2025:KER:63148



**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH**

**FRIDAY, THE 22ND DAY OF AUGUST 2025 / 31ST SRAVANA, 1947**

**WP(CRL.) NO. 1002 OF 2024**

**CRIME NO.1/2024 OF INDIAN NAVY, KOCHI, Ernakulam**

**PETITIONER:**

**SANTOSH KARWADE**
**AGED 49 YEARS**
**S/O LATE MR.SITARAM KARWADE, FLAT NO.2,**
**F BUILDING, GREEN CITY, SHIVANE,**
**PUNE, PIN - 411023**

**BY ADV SRI.YESHWANT SHENOY**
**SMT.AYSHA ABRAHAM**

**RESPONDENT:**

1 **UNION OF INDIA**
**REPRESENTED BY SECRETARY, MINISTRY OF DEFENCE,**
**SOUTH BLOCK, NEW DELHI, PIN - 110011**

2 **CHIEF OF NAVAL STAFF**
**SOUTH BLOCK, CENTRAL SECRETARIAT,**
**NEW DELHI, PIN - 110011**

3 **FLAG OFFICER COMMANDING IN CHIEF**
**SOUTHERN NAVAL COMMAND, NAVAL BASE,**
**KOCHI, PIN - 682004**

**4 COMMANDING OFFICER**
**INS VENDURUTHY, NAVAL BASE,**
**KOCHI, PIN - 682004**

**5 PRESIDENT**
**GENERAL COURT MARTIAL OF SANTOSH KARWADE,**
**ASW SCHOOL, NAVAL BASE, KOCHI, PIN - 682004**

**BY ADV SRI.AR.L.SUNDARESAN, ASGI**
**SHRI.SUVIN R.MENON, CGC**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 17.03.2025, THE COURT ON 22.08.2025 DELIVERED THE FOLLOWING:**

"C.R."

# J U D G M E N T

The petitioner, a Navy personnel with 31 years of service, challenges the trial held against him by the Court-Martial under the Navy Act, 1957 (for short, the Navy Act), in this writ petition filed under Article 226 of the Constitution of India.

## Factual Background

2. The petitioner joined the Indian Navy as a Sailor in July 1993. He currently holds the rank of Master Chief Petty Officer, Logistics (Finance & Administration), First Class.

3. A Court-Martial was convened under the Navy Act to try the petitioner on the following charges:

> *"The accused Santosh Karwade, MCPO LOG (F&A) 1, 179845R, Indian Navy then belonging to Indian Naval Hospital Ship Sanjivani and presently borne on the books of Indian Naval Ship Venduruthy, being a person subject to Naval Law is charged for that he:-*
>
> *(a) Between 30 Apr 21 to 07 May 21, guilty of cheating Surg Lt. M.Balachandran (76581Y) in that he dishonestly induced the said officer to transfer a sum of Rs.1,10,595/-*

*(Rupees One Lakh Ten Thousand Five Hundred and Ninety Five only) to his HDFC bank account no.00721150002065 for returning the unspend amount to Govt through MRO, with the intention of not doing the same and thereby committed an offence punishable under Section 420 of Indian Penal Code, 1860 read in conjunction with Section 77(2) of the Navy Act, 1957.*

*(b) Between 30 Apr 21 to 07 May 21, guilty of cheating Surg Lt. Emil Andrews (76582Z) in that he dishonestly induced the said officer to transfer a sum of Rs.1,11,039/- (Rupees One Lakh Eleven Thousand and Thirty Nine only) to his HDFC bank account no.00721150002065 for returning the unspend amount to Govt through MRO, with the intention of not doing the same and thereby committed an offence punishable under Section 420 of Indian Penal Code, 1860 read in conjunction with Section 77(2) of the Navy Act, 1957.*

*(c) Between 24 Mar 21 to 01 May 21, guilty of cheating Surg Lt. KS Sheshan (76585F) in that he dishonestly induced the said officer to transfer a sum of Rs.1,11,396/- (Rupees One Lakh Eleven Thousand Three Hundred and Ninety Six only) to his HDFC bank account no.00721150002065 for returning the unspend amount to Govt through MRO, with the intention of not doing the same and thereby committed an offence punishable under Section 420 of Indian Penal Code, 1860 read in conjunction with Section 77(2) of the Navy Act, 1957.*

*(d) Between 11 May 21 to 15 May 21, guilty of cheating Surg Lt. Chandu S. Raj (76594A) in that he dishonestly induced the said officer to transfer a sum of Rs.1,12,459/- (Rupees One Lakh Twelve Thousand Four Hundred and Fifty*

*Nine only) to his HDFC bank account no.00721150002065 for returning the unspend amount to Govt through MRO, with the intention of not doing the same and thereby committed an offence punishable under Section 420 of Indian Penal Code, 1860 read in conjunction with Section 77(2) of the Navy Act, 1957.*

