of the IPC. Apparently, on advice of the Law Branch, Frontier Headquarter HQ (Spl Ops), BSF, Bangalore an Additional ROE was also prepared and after due consideration of the case, an application under Rule 52 of the BSF Rules was submitted to Frontier Headquarter (Special Ops), Odisha through SHQ BSF, Trivandrum to convene Security Force for the trial of the petitioner.

7. Records reveal that the ROE was followed by convening order dated 1st June, 2022, for holding GSFC against the petitioner with effect from 9th June, 2022 on the following two charges:

First Charge BSF Act-1968 Section-46	**COMMITTING A CIVIL OFFENCE, THAT IS TO SAY RAPE PUNISHABLE U/S 376 OF IPC** In that he, at Kovalam on 27.09.2019 and 13.10.2019, had sexual intercourse with ***** CT (Mahila) of 184 Bn BSF, attached with SHQ BSF Trivandrum by giving false promise to marry her.
Second Charge BSF Act, 1968 Section- 46	**COMMITTING A CIVIL OFFENCE THAT IS TO SAY FORGERY FOR PURPOSE OF CHEATING PUNISHABLE U/S 468 OF IPC.** In that he, at SHQ BSF Trivandrum during the month of Sept/Oct 2019, made himself a false/forged Death Certificate of his wife, namely Smt. Nisha Verma with intend to cheat ***** CT (Mahila) of 184 Bn BSF (attached with SHQ BSF Trivandrum) by showing himself as a widower.

8. The petitioner was tried on both the aforesaid charges and in the said GSFC trial, on being arraigned by the charges, the petitioner

[8] "ROE", hereinafter

pleaded 'Not Guilty' to the charges. Thus, in order to prove their case, the prosecution examined 11 witnesses and after a perusal of the evidence on record, the GSFC found the petitioner guilty of both the charges and as such convicted him under Section 376 and Section 468 of the IPC, and as such *vide* an order dated 29th June, 2022, the petitioner was dismissed from service and sentenced to two years' rigorous imprisonment under Section 46 of BSF Act.

9. In the intervening period, a writ petition being ***W.P.(C) 13066/2021*** came to be filed by the petitioner, which was subsequently withdrawn *vide* an order dated 6th July, 2022, with liberty to avail remedies as available to him as per law, thereinafter the petitioner preferred a representation before the IG, BSF, FHQ Frontier Headquarter Bangalore. Subsequently, the petitioner preferred a pre-confirmation petition under Rule 142 of the BSF Rules dated 20th August, 2022, challenging the findings of the GSFC.

10. The petitioner, again preferred a second writ petition being ***W.P.(C) 13342/2022*** for time bound adjudication of the aforesaid statutory petition, wherein *vide* an order dated 14th September 2022, this Court directed the respondents to decide the statutory petition within a period of six weeks. Thereafter, the GSFC revised its sentence in accordance with the directions of the confirming authority, and by order dated 28th November, 2022, sentence which was imposed of the petitioner for two years was enhanced to ten years' rigorous imprisonment.

11. The petitioner preferred another petition dated 28th December 2022 under Section 117(1) of the BSF Act r/w Rule 167 of the BSF

Rules against the aforesaid order of the GSFC passed in revision trial and subsequently, also filed a 3rd Writ Petition being ***W.P.(C) 497/2023*** for time bound adjudication of the aforesaid statutory petition, wherein *vide* an order dated 17th January, 2023, this Court directed the respondents to decide the statutory petition within a period of six weeks.

12. In the meantime, the pre-confirmation petition came to be dismissed by the confirming authority on 17th February 2023, wherein the findings and sentence were confirmed by the competent authority by giving an observation that the findings of the GSFC are based upon evidence on record and the sentence awarded is legal and commensurate with gravity of offence. Accordingly, the petitioner preferred a post-confirmation statutory petition dated 7th March, 2023 under Section 117(2) of the BSF Act read with Rule 167 of the BSF Rules.

13. The petitioner also preferred a petition dated 7th March, 2023 under Section 130 of the BSF Act for suspension of sentence. However, during the pendency of the aforesaid petitions, the Petitioner again preferred a writ petition being ***W.P.(C) 3786/2023*** for time bound adjudication of the aforesaid statutory petition, wherein *vide* an order dated 24th March, 2023, this Court directed the Respondents to decide the statutory petition within a period of four weeks.

14. In view of the directions of this Court, the Director General[9], BSF, *vide* an order dated 12th April, 2023, rejected the aforesaid statutory decision being devoid of merits.

