2025:DHC:7909-DB

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

\+ W.P.(C) 7056/2023, CM APPL. 52425/2025 & CRL.M.(BAIL) 1548/2023

RAKESH BABU .....Petitioner

Through: Mr. Nityanand Singh, Mr. Vinay Ahrodia, Ms. Sonu Kumari and Ms. Prity Raj, Advocates

versus

UNION OF INDIA & ORS .....Respondents

Through: Ms. Radhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Mr. Kritarth Upadhyay, Mr. Vivek Sharma, Ms. Aprajita Verma, Ms. Khushi, Mr. Saksham Sharma, Advocates with Mr. Paramveer Singh, BSF

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

JUDGMENT (ORAL)

% 28.08.2025

C. HARI SHANKAR, J.

1. The petitioner joined the services of the Border Security Force[1] on 30 June 2008, and was initially posted at Gwalior. With effect from 5 March 2019, he was posted as Sub Inspector (Vet) at Silchar, Assam.

2. The present dispute relates to an offence alleged to have been

[1] BSF

committed by the petitioner, in respect of which a First Information Report[2] was registered against him at Police Outpost, Cacher, Assam, under Sections 342[3], 365[4] and 377[5] of the Indian Penal Code, 1860[6] read with Section 6[7] of the Protection of Children From Sexual Offences Act, 2012[8]. It was alleged that the petitioner had sodomized a 10-year old boy X[9] on 8 July 2021, and had also threatened to kill him if he reported the incident to anyone.

3. The facts relating to the said incident, as they emerge from the recitals in the FIR and the record of the proceedings of the General Security Force Court[10] which followed, are broadly as follows. On 8 July 2021, around 6:45 pm, X was sent by his mother to a nearby shop within the BSF Camp. Upon returning back home, in a state of shock, X informed his mother that he was sexually assaulted and sodomized by the petitioner who had also threatened to kill him if he informed about the incident to anyone. The Unit Adjutant, 134 Bn BSF, was informed of the incident. The house of the petitioner was raided. The petitioner was found lying in his house in an inebriated state. He was

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[2] FIR

[3] **342. Punishment for wrongful confinement**.—Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

[4] **365. Kidnapping or abducting with intent secretly and wrongfully to confine person**.—Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[5] **377. Unnatural offences**.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [397][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

[6] IPC

[7] **6. Punishment for aggravated penetrative sexual assault**.—(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.
(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

[8] "the POCSO Act" hereinafter

[9] Identity withheld

[10] GSFC

then taken for an identification parade, where the victim identified the petitioner as the person who sexually assaulted him. The petitioner was then taken to the BSF Hospital and examined by a medical officer. He was then placed under suspension with immediate effect and was ordered not to leave the Headquarters without obtaining prior permission. The aforenoted FIR was registered the next day.

4. The petitioner was tried for the said offences by the GSFC on the following charges:

(i) First Charge: "Committing a civil offence that is to say aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act, 2012".

(ii) Second Charge: Committing a civil offence that is to say voluntarily having carnal intercourse against the order of nature with a male child punishable under Section 377 IPC.

(iii) Third Charge: Committing a civil offence that is to say wrongfully confining a person punishable under Section 342 IPC

5. The GSFC, after admittedly following the prescribed procedure, found the petitioner guilty of all three charges against him. It was observed that the alibi that the petitioner had sought to press, viz., that he, on the date of the alleged incident, was in the Establishment Branch at Headquarters, was falsified by the defence witness whose evidence the petitioner himself had chosen to lead. The GSFC also

found material contradictions in the statements of the petitioner, tendered at different stages. It was found, by the GSFC, that the petitioner had threatened X with a knife and had forcefully taken him to the petitioner's quarters and latched the door from inside, before committing the act of sexual assault, thereby establishing all the charges against him.