*(e) Did on 03 May 21, in his capacity as ALOGO (Pay) of INHS Sanjivani, forge MRO No 0013 iro Surg Lt. M.Balachandran (76581Y) for a sum of Rs.10,595/- (Rupees Ten Thousand Five Hundred and Ninety Five Rupees only) by adding numeral '1' and words 'one lakh' to the description of the amount, respectively in the individual copy of MRO for the unspend amount of Ty Duty, intending that it shall be used for the purpose of cheating and thereby committed an offence punishable under Section 468 of Indian Penal Code, 1860 read in conjunction with Section 77(2) of the Navy Act, 1957.*

*(f) Did on 03 May, 21, in his capacity as ALOGO (Pay) of INHS Sanjivani, forge MRO No 0012 iro Surg Lt. Emil Andrews (76582Z) for a sum of Rs.11,039/- (Rupees Eleven Thousand and Thirty Nine only), by adding numeral '1' and words 'one lakh' to the description of the amount, respectively, in the individual copy of MRO for the unspend amount of Ty Duty, intending that it shall be used for the purpose of cheating and thereby committed an offence punishable under Section 468 of Indian Penal Code, 1860 read in conjunction with Section 77(2) of the Navy Act, 1957.*

*(g) Did on 03 May 21, knowingly make a false entry at Sr no.163 in MRO register of INHS Sanjivani, to be used for official purpose, indicating that an amount of Rs.1,10,595/- (Rupees One Lakh Ten Thousand Five Hundred and Ninety Five*

*Rupees only) was deposited in bank through MRO Sr No.0013, without actually depositing the said amount and committed an offence punishable under Section 60(a) of Navy Act, 1957.*

*(h) Did on 03 May 21, knowingly make a false entry at Sr no.164 in MRO register of INHS Sanjivani, to be used for official purpose indicating that an amount of Rs.1,11,039/- (Rupees One Lakh Eleven Thousand and Thirty Nine only) was deposited in bank through MRO Sr No.0012, without actually depositing the said amount and committed an offence punishable under Section 60(a) of Navy Act, 1957."*

4. While the trial before the Court-Martial was in progress, the petitioner filed this writ petition challenging the proceedings of the Court-Martial. According to the petitioner, the proceedings before the Court-Martial were conducted illegally and improperly and in breach of law inasmuch as he was denied his right to a free and fair trial. He has alleged that the proceedings before the Court-Martial were vitiated because of bias on the part of the Court against him and violation of the principles of natural justice. It is further alleged that he was not given a fair opportunity to examine the defence witness, was not given copies of the witness' depositions, was denied access to material documents and thus denied adequate opportunity to defend himself. He has raised irregularities in the investigation and

framing of charges against him as well. The petitioner has also challenged the constitutionality of Regulation 178(3) of the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965 (for short, 'Navy Regulations') and the appointment of the investigating officer as the prosecutor to conduct the trial before the Court-Martial. The following reliefs are sought in the writ petition:

> *"i) To declare the investigation as being vitiated because the final outcome of the investigation was pre-determined.*
>
> *ii) To declare that the charges framed are in violation of Regulation 155 of the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965.*
>
> *iii) To declare that the convening order to assemble the GCM was in violation of Regulation 156 of Navy (Discipline and Miscellaneous Provisions) Regulations, 1965.*
>
> *iv) To declare Regulation 178(3) of Navy (Discipline and Miscellaneous Provisions) Regulations, 1965 as ultra vires the settled principles in criminal jurisprudence and therefore being violative of the Constitution of India.*
>
> *v) To order the Respondents to pay the costs of this petition.*
>
> *vi) To issue such other and further reliefs as may be prayed for from time to time."*

## Points for Determination

5. This Court admitted the writ petition and issued notice to the respondents only on the relief No.(iv) by which the petitioner sought to declare Regulation 178(3) of the Navy Regulations, unconstitutional. According to the petitioner, the said Regulation that allows the prosecutor to be a competent witness is against the basic tenets of criminal jurisprudence and is violative of the right to a fair trial protected under Article 21 of the Constitution of India. During the pendency of this writ petition and after the vacation of the interim stay, the trial of the petitioner before the Court-Martial had proceeded to a conclusion, and he was convicted and sentenced. It is submitted that the appeal filed by the petitioner challenging the conviction and sentence is pending before the Armed Forces Tribunal. Thus, the main question that remains to be determined in this writ petition is the constitutionality of Regulation 178(3) of the Navy Regulations. Incidentally, the competency of the investigating officer to act as a prosecutor in a trial before the Court-Martial also arises for consideration.

## Rival Submissions

6. I have heard Sri.Yeshwant Shenoy, the learned counsel for the petitioner, Sri.AR.L.Sundaresan, the learned Additional Solicitor General of India (ASGI) and Sri.Suvin R.Menon, the learned Central Government Counsel.