[9] "DG", hereinafter

15. Thus, dissatisfied by the order passed by the DG and the other orders as enumerated herein below, the petitioner has filed the present writ petition under Article 226 of the Constitution of India, challenging and seeking setting aside of the following orders:

> "(i) Issue a writ of Certiorari or any other appropriate writ, order or direction thereby calling for records and quash the impugned order dated 29.06.2022 (Annexure-P-1), order dated 28.11.2020 (Annexure-P2), order dated 17.02.2023 (Annexure-P3), order dated 20.02.2023 (Annexure-P4), order dated 12.04.2023 (Annexure-P5) passed by the DG BSF.
> (ii) Issue a writ of Certiorari or any other appropriate writ, order or direction thereby directing the respondent DG BSF to reinstate the petitioner in service with all the consequential benefits.
> (iii) Pass any other order this Hon'ble Court deems fit in the interest of justice."

16. Mr. Tarun Rana, learned Counsel appearing for the petitioner argued that the complainant shared cordial relations with the petitioner and there was no occasion for any allegation to be leveled against the petitioner. According to him, the first complaint dated 26th November, 2019 lodged by the complainant does not mention allegations of rape or physical relationship.

17. The learned Counsel has strenuously argued that it was because of the nature of the offences mentioned in the complaint, the proceedings were initially conducted before the Women Harassment Committee of BSF. He drew this Court's attention to the statements recorded during the said proceedings, wherein according to him, the complainant stated that she had engaged in sexual relations with the petitioner only once and that it was consensual and that she was not

pressurized by the petitioner for any sexual favours by taking advantage of his posting and presence in the Establishment Branch.

18. The learned Counsel has strongly relied on the recommendation of the Committee, which has held that incident was not a case of sexual harassment but a case of cheating on false promise to marry and cyber crime, for which he says that there was no proof nor any witnesses, except the CD of recorded conversation. According to the learned Counsel, at best the case ought to have been referred to the Cyber Crime, but the respondents wrongly initiated the COI. Even in the said COI, a fresh inquiry was made into complaint dated 26th November, 2019, without considering the recommendation and proceedings of the Women Harassment Committee.

19. The learned Counsel has referred to the various questions and answers recorded during the COI to argue that most of the answers support the innocence of the petitioner. He has also submitted that, although there were certain improvement in the statements, inasmuch as she initially stated before the Committee that she had physical relations with the petitioner only once, but later she claimed that it occurred twice, the second being at a hotel in Kovalam, these inconsistencies, however, by and large extent strengthen the petitioner's case.

20. According to the learned Counsel, the findings recorded by the COI, invariably states that the actions of the petitioner to be an act of cheating and having illicit relationship with another woman, amounting to adultery. He states that while the act could be immoral, but could not be rape as during inquiry, COI has found even the

complainant to be blameworthy and recommended disciplinary actions against the petitioner as well as the complainant.

21. It has been further submitted by the learned Counsel of the petitioner that even in the GSFC proceedings, when the complainant was examined as PW-2, she admitted that although the death certificate had been provided to her by the petitioner, but the same was not filed by her along with the complaint dated 26th November, 2019. Thus, according to the learned Counsel, the veracity of the death certificate could not be proved as the source from where the printout had been taken has not been proved.

22. He submits that there had been material contradictions in the statements of the complainant at various stages during the proceedings and according to him, the statements do not inspire any confidence. Further, he has sought to challenge the veracity of the complaint as allegedly the same had been drafted by some Counsel. According to him, the offence of rape has not been proved and at best the incidence was of a consensual physical relationship between two adults. He has vehemently contested the enhancement of corporal punishment from the initial two years to ten years in revision and has stated that it was done in a mechanical and arbitrary manner.

23. Per contra, Ms. Pratima N. Lakra, learned CGSC appearing for the respondents, submits that the issue is no longer *res gestae* that this Court exercising its jurisdiction under Article 226 of the Constitution, has extremely limited power of judicial review in GSFC proceedings. She points out that there are only three broad principles under which these orders passed by the GSFC can be interfered with, which are:

(i) Patent violation of natural justice

(ii) Lack of jurisdiction

(iii) Manifest perversity

and as such relies on the following judgments:

i. ***Ram Kishan v Govt. of NCT of Delhi***[10],

ii. ***Indian Oil Corporation v Ajit Kumar Singh***[11],

iii. ***Sumit Sangwan v Union of India***[12].

24. The learned CGSC has buttressed her submissions on the premises that GSFC trial was conducted strictly in accordance with the BSF Act and Rules, wherein 11 witnesses were examined and almost 37 documents have been exhibited. According to her, the petitioner was awarded full opportunity of defending himself and no violation of natural justice or legal procedure has been demonstrated.