6. We deem it appropriate to reproduce, *in extenso*, the findings of the GSFC:

> **"BRIEF REASONS IN SUPPORT OF FINDING OF THE COURT**
>
> **FIRST ISSUE OF THE FIRST CHARGE**
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> **That at about 1845 hrs on 8th July 2021, X and the accused were present in Q/No. 14/Type I, (Ftr SOs Transit Mess).**
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> There is no dispute over the fact that on 8th July 2021, the accused was living and at about 2030 hrs, he was apprehended by PW-2 and his party from quarter used as Ftr SO's Transit Mess, near Ftr Vet Hospital. The Court also believes the evidence (Exhibit-BB) produced by PW-10, that the quarter number Ftr SO's Transit Mess is Q/No. 14/Type-1. The Court also believes the statement of victim child (PW-16) that when on 8th July 2021 at about 1845 hrs, when he was going to Civil Grocery Shop near Morcha No.-4 to buy match box, he was forcefully under threat of knife, taken by the accused to his quarter. The Court also believes that the PW-16 knew the accused before this incident as he has seen accused in Ftr Vet Hospital and also outside his quarter, where he was forcefully taken as he used to play/walk in that area. This statement of victim child that he was aware about the quarter of accused is corroborated by the PW-20 (witness in reply) who has stated that children including the victim child used to come to play/walk near the Ftr Vet Hospital. To come to the issue of time, the Court believes the evidence of PW-15, that at 1721 hrs and 1725 hrs on 8th July, 2021, he received two photos and two test messages (Exhibit-JJ') from his wife (PW-1). The Court also believes the evidence by PW-1, that after coming back to house in distressed condition after 20-25 min, his son took about 15 minutes to narrate everything about the incident. Then, she called her husband and

shared two photos of her son on WhatsApp to show bruises on her son cheeks. Going back in to the time from 1721 hrs, when PW-15 receives WhatsApp messages from his wife, the Court believes that at about 1845 hrs on 8th July, 2021, the X was present at Q/No. 14, Type 1, with the accused.

The Court also believes the evidence of victim child (PW-16) when during the visit of place of incident in the open court, he identifies the Q/No. 14/Type-1 (Ftr SO's Transit Mess) as the place where the accused was living and forcefully under threat of knife, took him in his room and latched the door from inside, threatened him, beat him and committed a sodomy with him. The Court found material consistency in the statement of PW-16, which is further corroborated by statement of PW-1, PW-2, PW-3, PW-15. Hence, the Court has no hesitation in believing their statement.

The Court does not believe the statement of the accused on oath that at about 1845 hrs on 8th July, 2021, he was not present in his quarter at Ftr SOs annexe quarter but was present in Estt Branch at Main Office of FTR HQ as the statement of the accused is not supported by the statement of defence witness. DW-1 and DW-2 have deposed that the accused visited the Estt Branch Ftr HQ BSF M&C at about 1820 hrs, stayed there for total 4-5 minutes. The distance between Ftr Estt Branch and Q/No. 14/Type-l is about 100 mtrs and it hardly takes 3-5 minutes to cover that distance. DW-3 deposed that the accused visit Q-Store at 1800 hrs and after getting his clothing issued, within 4-5 min the accused left the Q store. DW-4 in his statement has stated that at about 1745 hrs, he was standing in queue for collection of liquor for the accused, it took him 10 minutes to collect the liquor, then for next 10 minutes, he remained in the jawan barrack area, then he took his scooty and reached at accused's quarter near vet hospital within 5 minutes, this way after 1745 hrs, he took 25 minutes more, i.e. by 1810 hrs, he had reached at accused's quarter and that time accused by present in his quarter so. None of the defence witness could support the statement of accused that at 1845 hrs he was present in Estt Branch of Ftr HQ M&C. Whereas, as per the evidence produced by the defence itself, the accused had reached his quarter at Ftr SOs Transit Mess, by all counts before 1830 hrs.

The Court also found material contradictions in the statement of the accused given at different occasions i.e. before doctor who done his medical examination at SMCH, during SCOI and ROE and before this Court. Due to material contradiction in his statement, the Court found the statement of accused not trustworthy.

Considering above, the Court takes first issue of the first charge

proved and moves to second issue of the first charge.