7. The learned counsel for the petitioner submitted that appointing the investigating officer as the prosecutor in the trial of the case he investigated and allowing the prosecutor to be a witness in a case he is conducting violates all the canons of fair trial protected under Article 21 of the Constitution of India. The learned counsel for the petitioner further submitted that Regulation 178(3) of the Navy Regulations, which permits the prosecutor to be a competent witness, violates the basic principles of criminal jurisprudence and should be struck down as unconstitutional. The learned counsel further submitted that even if Regulation 178(3) of the Navy Regulations allows the prosecutor to be a witness, that does not mean that it is permissible to make the investigating officer a prosecutor. Relying on *Himanshu Singh Sabharwal v. State of M.P.* [(2008) 3

SCC 602], it was submitted that a fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. The learned counsel also submitted that the term 'suitable person', found in Regulation 163(1) of the Navy Regulations cannot be interpreted to include the investigating officer. Relying on the decision of the Supreme Court in ***Union of India v. Parashotam Dass*** [2023 KLT OnLine 2316 (SC)] it was argued that the High Court, under Article 226 of the Constitution, has the power of judicial review even in respect of Court-Martial and it can grant appropriate relief if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record. Reliance was placed on ***R.Sarala v. T.S. Velu and Others*** (AIR 2000 SC 1731) and ***Tarsem Kumar v. State of Himachal Pradesh*** [(2022) 3 Crimes (HC) 316] to contend that the role of prosecutor and the investigating officer in a criminal prosecution is distinct and separate.

8. The learned ASGI, on the other hand, submitted that the challenge to Regulation 178(3) of the Navy Regulations on

the ground that it is *ultra vires* to the settled principles of criminal jurisprudence and thus unconstitutional is not legally sustainable. The learned ASGI submitted that the challenge against the said Regulation is also not sustainable in view of Article 33 of the Constitution of India. Reliance was placed on ***Ram Sarup v. Union of India and Another*** (AIR 1965 SC 247), ***Lt. Col. Prithi Pal Singh Bedi v. Union of India and Others*** [(1982) 3 SCC 140] and ***R.Viswan and Others v. Union of India and Others*** [(1983) 3 SCC 401]. It is further submitted that the petitioner is estopped from challenging the said provision since he himself sought to summon the prosecutor, who is also the investigating officer, to adduce evidence during the trial. According to the learned ASGI, the Court-Martial was conducted strictly in compliance with the procedure stipulated in the Navy Act and the Navy Regulations and the procedure of criminal trial as elucidated under Cr.P.C/BNSS does not apply to proceedings under the Navy Act.

9. As to the second point urged by the petitioner, the learned ASGI submitted that as per the scheme of the Navy Act and the Navy Regulations, any suitable person can be appointed

as the prosecutor in a trial, and thus, there is no bar in appointing the investigating officer as the prosecutor. The investigating officer is a Logistic Officer having experience of 15 years in the Navy in the field of allowances and financial documents and the Flag Officer Commanding in Chief who convened the Court-Martial considered him as the most suitable person to carry out the role of prosecutor and appointed him so and the said procedure in no way violated any of the procedures stipulated in the Navy Act or the Navy Regulations or the principles of fair trial. No prejudice has been caused to the petitioner on account of the appointment of the investigating officer as the prosecutor. There is no violation of any fair trial principles, as the prosecutor is not entitled to any special privilege while giving evidence and is always subject to cross-examination by the accused, added the learned ASGI. The learned Central Government Counsel endorsed the arguments of the learned ASGI.

## Analysis and Finding

***Point No.1:- Is the prosecutor a competent witness: Constitutional validity of Regulation 178(3)***

10. The first question that arises for consideration on

these rival contentions is as to the constitutional validity of Regulation 178(3) of the Navy Regulations.

11. Defence personnel serving in the Army, Navy, or Air Force are dealt with by the special provisions contained in the Army Act, Navy Act or Air Force Act, respectively. The Navy Act and the Navy Regulations made thereunder constitute a self-sustaining Code that prescribes the procedure for investigation and trial. Section 2 of the Navy Act deals with persons subject to naval law. As per sub-section 1(a) of Section 2, every person belonging to the Indian Navy during the time that he is liable for service under the Act is subject to naval law. As per Section 78(1), every person subject to naval law who is charged with a naval offence, or a civil offence, can be tried and punished under the Navy Act regardless of the place of commission of the offence. Section 3(3) defines 'civil offence' as an offence triable by a Court of ordinary criminal jurisdiction in India. Section 3(13) defines 'naval offence' as any of the offences under Sections 34 to 76 of the Navy Act. Chapter XII of the Navy Act deals with the constitution of the Disciplinary Court and the Court-Martial. There is no permanent court for the Indian Navy, and the Court-Martial

will be constituted when the need arises. The President, the Chief of the Naval Staff, or any officer empowered in this behalf by commission from the Chief of the Naval Staff shall have the power to order a Court-Martial for the trial of the offences under the Navy Act. A Court-Martial can be held ashore or afloat. The Court-Martial shall consist of the President and members. The total number of officers of the Court-Martial shall not be less than five or more than nine, including the President. Every Court-Martial shall be attended by a trial judge advocate to assist the Court. He shall perform the duties as are provided under the Act. The trial judge advocate shall decide all questions of law arising during the trial of the Court-Martial. He shall also advise the Court as to questions regarding the admissibility of the evidence or the propriety of the questions asked by or on behalf of the parties during the trial. Section 93 of the Navy Act deals with the power of the Court-Martial to try offences. Chapter XIII of the Navy Act deals with the procedure of Court-Martial.