25. She further contends that the GSFC has meticulously analyzed the oral and documentary evidence, and the findings arrived are detailed, well-reasoned and based on corroborated facts and as such the impugned order does not call for any interference by this Court. In her submission, there was no procedural irregularity or arbitrariness and, in any case, this court may not override or dilute a conviction rendered by a competent authority/GSFC after full trial.

26. Ms. Lakra has controverted the grounds of the petitioner, by submitting that the statement of the complainant has been narrated and mentioned out of context. According to her, the purported consent that

[10] **W.P.(C) 6822/2011**
[11] **Civil Appeal No. 3663/2023**
[12] **W.P.(C) 13248/2022**

is being claimed by the petitioner for having a physical relationship is invalid in law inasmuch as the same was obtained by deceit and fraud, wherein admittedly the petitioner misrepresented his marital status by forging the death certificate of his living wife.

27. The learned CGSC has submitted that any inducement with false promise of marriages vitiates the consent under Section 90 of the Indian Evidence Act, 1872 and falls squarely within Explanation (ii) of Section 375 of the IPC. Reliance is placed on the judgment of the Supreme Court in ***Pramod Suryabhan Pawar v The State of Maharashtra***[13]**.**

28. The learned CGSC has sought to controvert the ground of material contradictions in the statement of complainant by relying on the judgment of the Supreme Court in ***Subodh Nath & Anr. v State of Tripura***[14], to buttress her submissions that evidence cannot be discarded only on the ground of some discrepancy in the evidence of the witnesses as this can be due to various reasons including normal errors of observation, loss of memory, mental deposition and the like.

29. She relied on the admitted relationship between the complainant and the petitioner and corroboration of the hotel records with the CDR details of the mobile numbers to highlight that the GSFC's findings of the guilt of the petitioner is based on cogent evidence, corroborated documentary records and admissions of the petitioner.

30. Thus, according to her, the omnibus plea of consensual

[13] **2019 (9) SCC 608**
[14] **2013 (4) SCC 122**

relationship sought to be argued by the petitioner is wholly misconceived defense, contrary to both facts and settled legal principles.

31. It has been further submitted that the scope of Women Harassment Committee is limited to harassment of women at workplace and the findings of Women Harassment Committee are not binding on the statutory GSFC proceedings under the BSF Act. According to her, the findings of the Women Harassment Committee support the version of the complainant as it termed the petitioner's conduct as cheating on a false promise of marriage, which forms the basis of criminal liability under Sections 376 and 468 of the IPC.

32. As regards to the contention of the learned counsel for the petitioner that no disciplinary proceedings were initiated against the complainant, she has submitted that there is no concept of negative parity in criminal law and in any case, the offences and rules are different for both the petitioner and the complainant, wherein the act of the petitioner against the complainant involved intentional deceit through fabrication of death certificate and physical exploitation under false promise of marriage.

33. As regards to the admissibility of the certificate under Section 65B of the Indian Evidence Act is concerned, the learned Counsel has relied on the judgment of the Supreme Court in ***Arjun Panditrao Khotkar v Kailash Kushanrao Goratiyal***[15]. Further, with regard to the enhancement of the quantum of punishment imposed on the petitioner,

[15] **2020 7 SCC 1**

the learned Counsel has taken this Court to Section 116 of the BSF Act, to submit that the necessary power has been vested with the authorities and explained that, in view of the minimum sentence prescribed for the offence of rape under Section 371 of IPC, the petitioner was rightly punished and sentenced upto ten years of imprisonment with termination of his service from the Force and accordingly, prays for dismissal of this writ petition.

34. Having heard the learned Counsel for the parties, and taking into consideration 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 Act and rules framed therein, must be understood, in order to appreciate the adversarial controversy raised in this petition between the parties concerned. Recently, a Coordinate Bench of this Court in the matter of ***Deshraj v Director Gen. B.S.F. & Anr***[16]**,** *vide* its judgment dated 13th May, 2025 profitably referred to a judgment passed by a Division Bench of the Gauhati High Court in ***Director General, Border Security Force & Ors. v Iboton Singh (KH)***[17] in the following words:

> *"25. Before opining on the conflicting claims as raised by the parties, it is relevant to note the settled position in law that the proceedings before the SSFC are not open to be reviewed by this Court in the manner of an appellate forum. The scope of interference of this Court under Article 226 of the Constitution of India is circumscribed. We may quote the relevant extract from the* ***Director General, Border Security Force*** *(supra), which reads as under:-*
>
> *12. Since the entire procedure of a trial by SFC is*

