



“C.R”

1

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. NATARAJAN

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2026 / 27TH BHADRA, 1948

W.A. NO.2980 OF 2025

(CRIME NO.1/2024 OF INDIAN NAVY, KOCHI, ERNAKULAM
AGAINST THE JUDGMENT DATED 22.08.2025
IN WP(Cr1.) NO.1002 OF 2024 OF HIGH COURT OF KERALA)

APPELLANTS/RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI, PIN - 110 011
- 2 CHIEF OF NAVAL STAFF,
SOUTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI, PIN - 110 011
- 3 FLAG OFFICER COMMANDING IN CHIEF,
SOUTHERN NAVAL COMMAND, NAVAL BASE, KOCHI, PIN - 682 004
- 4 COMMANDING OFFICER,
INS VENDURUTHY, NAVAL BASE, KOCHI, PIN - 682 004

BY ADV SHRI.SUVIN R.MENON, CGC
SHRI.P.SREEKUMAR, ASGI

RESPONDENTS/WRIT PETITIONER/RESPONDENT NO.5:

- 1 SANTOSH KARWADE, AGED 49 YEARS,
FLAT NO.2, F BUILDING, GREEN CITY,
SHIVANE, PUNE, PIN - 411 023



“C.R”

2

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

2 PRESIDENT,
 GENERAL COURT MARTIAL OF SANTOSH KARWADE, ASW SCHOOL,
 NAVAL BASE, KOCHI, PIN - 682 004

SHRI YESHWANTH SHENOY

OTHER PRESENT:

SMT. AYSHA ABRAHAM

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05.01.2026, ALONG
WITH WA.218/2026, THE COURT ON 17.08.2026 RESERVED FOR JUDGMENT, AND THE
COURT ON 18.09.2026 DELIVERED THE FOLLOWING:



“C.R”

3

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. NATARAJAN

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2026 / 27TH BHADRA, 1948

W.A. NO.218 OF 2026

(AGAINST THE JUDGMENT DATED 22.08.2025

IN WP(Cr1.) NO.1002 OF 2024 OF HIGH COURT OF KERALA)

APPELLANT:

SANTOSH KARWADE, AGED 49 YEARS,
FLAT NO.2, F BUILDING, GREEN CITY, SHIVANE,
PUNE, PIN - 411 023

BY ADV SMT.AYSHA ABRAHAM

RESPONDENTS:

- 1 UNION OF INDIA.
REPRESENTED BY SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI, PIN - 110 011
- 2 CHIEF OF NAVAL STAFF,
SOUTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI, PIN - 110 011
- 3 FLAG OFFICER COMMANDING IN CHIEF,
SOUTHERN NAVAL COMMAND, NAVAL BASE, KOCHI, PIN - 682 004
- 4 COMMANDING OFFICER,
INS VENDURUTHY, NAVAL BASE, KOCHI, PIN - 682 004



“C.R”

4

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

5 PRESIDENT,
 GENERAL COURT MARTIAL OF SANTOSH KARWADE, ASW SCHOOL,
 NAVAL BASE, KOCHI, PIN - 682 004

BY ADVS. SHRI.P.SREEKUMAR, ASGI
 SHRI.SUVIN R.MENON, CGC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02.02.2026, ALONG
WITH WA.2980/2025, THE COURT ON 17.08.2026 RESERVED FOR JUDGMENT AND THE
COURT ON 18.09.2026 DELIVERED THE FOLLOWING:



“C.R”

5

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

JUDGMENT*(Dated: 17th September, 2026)*

[WA Nos.2980/2025, 218/2026]

K.Natarajan, J

These intra-court appeals – Writ Appeal No.218 of 2026 is filed by the appellant/writ petitioner, and Writ Appeal No.2980 of 2025 is filed by the Union of India, for setting aside the judgment passed by the learned single Judge of this Court in W.P. (Crl.) No.1002 of 2024 dated 22.08.2025.

2. We have heard the arguments of the learned counsel for the appellants in W.A. No.2980 of 2025, Sri. P.Sreekumar, ASGI, for the Union of India and Sri.Yaswanth Shenoy, learned counsel for the respondents. The ranks of the parties before the single Judge are retained for convenience.

3. The writ petitioner, Santhosh Karwade, who was a Navy personnel with 31 years of service, is stated to be undergoing a trial held against him by the court martial under the Navy Act, 1957 (for short, ‘Navy



“C.R”

2026:KER:71832

Act’). By filing the writ petition, he mainly challenges the trial before the court-martial, which was in progress. According to the petitioner, the proceedings before the court-martial were conducted illegally and improperly, in breach of law, as he was denied his right the free and fair trial, which was guaranteed under Article 21 of the Constitution of India.