12. Section 184 of the Navy Act empowers the Central Government to make regulations for the governance, command,

discipline, recruitment, conditions of service and regulation of the naval forces and generally to carry into effect the provisions of the Act. Sub-sections (2)(d) to (f) of Section 184 specifically say that such regulations may provide for the convening and constitution of Court-Martial, the appointment of prosecutors at trials by Court-Martial, the adjournment, dissolution, and sittings of Court-Martial, and the procedures to be observed in trials by Court-Martial. Section 88 provides that the procedure before trial and the manner of investigation shall be as prescribed. Invoking the power under Section 184, the Central Government enacted Navy Regulations prescribing the manner of investigation before trial and the manner of investigation as contemplated under Section 88 of the Navy Act.

13. Regulation 148 of the Navy Regulations mandates the Commanding Officer to make an application for trial of an offender by Court-Martial. The Commanding Officer is the officer or other person in actual command of a ship or establishment [Regulation 2(dd)]. As per Regulation 149, before a Commanding Officer proceeds to make an application for trial by a Court-Martial, he is bound to investigate the case himself or by a

suitable person and to record a summary of evidence. As per Regulation 151, the investigating officer appointed by the Commanding Officer shall forward the recording of evidence to the Commanding Officer for taking the statement of the accused under Regulation 151(3). As per Regulation 163(1), the Convening Authority shall, by warrant under his hand in the prescribed form, appoint a suitable person to prosecute trial before the Court-Martial. Regulation 178 deals with the provisions as to witnesses for prosecution and the defence. Regulation 178 (3) specifically stipulates that the prosecutor is a competent witness.

14. The petitioner challenges the constitutional validity of Regulation 178(3) on the ground that it is *ultra vires* to the settled principles in criminal jurisprudence. The petitioner has no challenge that the said provision is violative of any of the fundamental rights guaranteed to him. The petitioner has also no case that the said provision is *ultra vires* the parent Act, i.e., the Navy Act. However, the learned counsel for the petitioner submitted that permitting the prosecutor to give evidence in a case he is prosecuting violates the principles of fair trial, which is

recognised as an essential part of the broader right to life and liberty guaranteed under Article 21 of the Constitution of India. *Per contra*, the learned ASGI submitted that Regulation 178(3) does not violate the fair trial, but ensures fair trial to the prosecution and the defence and thereby ensures justice to the victim and the accused. It is further contended that a Court-Martial constituted only for the purpose of trying an offence can have a prosecutor who would have been an officer who investigated the case as empowered under Regulation 149, and it was contemplating such a necessity, Regulation 178(3) of the Navy Regulations stipulates that the prosecutor is a competent witness. It is also contended that the said Regulation not only empowers the prosecutor to give evidence, but also permits the defence to cross-examine him to elicit the truth encountered by him during the investigation while he was acting as an investigating officer and thus ensures a fair trial to both the prosecution and the defence. The learned ASGI further submitted that the provisions of the Navy Act and the Navy Regulations, insofar as they infringe or affect the fundamental rights, are protected by Article 33 of the Constitution.

*Exception to Fundamental Rights under Article 33 of the Constitution*

15. Article 33 of the Constitution of India expressly empowers the parliament to modify the rights conferred by Part III of the Constitution in their application to the members of the Armed Forces so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Article 33 reads as follows:

> *"**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 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. "*

16. A reading of the above Article shows that it carves out an exception insofar as the applicability of fundamental rights to members of the Armed Forces and the Forces charged with maintaining public order is concerned. Article 33, on a plain grammatical reading of its language, does not require that Parliament itself by law restricts or abrogates any of the fundamental rights to attract the applicability of that Act. What it says is that Parliament may, by law, determine the permissible extent to which any of the fundamental rights may be restricted or abrogated in the application to the members of the Armed Forces and the Forces charged with the maintenance of public order. It therefore follows that if any provisions of the Act or Rules restrict or abrogate any right guaranteed under Part III of the Constitution, it cannot be challenged on the ground that it is violative of the fundamental rights guaranteed under Part III. The law on the subject is fairly well settled.

17. As early as in 1965, the Constitution Bench of the

Supreme Court in ***Ram Sarup*** (supra), while rejecting the challenge against the provisions of the Army Act, 1950 on the ground that they are unconstitutional as violative of Part III of the Constitution, held that the Army Act, 1950 was enacted in pursuance of the enabling power conferred upon Parliament by Article 33 of the Constitution and is entitled to protection despite the restrictions imposed by its provisions on the fundamental rights guaranteed by the Constitution. It was further held that the provisions of the Army Act, 1950, formed an inherent part of the legislation and, having been enacted in pursuance of the power conferred by Article 33, they would not be declared void to the extent they restricted or abrogated the guarantee of fundamental rights to members of the Armed Forces. It was also held that each and every provision of the Army Act, 1950 is a law made by Parliament and that if any such provision tends to affect the fundamental right under Part III of the Constitution, that provision does not, on that account, become void, as it must be taken that Parliament has thereby in exercise of its power under Article 33 of the Constitution, made the requisite modification to effect the respective fundamental right. In ***Prithi Pal Singh Bedi*** (supra), the

constitutional validity of Rules 22, 23, 25 and 40 of the Army Rules, 1954 was challenged as being violative of the fundamental rights of the petitioner guaranteed under Articles 14 and 21 of the Constitution. It was held that if any provisions of the Army Act or Rules conflict with the fundamental rights, they shall have to be read subject to Article 33 as being enacted with a view to either restricting or abrogating other fundamental rights to the extent of inconsistency or repugnancy with the Army Act. It was observed in paragraph 15 thus:

> *"Therefore it is not possible to accept the submission that the law prescribing procedure for trial of offences by court martial must satisfy the requirement of Article 21 because to the extent the procedure is prescribed by law, and if it stands in derogation of Article 21, to that extent, Article 21 in its application to the Armed Forces is modified byenactment of the procedure in the Army Act itself".*

18. In ***Viswan*** (supra), Section 21 of the Army Act, 1950 which empowered the Central Government to make rules restricting fundamental rights under Article 19(1)(a), (b) and (c) to such extent and in such manner "as may be necessary" was held to be constitutionally valid as being within the power conferred under Article 33. In ***Union of India and Others v. Ex. Flt.***

***Lt. G.S. Bajwa*** [(2003) 9 SCC 630], it was held that the fundamental rights of members of armed forces can be restricted or abrogated by an Act of Parliament enacted in exercise of plenary legislative jurisdiction read with Article 33. Quite recently, in ***Arshnoor Kaur v. Union of India*** (2025 KLT OnLine 2652 (SC)], it was held that the effect of Article 33 is to enable Parliament to limit or abrogate the fundamental rights in their application to the members of the Armed Forces and such restrictions or abrogation must be made by law passed by Parliament

19. The Navy Regulations were framed in exercise of the power to enact subordinate legislation under Section 184 of the Navy Act and thus Regulation 173 of the Navy Regulations is a law as defined under Article 13 of the Constitution of India and thus subject to the restriction contained under Article 33 of the Constitution of India.

20. The learned counsel for the petitioner relied on the decision of the Supreme Court in ***Parashotam Dass*** (supra) to contend that the High Court under Article 226 of the Constitution has the power of judicial review even in respect of Court-Martial

and it can grant appropriate relief if the said proceedings have resulted in denial of fundamental right guaranteed under Part III of the Constitution. The issue considered in the said case was whether the order passed by the Armed Forces Tribunal would be amenable to challenge in the writ jurisdiction under Article 226 of the Constitution of India before the High Court. Relying on ***L.Chandrakumar v. Union of India and Others*** [(1997) 3 SCC 261], ***S.N.Mukherjee v. Union of India*** [(1990) 4 SCC 594] and ***Rojer Mathew v. South Indian Bank Ltd and Others*** [(2020) 6 SCC 1], the Supreme Court concluded that there is no *per se* restriction on the exercise of power under Article 226 of the Constitution by the High Court reviewing a decision arising from an order of Armed Forces Tribunal if there is denial of fundamental right under Part III of the Constitution or there is a jurisdictional error or error apparent on the face of the record. The applicability of Article 33 of the Constitution of India to the provisions of statutes governing the Armed Forces did not arise for consideration in the said decision. It has already been pointed out that Parliament has the power to restrict or abrogate any of the rights conferred by Part III of the Constitution in their application to the members of the

Armed Forces so as to ensure the proper discharge of duties and maintenance of discipline amongst them. The Navy Act and the Navy Regulations are one such law and, therefore, any of the provisions therein cannot be struck down on the only ground that they restrict or abrogate or tend to restrict or abrogate any of the rights conferred by Part III of the Constitution, and this would indisputably include Article 21 of the Constitution.

21. Even otherwise, it is not possible to subscribe to the view that Regulation 178(3) of the Navy Regulations violates the principles of fair trial and thus infringes Article 21 of the Constitution of India. The said provision only says that the prosecutor is a competent witness. A person who can lawfully be called to give evidence is a competent witness. Competency as a witness refers to a person's legal ability to testify. Competency is the rule, and incompetency is the exception. In Section 118 of the Indian Evidence Act, a competent witness refers to individuals who are legally able to give testimony in court.

22. There is no criminal investigation branch or the prosecution branch in the Indian Navy under the Navy Act or the

Navy Regulations. There is no separate cadre for prosecution as provided under Cr.P.C. As per Regulation 163(1) of the Navy Regulations, the Convening Authority is given the power to appoint a suitable person serving in the Indian Navy as a prosecutor. True, it is inappropriate for a prosecutor to be both the advocate and a witness in the same case because it can create a conflict of interest. However, there may be situations where a prosecutor possesses unique first-hand knowledge of a fact relevant to the case and no other witness can provide that information. In those situations, the prosecutor's testimony might be deemed necessary. However, the decision whether to allow a prosecutor to be a witness ultimately rests with the Court. It is important to distinguish between a witness's competency and his credibility. A prosecutor may be legally competent to testify, but his credibility depends on the weight given to his testimony. Section 137 of the Navy Act, which is analogous to Section 311 of Cr. P.C., allows the trial judge advocate to summon any person to give evidence before the Court- Martial if his evidence is essential for the just decision of the case. As per Regulation 178(4) of the Navy Regulations, even a member of the Court is not disqualified

from being examined as a witness if it is found in the course of the proceedings that he may give material evidence. Therefore, it cannot be said that a prosecutor is incompetent to be a witness in a trial before a Court-Martial in which he prosecutes.