[16] **W.P.(C) 768/2007**
[17] **2007 SCC OnLine Gau 419**

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 and accused by a SFC, be considered by a competent authority for the purpose of confirmation thereof, such confirmation of the findings and sentence by such an authority shall be final and shall not be, ordinarily, interfered with by invoking the power of judicial review under article 226. Though it is true that notwithstanding the finality attached to the proceedings of a SFC, which stands confirmed by a competent authority, the High Court shall not, ordinarily, exercise its power of judicial review by invoking article 226, the fact remains that constitutionally, there is no limitation, on the power of the High Court, to examine, under article 226, if there has been any infraction of the provisions of the relevant enactments resulting into miscarriage of justice. Thus, for the limited purpose of determining if the proceedings of a SFC have been conducted in accordance with the requirements of the law, the High Court's power, under article 226, would always remain available. The power, under article 226, will also be available to find out if there has been violation of the principles of natural justice, while conducting the trial and whether such violation has vitiated the entire proceedings. The power of judicial review, so exercisable, does not, however, empower the High Court, if one can point out, to sit on the findings of a SFC or on the proceedings of a SFC as an appellate authority and re-appreciate the findings for the purpose of determining if the evidence were sufficient for the conclusion reached. However, when the findings reached are found to be perverse and/or contrary to, or in violation of, the provisions of the law relevant thereto and if such infraction has resulted, in the opinion of the High Court, failure of justice, it becomes the duty of the High Court to step in under article 226 and undo the wrong. If the High Court sits over the findings of a SFC as if it is sitting as an appellate authority, then, such an approach of the High Court would amount to overstepping its jurisdiction."

35. Thus, this Court is clear in its mind that, while exercising its

power under Article 226 of the Constitution against the proceedings or orders passed pursuant to the GSFC proceedings, which are conducted under the BSF Act, it does not act as an appellate Court, nor is it permitted to re-appreciate the evidence. This Court while entertaining its supervisory jurisdiction in this Writ Petition is basically exercising its power of judicial review which itself enjoins upon and confines its scope to examine only the correctness of the decision making process and the fairness of the procedure adopted and does not examine the merits of the decision *per se*. As to the extraordinary circumstances, in which this Court can interfere with the conclusion or the finding of the GSFC proceedings and the extent to which it can mould the relief, the Supreme Court in the celebrated judgment of ***B.C. Chaturvedi v UOI*** & ***Ors.***[18], has invariably delineated the limited scope of judicial review in the following words:

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the*

[18] **(1995) 6 SCC 749**

> *delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."*

36. Thus, it is decipherable from the long list of precedents holding that, where a Court Martial or a departmental proceeding, if the inquiry is otherwise properly held, it is the said authorities, who are the sole judges of facts. 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 a proceeding for a writ under Article 226 of the Constitution. Reliance in this regard is placed on the judgment of the Supreme Court in ***State of Andra Pradesh & Ors. v Chitra Venkata Rao***[19].

37. Further, a finding of fact recorded by these authorities cannot be challenged on the ground that the relevant and material evidence adduced before them was insufficient or inadequate to sustain the finding. The adequacy or sufficiency of evidence led on a point and the inferences of fact drawn from the said findings falls within the exclusive jurisdiction of the said departmental authorities. Reliance in this regard is placed on the judgment of the Supreme Court in ***Syed Yakoob v K.S. Radhakrishnan***[20].

38. In contradiction to the aforesaid precedent, this Court cannot be oblivious of the fact that the Supreme Court, in ***Bharti Airtel Limited***

[19] **(1975) 2 SCC 557**
[20] **1963 SCC OnLine SC 24**

v A.S. Raghvendra [21], has held that the power of the High Court to re-appraise the facts, cannot be set to be completely impermissible under Article 226 and 227 of the Constitution. The Supreme Court while putting a caveat to the said power clarified that in re-appraising the facts, there must be a level of infirmity greater than ordinary, in the said departmental or Court Martial or Tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. Thus, a balance has to be struck between both the competing powers, with the aforesaid legal mandate. In other words, even if any infirmity is noted in any decision of GSFC, this court can be called upon to interfere, only, if the infirmity complained of, is greater than ordinary in the judicial sense.

39. As far as the present case is concerned, the first contention of the learned Counsel for the petitioner, regarding allegation of rape having been never proved and at the most the same to be construed to be a consensual relationship between two adults of matured age is concerned, this Court finds that there is cogent evidence on record to show that the petitioner and the complainant had met each other at Kovalam, Trivandrum on 27th September, 2019 and 13th October, 2019. In this regard, the evidence brought on records points out that;

(i) The complainant (*****) is a widow of a BSF employee, who was enrolled in BSF in the month of December 2012 on compassionate basis and has a 14 years old girl child. She joined SHQ BSF Trivandrum, Kerala on attachment in the month of June 2019 and had been working with the

[21] **(2024) 6 SCC 418**

Establishment Branch, SHQ BSF Trivandrum since then.