SECOND ISSUE OF THE FIRST CHARGE

That the accused at about 1845 hrs on 8th July 2021, committed penetrative sexual assault on X in Q/No. 14/Type I(Ftr SOs Transit Mess).

The Court believes the statement of PW-16, X (victim child) that when at about 1845 hrs on 8th July, 2021, he was going towards Civil Grocery Shop near Morcha No.-4 to buy match box, taking tiled pathway passing in front of accused's quarter, the accused called him and took him upto back side of Ftr Vet Hospital, kissed him on his lips and cheeks, threatened him with knife and forcefully took him to his quarter at Q/No. 14/Type-I (Ftr SOs Transit Mess) and forcefully removed his pant, applied oil on his back and penetrate his penis into his anus and then shook. PW-16 feel pain in this act. After shaking, when the accused cleaning his main part, moved inside the second room of the his quarter, he got the opportunity to run away from there.

The statement of X (PW-16) is also corroborated by statement of his mother (PW-1) and his father (PW-15), who has stated that X after reaching home, informed PW-1 about the whole incident that accused had committed penetrative sexual assault on him and then, PW-1 further informed the whole incident to his husband (PW-15). While enroute to BN HQ, PW-15 also asked X about the incident and he again narrated the whole incident to his father that accused entered his main part into his bum and shook, as his wife narrated to him. The statement of X is also corroborated by the evidence of medical expert supported by medical evidence (Exhibit CC) wherein it is clearly mentioned that medical examination of X was conducted at 1145 hrs on 9th July 2021 at Silchar Medical College and Hospital (SMCH) and medical board in their medical report has clearly opined that the X has sustained injury in his anal orifice which is suggestive of forceful sexual penetration, either attempted or committed. The medical report opined that injury sustained in his face is consistent to have been caused by sustained forceful kissing. The above statement by the PW-1, PW-15 and PW-16 is also corroborated by the evidence of PW-2.

Considering, the evidence of X that in the morning of 9th July 2021, he had gone for toilet (passage of fecal waste) and washed, spermatozoa was not detected on anal swabs of the X as the Court also believes the opinion of the PW-11 that after passing of fecal waste and washing, the spermatozoa will wash away. The Court also agree with the opinion of the expert witness (PW-12) who conducted the medical examination of the accused at 1530 hrs on

9th July 2021 at Silchar Medical College and Hospital and opined that evidence of involvement in Sexual activity not deducted and no injuries deducted on his person and during court questions, PW-12 have further clarified that his opinion that "Evidence of involvement in Sexual activity not deducted" was issued in reference to the short immediate period preceding the time, when the medical examination is conduct as after 20 hrs, it is not possible to find out whether the person was involved in sexual activity or not. The Court does not found any benefit out DNA analysis report which remains inconclusive as the DNA the samples found fragmented and not be amplified.

Here, the Court found that the prosecution beyond reason doubt established the foundation of its case that accused on 8th July 2021 at about 1845 hrs had committed sexual penetrative assault against the X at Q/No, 14. Type I(Ftr SOs Transit Mess) but the accused did not produce any evidence to prove anything contrary to it. So, the Court is satisfied that defence miserably failed to dispel the presumption acting against the accused U/S 29 of POCSO Act that he had committed penetrative sexual assault against X.

The Court also found that the statement of accused during SCOI, ROE and before his court is full of material contradictions and vital improvements which makes him highly unreliable witness. Hence, the accused's statement is not believable. Whereas, the defence fail to prove any material contradiction in the statements of victim child, X, given at different stages of this case.

Considering above, the Court takes the second issue of the first charge proved and moves to last issue of the first charge.

THIRD ISSUE OF THE CHARGE

That the act of accused committing penetrative sexual assault on X is covered under the provisions of Sec 5 OF POCSO Act, 2012.