23. The Privy Council and various High Courts have held that the counsel is competent to testify in a case in which he appears. It was held by the Privy Council in ***Seth Biradh Mal v. Sethani Prabhabhati Kunwar*** (AIR 1939 PC 152) that counsel representing a party is not incompetent to be a witness. In ***D.Weston v. Pery Mohandas*** [ILR 40 Cal. 898], the Calcutta High Court took the view that there is nothing necessarily unprofessional in counsel giving evidence in a case in which he appears as such. It was observed that under Section 118 of the Evidence Act, counsel, though he may be engaged in the case, is competent to testify whether the facts in respect of which he gives his evidence occurred before or after his retainer. The Madras High Court in ***Lodd Govindoss Krishnadoss and Others v. Rukmani Bhai*** [AIR 1916 Mad.5] held that though it was not desirable that counsel ought not to appear in a case where it was probable that his evidence would be material, there was no

inflexible rule that his evidence ought not to be taken, if at any stage of the suit, it became necessary to do so. The Patna High Court in ***Sabitri Thakurain v. F.A.Savi*** [AIR 1933 Patna 306] held that although it is undesirable that a lawyer should appear in a case in which he knows or has reason to believe that he would be an important witness, there is no harm in giving evidence in the case.

24. Regulation 178(3) not only empowers the prosecutor to give evidence but also empowers the defence to cross-examine him. The defence can also summon him as a witness. As per Ext.P9 witness schedule filed by the petitioner, he sought to summon the prosecutor. For all these reasons, it cannot be said that the said provision violates the principles of fair trial and thus contravenes Article 21 of the Constitution. The challenge against the constitutionality of Regulation 178(3), therefore, must fail.

***Point No. 2:- Can the Investigating Officer and the prosecutor be the same person: Interpretation of Regulation 163(1)***

25. The next question concerns the interpretation of the word ‘suitable person’ found in Regulation 163(1) of the Navy

Regulations. The question is whether the word 'suitable person' found in Regulation 163(1) of the Navy Regulations could be interpreted to include the investigating officer as well, thereby allowing the investigating officer to act as prosecutor in the very same trial before the Court-Martial. It is a question of public importance since it affects the right to a fair trial available to the accused.

*The Right to Fair trial*

26. A fair trial is fundamental to the administration of criminal justice and the rule of law. It protects the rights of the accused, the victim, and society as a whole. The right to fair trial is a norm of international human rights law and is also adopted by many countries in their procedural law. Countries like USA, Canada, UK and India have adopted this norm, and it is enshrined in their Constitution. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial. The right to fair trial is considered a fundamental right in India, derived from Article 21 of the Constitution, which guarantees protection of life and personal liberty. In *Motilal Saraf v. Union of India* [(2007) 1

SCC Crl. 180], the Supreme Court observed that the concept of fair trial flows directly from Article 21 of the Constitution. Article 21 guarantees a fair trial at all stages of the process, including investigation, probe, trial and appeal. In ***Dwarka Prasad Agarwal v. B.D. Agarwal*** [(2003) 6 SCC 230], the Supreme Court opined:

> *"The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our Constitution as also the international treaties and conventions, the right to get a fair trial is a basic fundamental/human right. Any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India. Right to a fair trial by an independent and impartial tribunal is part of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 [see Clark (Procurator Fiscal, Kirkcaldy) v. Kelly [(2003) 1 All ER 1106(PC)]."*

In ***Nirmal Singh Kahlon v. State of Punjab and Others*** [(2009) 1 SCC 441], it was held that fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. In ***Sathyavani Ponrani v. Samuel Raj*** (2010 (4) CTC 833), while dealing with fair trial, the Supreme Court has held that the same is mandatory under Articles 14, 21 and 39 of the Constitution of India. It was

observed thus:

> *"66. Free and Fair Investigation and Trial is enshrined in Article 14, 21 and 39-A of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The preamble and the constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution. Therefore such a right is a constitutional right as well as a fundamental right. Such a right cannot be confined only to the accused but also to the victim depending upon the facts of the case. Therefore such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party in getting a fair trial would in violation of Article 14 of the Constitution."*

In ***Sidhartha Vashisht v. State (NCT of Delhi)*** [(2010) 6 SCC 1], the Supreme Court observed thus:

> *"197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime".*

In J.***Jayalalithaa and Others v. State of Karnataka and Others***

[(2014) 2 SCC 401], it was observed thus:

> *"28. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case".*

A Three-Judge Bench of the Supreme Court in ***Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another*** [(2019) 17 SCC 1] held as under:

> *"17. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , be "right, just and fair and not arbitrary, fanciful or oppressive" (see para 7 therein). Equally, in Commr. of Police v. Delhi High Court, (1996) 6 SCC 323 : 1996 SCC (Cri) 1325], it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see para 16 therein)".*

In ***Sovaran Singh Prajapati v. The State of Uttar Pradesh*** (2025 INSC 225), it was held that the ideal of fair trial has protection in the Constitution and the international legal framework, as a basic

human right.