4. The main contention was that the court-martial had been convened under the Navy Act for various charges framed against him. Among these, certain charges alleged that he had dishonestly induced an officer, named Balachandran to transfer a sum of ₹1,10,595/-, and several similar allegations were also made against him, and he was charged with offences under Section 420 of the Indian Penal Code read with Section 77(2) of the Navy Act. When the trial commenced, eight witnesses were examined. At that time, he came to know that the trial was being conducted before the court-martial by the Prosecutor, who is none other than the Investigating Officer of the charges levelled against him, and he was denied access to material documents and was denied adequate opportunities to



“C.R”

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

defend the case. He has raised certain irregularities in the investigation as well as charges framed against him; especially, he has challenged the constitutionality of Regulation No.178(3) of the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965 (hereinafter referred to as Navy Regulations). Accordingly, he filed the writ petition seeking a declaration that the Investigation Officer had been vitiated as the final outcome of the investigation was predetermined, a declaration that the charges were framed in violation of Regulation 155 of the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965 and a declaration that the convening order to assemble the GCM was in violation of Regulation 156.

5. The main challenge, in brief, was that the investigating officer himself was appointed as a prosecutor under Regulation 163(1) of the Navy Regulations and, in turn, he conducted the trial before the court-martial. Although 178(3) of the Navy Regulations says that the Prosecutor may be a competent witness, it is against the principles of criminal jurisprudence, and he cannot act in two roles as both Prosecutor and Investigating Officer.



“C.R”

Therefore, Regulation 178(3) is to be declared as ultra vires the Constitution of India under Article 21.

6. After hearing both sides, the learned single Judge elaborately dealt with the matter and disposed of the writ petition, holding that the petitioner is not entitled to a declaration that Regulation 178(3) of the Navy Regulations is ultra vires the Constitution. However, the learned single Judge held that the word ‘suitable person’ found in Regulation 163(1) of the Navy Regulations cannot be interpreted to include the Investigating Officer and allow the Investigation Officer to act as Prosecutor in the very same trial. The right to a fair trial would be infringed when the same Investigation Officer himself assumes the role of the Prosecutor in a trial before the court, and further, the single Judge proceeded and directed the petitioner to approach the Armed Forces Tribunal; if the trial conducted by the Prosecutor, who himself is the Investigating Officer, caused any prejudice to him and the trial has been vitiated. It has been left open to the AFT to decide while challenging the conviction and sentence of the



“C.R”

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

petitioner. By rejecting the prayer of the petitioner to declare the Regulation 178(3) of the Navy Regulation is ultra vires the Constitution. Hence, the writ petitioner filed this writ appeal. The Union of India also filed another writ appeal. Whereas an observation was made by the learned single Judge in the final order that appointing of the Investigating Officer as a prosecutor and treating him as a witness in the same trial would infringe the right to a fair trial, and holding that the Investigating Officer shall not be appointed as a Prosecutor in the trial of the same offences.

7. The learned counsel appearing for the writ petitioner/appellant has vehemently contended that the single Judge, though held in the final para, that the Investigating Officer should not be appointed as Prosecutor. But he fails to declare that Regulation 178(3) of the Navy Regulations is ultra vires the Constitution of India. Instead, holding that after the trial, upon conviction and sentence, directed to approach the AFT to decide the issue of whether the trial has been vitiated or not, in view of the appointment of the Investigating Officer as a prosecutor, on the background



“C.R”

2026:KER:71832

of Regulation 163(1) of the Navy Regulations. Therefore, he has contended that Regulation 178(3) is ultra vires to Article 21 of the Constitution of India, for a free and fair trial is guaranteed, and in criminal jurisprudence, the Investigating Officer cannot be a Prosecutor; he should be a competent/suitable person to be appointed by the authorities under Regulation 163. He also argued some points on the merits of the case. Considering the merits of the case, it is irrelevant to this Court, except for the question of law, to find out whether Regulation 178(3) of the Navy Regulation is ultra vires the Constitution of India. The counsel for the petitioner relied upon various judgments.