The Court believes the statement of X (PW-16) and his father (PW-15) that the Date of Birth of X is 21.10.2010. The Court also believes the correctness of Date of Birth Certificate, issued by Nagar Nigam, Bareilly, Govt of UP mentioning the date of Birth of X as 21.10.2010. The Court also believes the correctness of Bonafide Certificate issued by present school of X i.e. KV Rajouri, the details mention in school Admission Register of last school attended i.e. KV Rajouri that DOB of X is 21.10.2010. The Court also believes the finding of medical board which examined X on 9th July 2021, who on the basis of bone ossification test, conclude that age of X is above 10 years and below 12 years.

The defence does not contradiction these evidence regarding the DOB and age of X. Considering above evidence, the Court takes this issue proved that on the date of incident i.e 8th July' 2021, the age of X was below 12 years.

Hence, the Court takes it proved the act of accused is covered U/S 5 (m) of POCSO Act, 2012.

The Court also takes the issue that accused was public servant covered under the definition of Sec 21 (twelfth) as there is no dispute between the prosecution and defence that on the date incident on 8th July 2021, the accused was appointed under and at the pay of Border security Force (BSF), a central government agency. There is admission of this fact by the accused in his statement on oath and also in reply to question asked by the Court under BSF Rule 93(2). Hence, the Court takes this issue proved that act of penetration sexual assault by the accused on X at about 1845 hrs, on 8th July 2021 is covered under Sec 5 (c) of the POCSO Act, 2012.

Hence, the Court takes the first charge of the charge sheet proved beyond reasonable doubt.

SECOND CHARGE

FIRST ISSUE OF THE SECOND CHARGE

That the accused and X at about 1845 hrs on 8th July 2021, were present in Q/No. 14/Type I (Ftr SOs Transit Mess).

As the first issue of the second charge is identical to the first issue of the first charge. Since, the Court after due deliberation on the evidence available, have already take this issue proved, the court without repeating the evidence, takes the first issue of the second charge proved and moves to the second issue of the second charge.

SECOND ISSUE OF THE SECOND CHARGE

That the accused at about 1845 hrs on 8th July' 2021 at Q/No. 14/Type-l (Ftr SO's Transit Mess), had voluntarily penetrated his penis into the anus of the X.

The Court while deliberating upon the second issue of first charge finds second issue of the second charge is identical to the second issue of the first charge except that here there is no mandatory presumption acting against the accused and the prosecution is also required to prove that the act of the accused was voluntarily. The Court believes the evidence of victim child X (PW-16), whose

statement is corroborated by medical evidence and by the evidence of PW-1, PW-2, PW-9 and PW-15 that accused had forcefully taken that accused inside his quarter and there removed the pant of X and applied oil on his back and penetrated his penis into the anus of X. The defence did not produce any evidence in rebuttal that the act of accused, penetrating his penis into the anus of the X was not voluntary whereas the accused in his evidence have outrightly denied to have committed any such act of penetrative sexual assault against X and also denied his presence at his quarter at given time. The Court has also found material consistency in the evidence of victim child X on this issue, supported by the medical evidence but there are material contradictions in the statement of accused, given at different stages of this case. The evidence of X is corroborated by the evidence by PW-1, PW-2, PW-9, PW-12 and PW-15. After due deliberation, the Court has no hesitation to believe that prosecution has proved beyond reasonable doubt that accused had voluntarily penetrated his penis into the anus of X. Hence, the Court takes the second issue of the second charge proved and the Court moves to last issue of the second charge.

THIRD ISSUE OF THE SECOND CHARGE

It is in the personal knowledge of the court being a mature man that the nature recognizes that the penile-vaginal intercourse is only intercourse which is in order of nature and all other mode like anal sex, oral sex etc are against the order of the nature. The Court has no hesitation in accepting that the canal intercourse by accused by penetrating his penis into the anus of X is against the order of the nature as it does not result into procreation, hence it is unnatural. Considering this, the Court takes the last issue of the second charge proved beyond reasonable doubt. Hence, the Court takes the second charge of the chargesheet proved.

THIRD CHARGE

FIRST ISSUE OF THE THIRD CHARGE

That 8th July, 2021, at about 1845 hrs, the accused confined X in Q/No. 14/Type-l, (Ftr SO's Transit Mess).