27. Therefore, a free and fair trial is a *sine qua non* of a criminal prosecution. The right to get a fair trial is not only a basic fundamental right but also a human right. The Courts in India play a crucial role in safeguarding this right by adhering to established legal principles, ensuring that the judicial process is transparent, impartial and accessible to all, and the Court-Martial is not an exception. The crucial question is whether this right to a fair trial would be infringed when the investigating officer himself assumes the role of a prosecutor in a trial before the Court-Martial.

*The Role of the Investigating Officer and the prosecutor under the Cr.P.C and the Navy Act and Regulations*

28. The investigation and prosecution are two different facets of the administration of criminal justice. An investigating officer's role is to collect evidence and build a case, while a prosecutor's role is to present the case before the court. Normally, the role of the prosecutor commences after the investigation agency presents the final report in court, following

the culmination of the investigation. The role of public prosecutor is inside the court, whereas the role of the investigation is outside the court. The Supreme Court in ***Sarala*** (supra) delineated the role of the investigating officer and public prosecutor in criminal investigation and prosecution. The Supreme Court ruled that the public prosecutor has no statutory role in the investigation stage of a criminal case. It was observed that involving the public prosecutor in the investigation is unjudicious as well as pernicious in law. The Court emphasised that the investigative power lies with the police, and the public prosecutor's role begins after the police have completed their investigation and filed a final report. In essence, the ruling affirmed the independence of the police in conducting investigations, while clarifying the distinct and separate role of the public prosecutor in the subsequent prosecution stage.

29. Under the scheme of Cr. P.C., the roles of investigating and prosecuting are distinct and are handled by separate wings to ensure impartiality and prevent bias. Investigation is defined in Section 2(h) of the Cr.P.C., as including "all the proceedings under this Code for the collection of evidence conducted by a

police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf." The investigation, under Cr.P.C., takes in several aspects, and stages for collection of evidence commencing from the registration of F.I.R., ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of a final report based on the opinion so formed. As per Sections 24 and 25 of Cr.P.C., Prosecutors, including Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors, are to conduct prosecutions and criminal proceedings in High Courts and Sessions Courts and Assistant Public Prosecutors are appointed for conducting prosecutions in the Magistrate's Courts. He is the officer of the court. A public prosecutor appointed under Section 24 or 25 of Cr.P.C occupies a statutory office of high regard. Rather than a part of the investigating agency, he is instead an independent statutory authority [*Hitendra Vishnu Thakur and Others v. State of Maharashtra and Others*, (1994) 4 SCC 602] who serves as an officer to the court [*Deepak Aggarwal v. Keshav Kaushik and*

*Others*, (2013) 5 SCC 277]. The prosecutor is to deal with a different field in the administration of justice, and he is not involved in the investigation. Similarly, the investigating officer is in no way involved in the prosecution of the case before the Court, which is the domain of the prosecutor. Though Section 302 of Cr.P.C allows a Magistrate to grant permission to a person, other than a police officer below the rank of Inspector, to conduct the prosecution of a case, it carves out an exception that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence to which the accused is being prosecuted. The cumulative effect of the scheme of Cr.P.C and the constitutional philosophy regarding fair trial is that both the investigating agency and the prosecution wing should operate in their independent fields while ensuring adherence to the basic rule of law. The prosecutor should not be involved in the investigation process and vice versa.

30. The independence of the prosecutor's function stands at the heart of the rule of law. The objective of a criminal trial is to determine, through a fair and impartial legal process, whether an individual accused of a crime is guilty or not guilty. It is the

prosecutor's primary responsibility to assist the court in achieving this objective. A prosecutor is one who should necessarily carry out his duty and conduct the case of the prosecution with a sense of impartiality and fairness. In the words of Crompton J., in ***R. v. Puddick*** [(1865) 4 F and F 497 at page 499], Public prosecutors "should regard themselves rather as Ministers of Justice assisting in its administration than as Advocates". As has been observed by Avory J. in ***R v. Banks*** [1916 (2) KB 621], “prosecutors are the gatekeepers in the criminal justice system. It is now a well-settled rule that prosecutors are independent of the police and the courts. While the police, the Courts and the prosecutors have responsibilities to each other, each also has legal duties that separate them from others. The prosecutor does not direct police investigations, nor does he advise the police. The Government should ensure that prosecutors are independent of any executive influence and can discharge their professional duties and responsibilities without any interference”.

31. Commenting upon the role of the public prosecutor, the Supreme Court in *Hitendra Vishnu Thakur* (supra) has held as under:

> *"23.....A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation....."*

In ***Shiv Kumar v. Hukam Chand and Another*** [(1999) 7 SCC 467], a three-Judge Bench of the Supreme Court, having taken note of various judgments rendered by some High Courts, highlighted the role of the public prosecutor thus:

> *"13. ... A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the*

*accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor".*

In ***Sidhartha Vashisht*** (supra), it was held that a duty is cast upon the prosecutor to ensure that the rights of an accused are not infringed and he gets a fair chance to put forward his defence so as to ensure that a guilty does not go scot free while an innocent is not punished.