8. *Per contra*, the learned Additional Solicitor General of India countered the arguments and also contended that Section 4 of the Navy Act provides for the fundamental rights to apply to persons subject to the Naval Law with modifications. Therefore, it is contended that Cr.P.C. is not applicable to the Navy Act; it has separate procedural law and regulations under the Navy Act and Regulations, which provide the manner of



“C.R”

2026:KER:71832

conducting the trial before the court-martial. Therefore, it is contended that Regulation 178(3) of the Navy Regulation is not ultra vires the Constitution of India and also contended that the Regulation provides a provision to examine the Prosecutor as a witness. Therefore, he has supported the findings of the learned single Judge against the appellant/writ petitioner. However, contended that the observation of the single Judge holding that appointing the Investigating Officer as Prosecutor to conduct the trial before the court-martial would cause prejudice to the petitioner, resulting in a failure, is unwarranted.

9. Learned ASGI also contended that, as per Article 33 of the Constitution of India, the Parliament possess is the power to modify the rights conferred under Part III of the Constitution in respect of fundamental rights, where the Parliament has the authority to determine the extent to which such rights may be conferred upon members of the Armed Forces and charged with the maintenance of public order. Therefore, the central Government is empowered to enact special legislation for the Armed



“C.R”

2026:KER:71832

Forces, restricting their fundamental rights to the extent deemed necessary. It is further contended that Article 33 of the Constitution takes away the right to a fair trial for the Armed personnel. Section 5 of the Cr.P.C. also provides that the Cr.P.C. will not be applicable to a case where a specific special law enacted by the Parliament where the procedures made therein. Therefore, prayed for allowing the appeal filed by the Union of India and prayed for the dismissal of the appeal filed by the writ petitioner. The learned ASGI also relied upon the various judgments in its support.

10. Having heard the arguments, perused the records and the judgments relied upon by both sides.

11. The points that arise for our consideration are:

- (i) *Whether Regulation 178(3) under the Navy Regulations is ultra vires Article 21 of the Constitution of India?*
- (ii) *Whether the regulation 163(1) of the Navy Regulations prohibits appointing the Investigating Officer as Prosecutor?*

12. Before going into the merits of the case, it is worth mentioning the judgment relied upon by the learned Additional Solicitor General of India and the judgment relied upon by the counsel for the appellant. The



“C.R”

2026:KER:71832

learned ASGI relied upon the judgment of the Hon'ble Supreme Court reported in *Ajmer Singh and Others v. Union of India and Others [1987 (3) SCC 340]* and considered the proceedings before the Court-martials under Cr.P.C. The Hon'ble Supreme Court has already dealt with Section 475 of the Cr.P.C., and has held that the distinction made in the section between 'trial by a court to which this Code applies' and by a court-martial conclusively indicates that Parliament intended to treat the court-martial as a forum to the proceedings before (*sic* which) the provisions of the Code will have no application. Even Section 428 of Cr.P.C. has been made not applicable to the court-martial. In another judgment, in the case of *Union of India and Others v. G.S. Bajwa [Civil Appeal No.10383 of 1996]*, the Hon'ble Supreme Court had an occasion to consider the Air Force Rules and the constitutional validity of the provisions.

13. Before considering the case on merit, it is worth mentioning Section 5 of Cr.P.C., which defines as under:

5. Saving

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local



“C.R”

14

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

14. A bare reading of sub-section 2 of Section 4 of the Cr.P.C., where it refers to all offences under any other law, shall be investigated, inquired into, tried and otherwise dealt with under the same provisions, but subject to any enactment for the time being in force, regulating the manner or place of investigation and enquiry into trying or otherwise dealing with such offences. Expressly, the Cr.P.C. says that if any special procedure is prescribed by the special law, then that provision should be followed.

Section 4 of the Navy Act is also referred to as under:

4. Fundamental rights to apply to persons subject to naval law with modifications. - *The rights conferred by Part III of the Constitution in their application to persons subject to naval law shall be restricted or abrogated to the extent provided in this Act.*

15. As per Section 184 of the Navy Act empowers the Central Government to make regulations for the governance, command, discipline, recruitment, conditions of service and regulations of the naval forces and generally for the purpose of carrying into effect the provisions of this Act.



“C.R”

Based upon Section 184(1) of the Navy Act, the Central Government also formulated the regulations for the same. As empowered by the Navy Act, the Central Government once framed the regulations for the Navy, where it contains all the procedural aspects in the regulations. In Chapter V, Part II of the Regulations for the Navy, Discipline and Miscellaneous Provisions provide for the establishment of court-martial, recording the commencement of the proceedings, recording evidence, investigation, arrest, remand, trial etc. Even Regulation 161 provides a proviso for the appointment of a Judge Advocate in the Department of the Judge Advocate General of the Navy is on the staff of the convening authority, that judge advocate shall ordinarily be the trial judge advocate for all courts-martial convened by the convening authority. Even 163 empowers for appointing a prosecutor and sitting of the court-martial.