The Court believes the statement of the victim child X (PW-16) that on 8th July 2021 at about 1845 hrs, he was going to civil grocery shop near Morcha No. - 4 to buy match box. While, he was passing in front of the accused's quarter at Q/No. 14/Type-l (Ftr SO's Transit Mess) he was called by the accused, who was standing in front of his quarter in towel. Since, he knew the accused, he went to him. The accused by putting his arms on his shoulder around his neck, talking take him upto Ftr Vet Hospital and there

he smooched X on his lips and cheeks. Then, the accused pick up a knife from the window of the Vet Hospital and threatened him to come to his quarter. When the X denied to come up with him, he shows the knife and said that he has not kept this knife just to show off. X got frightened and the accused forcefully took the X to his quarter and latched the door from the inside and did not allow him to move from there. The statement of X is also corroborated by the PW-1, PW-2, PW-9 and PW-15. The Court found material consistency in statement of above prosecution witnesses. Whereas, the accused denied his presence at that time in his quarter but said that at that time he was present in Estt Branch Main Officer of Ftr HQ BSF M&C. Since, there are material contradictions and vital improvements in the statement of the accused which makes his statement highly unreliable. While deliberating in the first issue of the first charge, the Court has already taken it proved that the accused and X was present in Q/No. 14/Type-1 (Ftr SO's Transit Mess). Hence, the Court take this issue proved and moves to the second issue of the third charge.

SECOND ISSUE OF THE THIRD CHARGE

That the confinement of X in Q/No. 14/Type-1, (Ftr SO's Transit Mess) by the accused was wrongful.

The Court believes the statement of the X (PW-16) that on 8th July 2021 at about 1845 hrs when he was going to civil grocery shop near Morcha No. -4 to buy match box, the accused showing him the knife, took him to his quarter Q/No. 14/Type-I forcefully, against his will. Since, the accused was holding the X tightly around his neck and carrying knife in his hand, X could not run away from there and was dragged by the accused to his quarter and the accused latched the door of his quarter from inside. The statement of X, was is corroborated by the PW-1, PW-2, PW-9 & PW-15. The defence did not produce any evidence to rebut the evidence of the PW-16 and outrightly denied that accused was present there and had taken the X to his quarter. The accused in his statement on oath has stated that at the given time he was present in the Estt Branch, Main Office of Ftr HQ BSF M&C to deposit his clearance for leave as he was proceeding on leave next day, which is contradicted by the statement of defence witnesses themselves.

Considering the above evidence, the Court believes that the accused wrongfully confine the X in his quarter No. 14/Type-l (Ftr SO's Transit Mess). Hence the Court takes this issue proved.

Hence, the Court takes the third charge of the charge sheet proved beyond reasonable doubt."

7. Following these findings, the GSFC sentenced the petitioner with Rigorous Imprisonment for 20 years, along with dismissal from service.

8. The petitioner preferred a pre-confirmation petition, which was rejected by the Confirming Authority, who confirmed the findings and sentence imposed by the GSFC.

9. Aggrieved thereby, the petitioner has instituted the present writ petition.

Submissions of learned Counsel for the petitioner, and findings thereon

10. Mr. Nityanand Singh, learned counsel for the petitioner, advances only three arguments, candidly acknowledging that, in exercise of our jurisdiction under Article 226 of the Constitution of India, we cannot re-examine evidence.

11. Jurisdiction of the GSFC to try an alleged offence under the POCSO Act

11.1 The first submission of Mr. Singh is that the GSFC did not have the jurisdiction to decide an offence under the POCSO Act. He has relies for this purpose on Section 32[11] of the POCSO Act.

[11] **32. Special Public Prosecutors**. - (1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.
(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.
(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (*u*) of Section 2 of the Code of Criminal Procedure, 1973 (2 of

11.2 Besides the fact that Section 32 of the POCSO Act deals with Special Public Prosecutors, their appointment and their qualifications and is, therefore, entirely irrelevant, the submission is, even otherwise, obviously unsustainable. Section 42A[12] of the POCSO Act clearly states that the provisions of the POCSO Act shall be in addition to and not in derogation of any other statute.