(ii) The petitioner was also in the same office and being acquainted with the work was asked to guide the complainant in the office functioning.

(iii) Admittedly, both the petitioner and the complainant due to their official engagement in the same establishment, knew each other.

(iv) The petitioner misrepresented that his wife has also expired after delivery of his second issue and that he is a widower and gave the complainant false promises of marriage, so that they both can raise their children together. It is on record, that the complainant had also inquired about his wife from him, so as to know how she had expired and also asked for her death certificate.

(v) The accused showed her the death certificate of his wife- Smt. Nisha Verma, in his mobile.

(vi) The complainant, who was examined as (PW-2), could not believe that any person would make false death certificate of his living wife, so she trusted the petitioner and got involved with him. As she was sure that the petitioner would marry her, she agreed to go to a hotel along with him.

(vii) On 27th September, 2019, they went near Kovalam Beach (Rock N Beach) in a car and went to a hotel room (Room No. 305) and had stayed there that night.

(viii) The defence, although sought to set up a plea of *Alibi* i.e. the petitioner was present somewhere else except the place of alleged offence at the relevant time of alleged offence on 27th September 2019, however, this plea was merely an

afterthought and was not taken at the time of framing of charges i.e. hearing under BSF Rule 45 which the accused omitted.

(ix) Anyhow, the defence came with this plea very late during the trial only and after closing of the case for the prosecution.

(x) In any case, the GSFC disbelieved the version of defence that the petitioner went to Nagarcoil and Kanyakumari on 27th September, 2019 as it has miserably failed to produce any iota of evidence in this regard. Whereas, the prosecution has established the fact that the petitioner was at Kovalam, Trivandrum in the intervening night of 27th/28th September, 2019 with the complainant.

(xi) Further, it has also come on record that the complainant has gone with the petitioner in Hotel Jumayira International on 13th October 2019 and had stayed in room No. 103 for about two hours.

(xii) The petitioner has also admitted in his written statement without oath and also during Court questioning under BSF Rule 93(2) that he went to room number 103 of Hotel Jumariya International at Kovalam, Trivandrum on 13th October with PW-2 to have lunch. Hence the issue in respect of 13th October, 2019 is not in dispute.

(xiii) The hotel records and CDR details have been corroborated, wherein the records produced by the Cyber Cell, Kerala Police, for both the mobile numbers of the petitioner and the complainant establish their same location on 27th September, 2019 and 13th October, 2019.

(xiv) In view of the aforesaid overwhelming evidence, the

GSFC has rightly believed that the petitioner and the complainant had met with each other in a hotel at Kovalam Trivandrum on 27th September, 2019 and also on 13th October, 2019. Hence, the meeting of the petitioner and the complainant on both the dates has been proved beyond reasonable doubt by the Respondents.

40. Further, it has also been proved that both the complainant and the petitioner, not only met with each other at Kovalam Trivandrum on 27th September, 2019 and 13th October, 2019, but also had sexual intercourse on these dates, as is apparent from the following evidence:

(i) The petitioner, in order to gain confidence of the complainant, had spoken about their marriage and also said that his father, sister and mother will come to Trivandrum for their marriage. After the trust was gained, both of them stayed in a hotel for that night and the petitioner had sexual intercourse with her (PW-2). Then on Friday, probably on 11th October, 2019, she went to her home in Kollam.

(ii) The Court disbelieved the version of defence that the petitioner had not gone to Kovalam, Trivandrum with the complainant on 27th September, 2019. Further the Court also disbelieved the version of defence that on 13th October, 2019, the petitioner only had lunch in said room of said Hotel at Kovalam with the complainant. More so, where there was no food service.

(iii) The Court believed the testimony of the complainant (PW-2) which has remained un-impeached despite extensive cross-examination which continued for three days. However,

the Court has no reason to believe the version of the defence as to why the petitioner was unable to have sexual relations with the complainant despite being alone with complainant in hotel rooms, once for entire night on 27th September, 2019 and then on 13th October, 2019 for about two hours.

41. This Court having found that both the petitioner and the complainant, not only met each other at Kovalam, Trivandrum on 27th September, 2019 and 13th October, 2019, but also had sexual intercourse on these dates, then the third issue remains, as to whether the consent for the said establishment of physical relationship was tainted with false promise to marriage. This Court while shifting through the evidence brought on record, finds that:

(i) That, the petitioner had obtained consent of the complainant (PW-2) for sexual intercourse by giving her false promise of marriage.

(ii) The Court believed the statement of PW-2 that when she was in physical relationship with the petitioner, once she had also asked the petitioner to intimate the DIG, SHQ BSF, Trivandrum about their proposed marriage, but the same was denied by the petitioner.