16. Regulation 178 defines the provisions as to witnesses for the prosecution and the defence. On perusal of Chapter V of Part II, a complete code or procedure has been provided under the Navy Regulations.



“C.R”

2026:KER:71832

Therefore, as per Section 4 of the Cr.P.C., where it says that if any other special law has been enacted and procedure has been made therein, that special law will prevail and that procedure will prevail, but not the Cr.P.C. As per Section 5 of Cr.P.C., the central government may make a rule consistent with Cr.P.C. On a conjoint reading of Section 4 of Cr.P.C., read with Section 475 of Cr.P.C., the application of Cr.P.C. is inapplicable to the Navy Act, and the Navy regulations which contain the self-code for conducting the enquiry, trial and sentence.

17. It is well settled that if any law framed by the Central Government is affecting the fundamental right of the citizen, then it is ultra vires. However, the fundamental rights guaranteed under Part III of the Constitution are subject to the restrictions imposed by Article 33 of the Constitution of India, where it read as under:

[33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc. - Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-
(a) the members of the Armed Forces; or
(b) the members of the Forces charged with the maintenance of public order; or
(c) persons employed in any bureau or other



“C.R”

2026:KER:71832

organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

18. In view of Article 33 of the Constitution of India, restrictions were imposed upon the fundamental rights guaranteed under Part III of the Constitution of India, especially Article 21 of the Constitution of India. In view of the same, the Parliament is empowered to enact laws restricting the fundamental rights of the members of Armed Forces, to the extent considered necessary in the interest of discipline and public order. That being so, the Navy Act was enacted by the Central Government or Parliament for the Armed Forces/ Navy, and a separate regulation was also made thereunder; therefore, the Cr.P.C. is not applicable to the court-martial. As contended by the learned counsel for the writ petitioner that the fair trial was violated by the Navy Regulations, which cannot be acceptable. Based upon the powers conferred under the Navy Act, in consonance with Sections 4 and 475 of Cr.P.C., the Navy Regulations were



“C.R”

2026:KER:71832

made, where Regulation 178 of the Navy Regulations provides the procedure for conducting trial by court-martial and sub-Regulation 3 to Regulation 178, where it refers and empowers that the prosecutor is a competent witness.

19. Coming to Regulation 163, wherein it provides for appointment of prosecutor, which is referred to as under:

***163. Appointment of prosecutor:-** (1) The convening authority shall by warrant under his hand in the prescribed form, appoint a suitable person to prosecute and notify such appointment to the trial judge advocate.*

(2) Where an officer is appointed as prosecutor, it shall be his duty to obtain from the convening authority such papers as may be necessary for the purpose of the prosecution.

(3) Where a counsel is appointed to conduct the prosecution there shall also be appointed, at the same time, an officer to assist him, in which case, it shall be the duty of that officer to obtain from the convening authority such papers as may be necessary.

(4) A counsel shall not be engaged for conducting the prosecution at court-martial without the prior approval of the Chief of the Naval Staff.

20. Wherein sub-regulation 4 of it provides that the counsel shall not be engaged for conducting the prosecution at court-martial without the prior approval of the Chief of the Naval Staff. On a reading of Regulation 163(i), where it mandates for appointing a suitable person to prosecute the



“C.R”

2026:KER:71832

case, and a conjoint reading of Regulation 178(3), it says that the prosecutor is a competent witness. Although it is not expressly stated that the Investigating Officer is explicitly prohibited from being appointed as prosecutor, it is implied that if the Investigating Officer is so appointed, he may also be examined as a witness. If, at all, the Investigating Officer is not appointed as a prosecutor, then there is no question of examining the prosecutor as a witness before the court-martial. Therefore, we are of the opinion that sub-regulation 3 of Regulation 178 has impliedly provided that the Investigating Officer, if he is also a prosecutor, can be examined as a witness.