11.3 There exist judicial pronouncements which have opined on the scope and ambit of the expression "in addition to and not in derogation of".

11.4 In ***Secretary, Thirumurugan Cooperative Agricultural Credit Society v M. Lalitha***[13], the Supreme Court was concerned with Section 3 of the Consumer Protection Act, 1986, which read:

> "3. **Act not in derogation of any other law**. – The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

The Supreme Court held, following its earlier decision in ***Fair Air Engineers (P) Ltd v N.K. Modi***[14], that it was "clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure."

11.5 A more direct authority is to be found in ***KSL And Industries***

1974) and provision of that Code shall have effect accordingly.

[12] **42-A. Act not in derogation of any other law**.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

[13] **(2004) 1 SCC 305**

[14] **(1996) 6 SCC 385**

Ltd v Arihant Threads Ltd[15], which was concerned with Section 34(2) of the Recovery of Debts and Bankruptcy Act, 1993[16], which read:

> "(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

Dealing with the effect of this sub-section the Supreme Court held, in para 37 and 38 of the report, thus:

> "37. *The effect of sub-section (2) must necessarily be to preserve the powers of the authorities under SICA and save the proceedings from being overridden by the later Act i.e. the RDDB Act.*
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> 38. We, thus, find a harmonious scheme in relation to the proceedings for reconstruction of the company under SICA, which includes the reconstruction of debts and even the sale or lease of the sick company's properties for the purpose, which may or may not be a part of the security executed by the sick company in favour of a bank or a financial institution on the one hand, and the provisions of the RDDB Act, which deal with recovery of debts due to banks or financial institutions, if necessary by enforcing the security charged with the bank or financial institution, on the other."
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> (Emphasis supplied)

This enunciation of the law came to be followed, later, by the Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd v UOI***[17].

11.6 Jaspal Singh J., sitting singly as a Judge of this Court also interpreted, with lucidity, the expression "in addition to not in

[15] **(2015) 1 SCC 166**
[16] "the RDDB Act" hereinafter
[17] **(2019) 8 SCC 416**

derogation of", as contained in Section 34(2) of the RDDB Act, thus[18]:

> "11. The answer to the question posed above, to my mind, is to be found not in sections 17, 18 and 31 of the Act but in Section 34 and more particularly in its sub-section (2). This is how section 34 runs:
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> *****
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> 12. On reading sub-section (1) along with sub- section (2) what emerges out is that notwithstanding the overriding effect of the provisions of the Act over any other law to the extent of inconsistency in the latter with the provisions of the former, the Acts enumerated in sub-section (2) remain intact. The words: "The provisions of this Act or the rules made there under shall be in addition to and not in derogation of" the Industrial Finance Corporation Act, 1948 are not without significance.
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> 13. The term "in addition to", is synonymous with "also", "moreover", "likewise", or "besides". The term, surely, cannot be construed as meaning "in lieu of" and is rather diametrically opposed to diminution or abatement or abridgment. In other words, what the term "in addition to" signifies is an increase of or accession to, and thus carries out the idea of protecting the reliefs already available under section 30 of the Industrial Finance Corporation Act, 1948. This, I feel, is further fortified by the words "and not in derogation of, the Industrial Finance Corporation Act, 1948."
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> 14. As we all know, the word "derogation" relates to the partial repeal or abolishing of a law, as by a subsequent Act which limits its scope or impairs its utility and force. In other words when we say "in derogation of" we mean, more generally, the act of taking away, or destroying the value or effect of anything, or of limiting its extent, or of restraining its operation. If that be the meaning and purport of the word "derogation", when section 34 uses the words "and not in derogation of the Industrial Finance Corporation Act, 1948", it is clearly conveyed that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 neither limits the scope nor impairs the utility and force of the Industrial Finance Corporation Act, 1948. And, the reason for it is not far to seek. Section 30 of the Industrial Finance Corporation Act, 1948 confers on the Corporation special rights to enable it to recover its dues