(iii) The Court also believed the statement of PW-6/*****, mother of PW-2, who has corroborated the statement of the complainant that her daughter intimated her that the petitioner is a widower and he would marry her. She has also revealed that her granddaughter was also aware that PW-2 is going to marry the petitioner.

(iv) The Court believed the testimony of PW-2, who stated

that she entered into a physical relationship with the petitioner after believing that he was a widower and when the promised her to marry. However, it was only during the time when the petitioner was on leave, she came to know that he was betraying her and then only then the Complainant started to avoid him.

(v) The Court believed that the petitioner had deceitfully promised marriage with PW-2 in order to obtain her consent to have sexual relationship with him. He also substantiated this fact that he is a widower by showing her, the death certificate of his wife-Smt. Nisha Verma.

(vi) Thus, this Court has no reason to not believe that the physical relationship was established by the petitioner on false promise of marriage and which was not only substantiated by various oral testimonies led during the trial, but also by showing the Complainant the forged death certificate of his living wife.

42. The next question, which arises for consideration by this court, is as to whether having physical relationship and false promise of marriage is proved from records, and does the same amount to rape, so as to be punishable under Section 376 of the IPC. This Court is conscious of the difference between giving a false promise and committing breach of promise. Pertinently, in cases involving false promise, the petitioner right from the beginning would not have any intention to marry the complainant and would have deceitfully induced her into physical relationship by giving a false promise to marry her, solely to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the petitioner might have given a promise with all seriousness to marry the complainant at the

time of making promise, however, subsequently the petitioner might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. Therefore, this Court is of the view that all cases of false marriages have to be assessed based on their individual facts and circumstances.

43. In the present case, it has come on record that the petitioner, had given a false promise of marriage, as he never intended to marry the complainant, as he was already married. To put this in a different manner, the purported consent for sexual relationship was obtained by the petitioner by deceit and fraud as he deliberately misrepresented his marital status and even created a false narrative of being a widower, by providing the complainant with a forged death certificate of his living wife. Apparently, the made-to-believe story concocted by the petitioner with the supporting forged certificates has tainted the consent. The learned Counsel for the respondents has rightfully in her contentions submitted that such an inducement vitiates the consent under Section 90 of the Indian Evidence Act, 1872 and falls squarely under the precincts of Explanation (ii) of Section 375 of the IPC.

44. Thus, this Court has no hesitation in holding that the plea of consensual relationship by the petitioner is ill-founded and the GSFC findings on rape is based on overwhelming cogent evidence, corroborated by documentary records, admissions and oral testimonies of the witnesses. There appears to be no disjunction between the evidence on record and the findings arrived at by the GSFC, which could persuade this Court in finding any infirmity in the impugned

order. Even, the loose contradiction in the statement of the complainant pointed by the learned Counsel of the petitioner, does not meet the threshold of being greater than ordinary infirmity in the judicial sense, so to persuade this court for any interference under Article 226 of the constitution.

45. Similarly, the second issue raised by the petitioner, relating to the charges of forgery levelled against him, inasmuch as it has been argued by him that the forgery of death certificate was never proved, so as to attract the provision of Section 468 of the IPC. This Court finds that the forgery is defined under Section 463 of IPC which reads as under:

> "Section 463- Forgery: Whoever makes any false document [or false electronic record] or part of a document [or electronic record,] with an intent to cause damage or injury, to the public or to any person, or to support claim or title, or to cause any person to part with property, or to enter any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

46. The aforesaid provision, relevant to the context says that whoever makes any false document or false electronic record with intent to support any claim or title commits forgery. As far as the present case is concerned, the petitioner in the month of September/October 2019, produced a false or forged death certificate of his wife- Smt. Nisha Verma. The Court believed that statement of PW-2 that the petitioner was convincing her in the month of September 2019 for marriage after showing himself as a widower. Then, she had also inquired about his wife and as to how she had expired and also asked for her death certificate. Apparently, the petitioner in order to justify and support his fraudulent act of being a

widower, has prepared the false certificate of his living wife. It has come on record that the forged death certificate was shown to the complainant over the mobile phone and during her statement before the Women Harassment Committee, the following statements were made, which derives the culpability of the offence of forgery against the petitioner:

> "Q.12 What prove do you have to justify your allegations?
> A. I have photocopy of both the fake death certificates and recorded telephonic conversation between me and CT. Kiran Kumar, copy of photograph shared by him.
> Q.13 Is it correct to suggest that you have preferred to indulge in sexual relationship with Ct. Kiran Kumar on 27/09/2019 believing that he would marry you as promised as he being a widower as per death certificate of his wife to you by him?
> A. Yes."