21. On a thorough reading of the Regulations, there is no prohibition on an Investigating Officer from being appointed as a Prosecutor. The Investigating Officer may be a suitable person for conducting the prosecution case before the court-martial, who knows the facts of the case and who finally files the charge sheet against the Armed personnel. Therefore, Regulation 178(3) of the Navy Regulations cannot



“C.R”

2026:KER:71832

be said to be ultra vires to Article 21 of the Constitution of India, but it is valid in view of the restrictions under Article 33 of the Constitution of India. Accordingly, we answered both points in favour of the Union of India.

22. We have also gone through the judgment of the Hon’ble Supreme Court in V.K. Singh’s case (Crl. Appeal Nos... of 2026), wherein Section 207 of Cr.P.C. is applicable to the Investigating Officer, considered applicable to the case, where the case was under the Official Secrets Act, that the investigation was done by the CBI, wherein the Cr.P.C. is applicable to the said case. There is no special law framed for the offences tried under the Official Secrets Act. Therefore, the judgment relied upon by the learned counsel for the appellant is not applicable to the case at hand. The learned counsel for the appellant also relied upon the judgment of the learned single Judge of Jammu & Kashmir and Ladakh in Writ Petition (c) No.255 of 2020 in respect of declaring Rule 129 of the Border Security Force Rules, 1969, as unconstitutional and ultra vires to Part III of the



“C.R”

2026:KER:71832

Constitution. But the said case is pending appeal before the Division Bench. Therefore, the same is not considered by this Court.

23. The learned ASGI also brought to our notice that throughout India, there are so many cases pending before the court-martial wherein the investigating officers are appointed as Prosecutors, and they are conducting the trial. Because there is no clear prohibition in the regulations for appointing the Investigating Officer as a Prosecutor. If the Investigating Officer is not appointed as a Prosecutor, then there is no question of calling the Prosecutor as a witness to be examined by the court-martial, and the same witnesses can be cross-examined by the defence counsel or Armed/person. Such being the case, the Parliament has consciously framed Regulation 178(3), where the Prosecutor is a competent witness. Therefore, the appointment of the investigating officer as a prosecutor cannot, by itself, be considered a violation of the right to a fair trial guaranteed under Article 21 of the Constitution of India. Apart from that, the writ petitioner already cross-examined 8 witnesses and even after concluding the trial, he

**“C.R”**

2026:KER:71832

says that he came to know that the Prosecutor was none other than the Investigating Officer. But that cannot be considered at this stage, where the trial was already completed. Therefore, the question of struck down Regulation 178(3) of the Regulation is not acceptable.

In view of the observation made by the learned single Judge that appointing the Investigating Officer as a Prosecutor, holding that the Investigating Officer already formed an opinion, and he can never be a suitable person to act as a Prosecutor. He shall be an independent authority serving as an officer of the court; is not correct. The sole duty of the prosecutor is to place the evidence before the court-martial. The judgment or order of sentence is to be delivered by the court-martial itself, and not by the prosecutor. The prosecutor's role is confined to effectively presenting the accused before the court and placing the evidence on record. Therefore, the prosecutor need not be an independent authority but must be a suitable person for prosecuting the case before the court-martial. Hence, the observation made by the single Judge cannot be accepted, and it is to



“C.R”

23

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

be set aside.

Accordingly, the appeal filed by the writ petitioner in Writ Appeal No.218 of 2026 is hereby dismissed, and the appeal filed by the Union of India in Writ Appeal No.2980 of 2025 is allowed. The observation made by the learned single Judge in respect of the appointment of the Investigating Officer as a Prosecutor before the court-martial under the Navy Act, which will prejudice the case of the writ petitioner, is hereby set aside. The observation made by the learned single Judge should not be influenced in any manner.

Sd/-

**K. NATARAJAN
JUDGE**

Sd/-

**JOHNSON JOHN
JUDGE**



“C.R”

W.A.Nos.2980/2025 & 218/2026

2026:KER:71832

APPENDIX OF WA NO.218 OF 2026

RESPONDENT ANNEXURES

Annexure R1 (a)	A true copy of the Interim Order dated 11.09.2024 of this Hon'ble Court in WP(Crl.) No. 1002 of 2024
Annexure R1 (b)	A true copy of the Order dated 27.09.2024 of the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No. 13116 of 2024
Annexure R1 (c)	A true copy of the Interim Order dated 23.10.2024 of this Hon'ble Court in WP(Crl.) No. 1002 of 2024
Annexure R1 (d)	A true copy of the Order dated 28.10.2024 of the Court Martial
Annexure R1 (e)	A true copy of the Memorandum of Appeal dated 12.06.2025 filed by the Appellant before the AFT, Kochi