[18] **Industrial Finance Corporation of India v Allied International Products Ltd. and Ors., MANU/DE/1478/1997**

> promptly and effectively, and without the necessity of resorting to long drawn litigation requiring adjudication by judicial authorities and which may harm the interest of the Corporation, frustrate its rights, block its funds and make it difficult for it to freely invest money.
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> 15. In short, thus, section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 keeps intact the Industrial Finance Corporation Act, 1948 and in no way limits, hinders or impairs the play of its provisions. This being the position, the coming into force of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has no effect on the pendency of the present proceedings. I hold accordingly."

11.7 There can, therefore, be no manner of doubt that, by using the expression "in addition to not in derogation of", Section 42A of the POCSO Act preserves, intact, the jurisdiction vested in any authority under any other statute to try and offence which is triable under the POCSO Act.

11.8 The question that arises is, therefore, whether the BSF Act empowers the GSFC to try an offence under the POCSO Act.

11.9 On a reading of the BSF Act, the answer, quite clearly, has to be in the affirmative.

11.10 Section 72[19] of the BSF Act empowers the GSFC to try any person subject to the BSF Act for any offence punishable thereunder and pass any sentence authorised thereby. "Offence" is defined in Section 2(1)(q)[20] of the BSF Act as "any act or omission punishable under this Act" and includes "a civil offence". "Civil offence" is

[19] **72. Powers of a General Security Force Court**.—A General Security Force Court shall have the power to try any person subject to this Act for any offence punishable thereunder and to pass any sentence authorised thereby.

[20] (*q*) "offence" means any act or omission punishable under this Act and includes a civil offence;

defined in Section 2(1)(d)[21] as an offence triable by a Criminal Court. In other words, every offence triable by a criminal Court is *ipso facto* a "civil offence" for the purposes of the BSF Act; it would therefore be an "offence" as defined in Section 2(1)(q) of the Act and, consequently, a GSFC would have the jurisdiction to try any person who alleged to have committed such an offence.

11.11 Clearly, therefore, the BSF Act empowers the GSFC to try offences under the POCSO Act. These provisions, seen in conjunction with Section 42A of the POCSO Act, which saves the jurisdiction vested in other authorities under other statutes, defeats Mr. Singh's contention that the GSFC did not have the jurisdiction to try a POCSO offence.

11.12 Section 32 of the POCSO Act has no application at all as it deals with qualifications of Special Public Prosecutors.

12. Re. procedure followed by the GSFC

12.1 The second submission of Mr. Singh is that the petitioner was not given certified copies of the statements of the PWs and was also only allowed to inspect the file.

12.2 This, too, cannot constitute a legitimate basis to challenge the decision of the GSFC in view of Rule 120[22] of the BSF Rules, which

[21] (*d*) "civil offence" means an offence which is triable by a criminal court;

[22] **120. Custody and Inspection of Proceedings**.—The proceedings shall be deemed to be in the custody of the Law Officer (if any) or, if there is none, of the presiding officer but may, with proper precaution for their safety, be inspected by the members of the Court, the prosecutor and accused, at all reasonable times before the Court is closed to consider the finding.

only permits inspection of the records of the proceedings during the trial. The entitlement to certified copies as per Rule 129[23] of the BSF Rules is only after the trial has concluded.

12.3 Mr. Singh submits in this context that a learned Single Judge of the High Court of Jammu & Kashmir has in ***Rovinder Singh v UOI***[24], declared Rule 129 of the BSF Rule to be unconstitutional. However, he fairly acknowledges that the said order stands stayed by a Division Bench in LPA.

12.4 Moreover, unlike the position in ***Rovinder Singh,*** the petitioner has not assailed the vires or validity of Rule 129 of the BSF Rules.

12.5 In that view of the matter, we cannot find any fault with the GSFC in not allowing the petitioner certified copies of the statements of the PWs during trial.

12.6 Even otherwise, if the petitioner was allowed to inspect the copies of the said PWs, we do not feel that any prejudice can be said to have resulted as a consequence of the petitioner not having been provided certified copies.