47. The Court, thus, has no choice but to believe that the petitioner in the month of September/October 2019 prepared a false/forged death certificate of his living wife, namely Smt. Nisha Verma. The Court believes that there was no other reason for the petitioner to prepare such certificate, but to cheat PW-2 by showing himself as a widower and then to make a false promise of marriage to her. Further, it is rather disturbing to note that two sets of forged death certificates have surfaced during trial of the present case and the petitioner did not even bother to explain its existence. The existence of the forged document is one thing and the admissibility of the said forged document is some other thing. Although, the petitioner had been harping upon the admissibility of the forged document and has sought to question as to the source from where the printout has been obtained, but did not take any steps to deny or explain the existence or prove that the said documents could not had been prepared by him or he could not had

taken advantage of the said forged document or the forged document surfaced is for some other purpose or reason. The Supreme Court in the case of ***Padum Kumar v State of Uttar Pradesh***[22] has held that in the absence of any explanation relating to forgery, a presumption has to be raised against the beneficiary, which in the present case is the petitioner. The benefit being to support his claim of being a widower, so as to support his false promise of marriage. The Supreme Court in the said judgement held *inter alia*:

> *"18. In the light of the evidence of PWs 1 to 3 and other evidence, the High Court rightly found that the appellant who delivered the registered envelope at the place of the complainant-PW-1 is bound to explain as to who made the alleged signature in Ex.-P4-delivery slip. In the absence of any explanation by the appellant-accused, as held by the High Court, a presumption is to be raised against the appellant who delivered the envelope as he is the only person having knowledge of the same. From the evidence of PW-3 Dr. M.L. Varshney, the prosecution has proved that the envelope contained valuable security-four Indira Vikas Patra of value of each Rs.5,000/- totalling Rs.20,000/-. Upon appreciation of evidence adduced by the prosecution, the courts below rightly recorded the concurrent findings that the appellant has forged the signature of PW-2-Devesh Mohan and the conviction of the appellant under Sections 467 and 468 IPC is based upon the evidence and the conviction does not suffer from any infirmity warranting interference."*

48. As regards the issue of admissibility of the certificate under Section 65B of the Indian Evidence Act, 1872 is concerned, this Court need not deal with the said aspect as the issue stands already settled by the Supreme Court that any electronic record can be produced along with the said certificate even at a later stage, which has been done in the present case with both the forged death certificates. In any case, this Court cannot re-assess the evidence and seek to substitute on its

[22] **(2020) 3 SCC 35**

own finding on this matter. The GSFC had intertwined various pieces of evidence before it, based on which it had come to conclusions on fact. Having done so, this Court cannot re-open the matter. These pleas are, therefore, repelled.

49. The next contention of the learned Counsel for the petitioner is as to the enhancement of the sentence from two years to ten years by the revisional authority, which according to him, has been done in a mechanical manner. However, this Court finds that the 'Revision order for assembly of General Security Force Court under the BSF Act,' has passed a very detailed and reasoned order dated 28th November, 2022, as to why the sentence already awarded by the GSFC was not commensurate and had to be re-considered after compliance of Rule 105(4) of the BSF Rules, 1969, in the following words:

> "4. While in on way intending to interfere with the discretion of the court in awarding the sentence, I, as confirming authority wish the court to take into account the following aspects while reconsidering the sentence awarded by it;-
>
> (a) In this case, the accused has been charged (1st change) u/s 46 BSF act,1968 for committing an offense punishable under section 376 of IPC, 1860 and found guilty. As per the provisions of section 376 IPC 1860, the offense of rape shall be punished with rigorous imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life, and shall be liable fine. The intention of the legislature clearly shows that in case a person is found guilty of offense u/s 376, IPC the court should not award less than 7 years of imprisonment.
>
> (b) It appears that the GSPC while deciding the quantum of sentence after finding the accused guilty U/S 376, IPC took into consideration provisions of section 46(b) of the BSF act, 1968. Section 46(6) provides that where the offense charged is one which is not punishable with death, the accused shall be liable

to suffer any punishment assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as in this act mentioned. Resultantly the court sentenced him to suffer rigorous imprisonment for the two years and dismissal from service.

(c) The court ought to have considered that application of provisions of section 46(b) to award lesser punishment were not applicable in view of the clear cut statutory mandate wherein minimum punishment has prescribed for the offence considering the seriousness of the offence and its effect on the society. Such statutory mandate ought to have been considered and adhered to by the court while deciding the quantum of punishment. However, the court has apparently overlooked this extremely crucial aspect of law. The court ought to have remembered that a rapist not only violates the victim's privacy and personal integrity but inevitable caused psychological as well as physical harm in the process. Rape is not merely a physical assault; it is often destructive of the whole personality of the victim.