12.7 In that view of the matter, Mr. Singh's second contention, predicated on the omission to provide certified copies of the statements of the PWs to his client is also without substance.

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[23] **129. Right of person tried to Copies of Proceedings**.—Every person tried by a Security Force Court shall be entitled to obtain on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required and before the proceedings are destroyed, from the Chief Law Officer a copy thereof, including the proceedings upon revision, if any.

[24] **AIR 2022 J&K 105**

13. Re. plea that GSFC decision is unreasoned

13.1 The third submission of Mr. Singh is that the GSFC's decision is unreasoned. We have reproduced the relevant portion of the decision of the GSFC hereinabove and, from a bare reading thereof, it is clear that the GSFC has provided cogent and convincing reasons in arriving at its finding.

13.2 Mr Singh's submission that the GSFC decision is unreasoned is, therefore, also rejected.

14. Inconsistencies in X's statement

14.1 Mr Singh also advanced a faint contention that there were inconsistencies in the statement of X. However, Ms. Dubey refers, in response, to ***Ramani v State of Madhya Pradesh***[25] in which it has been held that minor inconsistencies would not vitiate the case of the prosecution. She has also relied on Section 29[26] of the POSCO Act which engrafts a presumption of guilt against the accused unless proved otherwise. We find the reliance, by Ms Dubey, on Section 29 of the POCSO Act to be well taken.

14.2 In the present case, we are in agreement with Ms. Dubey that the various statements of the victim are cogent and convincing and,

[25] (**1999) 8 SCC 649**

[26] **29. Presumption as to certain offences**.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be

therefore, if the GSFC chose to rely on the said statements read with the available corroborating evidence in holding the petitioner to be guilty of the offence alleged against him, we do not find any perversity or illegality in the said finding.

15. Scope of judicial review

15.1 Besides, as Ms. Dubey points out, this Court does not sit in appeal over the decision of the GSFC, and exercises only certiorari jurisdiction. The parameters of certiorari jurisdiction can thus be delineated in ***Syed Yakoob v K.S. Radhakrishnan***[27]**:**

> "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. *A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court.* This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. *An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible*

unless the contrary is proved.

[27] **AIR 1964 SC 477**

evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (*vide* ***Hari Vishnu Kamath v Syed Ahmad Ishaque***[28]***, Nagandra Nath Bora v Commissioner of Hills Division and Appeals Assam***[29] *and* ***Kaushalya Devi v Bachittar Singh***[30]*.*

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record*. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but *there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record*. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record.

[28] **(1955) 1 SCR 1104**
[29] **(1958) SCR 1240**
[30] **AIR 1960 SC 1168**

> Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."
>
> (Emphasis supplied)

15.2 Division Benches of this Court have also spoken on the issue. In ***Kailash Chand Dig v UOI***[31], a Division Bench, of which one of us (C. Hari Shankar J.) was a member, has held:

> "33. The procedural framework under the BSF Act and Rules has been duly adhered to at every stage. The petitioner has failed to demonstrate any illegality, perversity, or procedural lapse warranting interference by this Court in exercise of writ jurisdiction. It is a settled position of law that findings of a court martial or its equivalents like the GSFC are not to be interfered with unless they are patently illegal or shock the conscience of the court. No such exceptional circumstance is made out in the present case."

15.3 Similar views stand expressed by this Bench in ***Sheelendra Kumar v UOI***[32] and ***Kiran Kumar v UOI***[33] and by a coordinate Division Bench in ***SI/Steno Digamber Singh v UOI***[34].

Conclusion

16. We, therefore, find no occasion to interfere with the impugned decision of the GSFC, which accordingly stands affirmed in its entirety.

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[31] **2025 SCC OnLine Del 2500**
[32] **2025 SCC OnLine Del 5420**
[33] Judgment dated 25.07.2025 in **W.P.(C) 6319/2023**
[34] **2025 SCC OnLine Del 3981**

17. The writ petition is therefore dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 28, 2025*/yg*