(d) A harmonious reading of the section 46(b) of BSF act 1968, the amendment prescribing minimum punishment under section 376, IPC and judgements of the Hon'ble Supreme court on the issue of awarding punishment lesser than the minimum prescribed under the relevant statute would show that whenever a BSF person is tried by Security force court constituted under BSF act 1968 for having committed an offence under section 376, IPC (charged under section 46 of the BSF Act, 1968) and found guilty the security force court shall be required to award the punishment prescribed under section 376, IPC. In this regard, circular No. 1/37/14/CLO-BSF/2022/2229- 2575 dated 06.10.2022 issued from HQ DG BSF on the issue may also be taken into consideration.

5. Seen in the light of the para 4 above the sentence awarded by the courts inappropriate as the same is less that the minimum sentence prescribed for the charge of 'Rape' u/s 376 IPC. The court may, therefore, consider whether under the facts and circumstances of the case, in the light of relevant legal provisions as well as the gravity of the charge the sentence awarder by the court commensurate with the gravity of the offence of which the accused has been found guilty or otherwise.

50. The learned Counsel for the petitioner has tried to point out the anomaly between minimum punishment prescribed for the offence

punishable under Section 376 IPC in the aforesaid order with the minimum punishment awarded by the GSFC. This Court finds that the minimum punishment prescribed for an offence punishable under Section 376 IPC has been enhanced to minimum ten years from the earlier seven years with effect from 21st April, 2018. Thus, mentioning of seven years as the minimum punishment in the aforesaid revision order is merely an error and as such the GSFC after noting the latest amendment, has rightly punished the petitioner for the minimum punishment of 'ten years', as prescribed for offence under Section 376 IPC.

51. This Court has tasked upon itself to narrate the aforesaid clinching evidence against the petitioner, which has gone un-rebutted, to independently arrive at a decision that there is no infirmity in the conclusion arrived by the GSFC. Further, this Court finds that there is absolutely no material on records to show that there had been any violation of principles of natural justice or that the proceedings held against the petitioner was in any manner inconsistent with the rules of natural justice. This Court finds that the petitioner was given ample opportunities for defence and had been provided with all the documents during the trial. Further, the petitioner was also given full opportunity of cross-examination, which was spilled over to several dates. Thus, by no stretch of imagination, it can be construed that there had been any violation of principles of natural justice in any of the proceedings against the petitioner. The petitioner has failed to demonstrate any procedural unfairness or breach of natural justice.

52. It is apparent from the facts of the present case that these

disciplinary proceedings against the petitioner were initiated upon receipt of a serious complaint from the widow of an ex BSF employee, wherein it was alleged that the petitioner had deceitfully induced her into believing that he was a widower and as such established physical relationship with her on false promise of marriage, for which the petitioner even forged death certificate of his living wife. The competent authority, after due application of mind and in exercise of powers under Rule 174 of the BSF Rules, directed the holding of a COI, which was duly followed by an additional COI. Upon evaluation of the material collected during the inquiries, a *prima facie* case was found against the petitioner, warranting the holding of a record of evidence. After due scrutiny of record of evidence, the competent disciplinary authority decided to convene the GSFC, as permissible under the provisions of BSF Act and Rules. Further, the record demonstrates that the charges were framed in accordance with the BSF Rules. The GSFC after considering all the evidences on record, including oral testimony and documentary evidence, arrived at a reasoned finding of guilt. The procedural framework under the BSF Act and Rules has been duly adhered to at every stage. Thus, the findings of the GSFC are based on comprehensive evaluation of oral and documentary evidence, and do not suffer from any infirmity, illegality or perversity warranting interference by this Court under Article 226 of the Constitution.

53. This Court cannot ignore the nature of the allegations which involves grave offence of rape and forgery by a disciplined Force. The act of deceitfully inducing a woman, particularly the widow of a deceased Force member is highly deplorable. The act attributed to the

petitioner is highly condemnable and militates against the standards of discipline, integrity and the honour expected of the Uniformed Services and as such the quantum of punishment appears to be commensurate and proportionate to the acts and demeanour of the petitioner. The petitioner has failed to demonstrate any procedural or statutory lapse warranting interference by this Court in exercise of its jurisdiction.

54. For all the aforesaid reasons, this Court does not find any grounds to interfere with the well-reasoned order. The rejection of the statutory petition by the DG, BSF, offer appropriate justification for the view taken and the punishment inflicted also passes the test of proportionality, as the trait of "behaviour and discipline" is something, which is absolutely non-negotiable for Personnel of Armed Forces/Armed Paramilitary Forces.

55. Accordingly, the writ petition is dismissed. All pending applications, if any, are also disposed of. There shall be no order as to cost.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

JULY 25, 2025/*gunn*