32. A Single Judge of the Karnataka High Court has elaborately considered the status and responsibilities of the public prosecutor in ***K.V.Shiva Reddy v. State of Karnataka and Others*** (2005 CriLJ 3000) and observed thus:

"*17. Public Prosecutors were expected to act in a "scrupulously fair manner" and present the case "with detachment and without anxiety to secure a conviction" and that the Courts trying the case "must not permit the Public Prosecutor to surrender his functions completely in favour of a private Counsel". Public Prosecutor for the State was not such a mouth piece for his client the State, to say what it wants or its tool to do what the State directs. "He owes allegiance to higher cause".*

> *He must not consciously "misstate the facts", nor "knowingly conceal the truth". Despite his undoubted duty to his client, the State, "he must sometimes disregard his client's most specific instructions if they conflicted with the duty in the Court to be fair, independent and unbiased in his views".*

The role of the public prosecutor came up before the Andhra Pradesh High Court in ***Katari Praveen v. State of Andhra Pradesh*** [2021 SCC OnLine AP 46], wherein the matter was considered and examined in detail and it was held that an ideal public prosecutor must consider himself/herself as an agent of justice in India. It was observed as follows:

> *"The duty of the Public Prosecutor is to represent the State and not the police. A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure, 1973. She/he is not a part of the investigating agency. She/he is an independent statutory authority. She/he is neither the post office of the investigating agency, nor its forwarding agency; but is charged with a statutory duty".*

The Division Bench of the Kerala High Court in ***Babu v. State of Kerala*** (1984 KLT 164) commented upon the role of the prosecutors thus:

> *"Prosecutors are really ministers of Justice whose job is none other than assisting the State in the administration*

*of Justice. They are not representatives of any party. Their job is to assist the Court by placing before the Court all relevant aspects of the case. They are not there to see the innocents go to the gallows. They are also not there to see the culprits escape a conviction."*

The Delhi High Court in ***Ajay Kumar v. State and Another*** (1986 CriLJ, 932), dealing with the role of a public prosecutor held that the public prosecutor is a functionary of the State appointed to assist the court in the conduct of a trial, the object of which is basically to find the truth and to punish the accused if he is found guilty according to the known norms of law and procedure. It is not part of his obligation to secure the conviction of an accused, in any event, or at all costs. Nor is he intended to play a partial role or become party to the persecution of the accused or lend support, directly or indirectly, to a denial of justice or of fair trial to the accused. His plain task is to represent the State's point of view on the basis of the material which could be legitimately brought before the Court at the trial. The Division Bench of the Himachal Pradesh High Court in ***Tarsem Kumar*** (supra) held that the expected attitude of the public prosecutor while conducting prosecution must be couched in fairness, not only to the Court

and to the investigating agencies, but to the accused as well.

33. As observed by the Supreme Court and other High Courts, as discussed above, a prosecutor occupies an office of high regard. The role of the prosecutor in any criminal trial is to safeguard the interests of the complainant/victim as well as the accused. He is not a part of the investigating agency; he is instead an independent authority who serves as an officer to the Court. He must act independently and in the interests of justice. The work of the prosecutor is intrinsically connected with the court and is not part of an investigating agency. A prosecutor is expected to be scrupulously fair, impartial and completely detached while performing his duties. A prosecutor does not represent the investigating agency but represents the state.

34. The learned ASGI submitted that the proceedings of a Court-Martial are not to be compared with the proceedings in a criminal court under Cr. P.C. and that the procedures of criminal trial as elucidated under Cr. P.C. or BNSS do not apply to the proceedings before the Court-Martial under the Navy Act or Navy Regulations. It is his submission that the Navy Act and the Navy Regulations constitute a special law in force, prescribing the

procedure for investigation and conferring special jurisdiction and powers on the Court-Martial for the trial of the offences and given the saving provision in Section 5 of Cr.P.C., the provisions of Cr.P.C are inapplicable in respect of all matters covered by such special law. The learned ASGI further submitted that, unlike criminal courts, a Court-Martial always has the aid of a trial judge advocate to protect the interests of the accused and to ensure a fair trial and justice according to law. I cannot subscribe to the said submissions. A comparison of the provisions in the Navy Act and Navy Regulations with the Cr.P.C. makes it clear that the procedure for investigation prescribed under the former is almost analogous to the procedure prescribed under the latter. Similarly, the procedure prescribed in the ordinary criminal court, when compared with the procedure prescribed for trial by a Court-Martial, is more or less the same.

35. Chapter XII of Cr.P.C. deals with the information to the police and their power to investigate. Key provisions include Section 156, which grants police the power to investigate cognizable offences, and Section 157, details the procedure for investigation. Section 156 provides for information as to non-

cognizable cases and the investigation of such cases. The investigating officer is empowered with various tasks, including registering the case, visiting the crime scene, collecting evidence, and forming an opinion on whether a case exists for prosecution. Section 160 empowers the investigating officer to summon witnesses for examination. Section 161 allows the investigating officer to examine persons acquainted with the facts of the case. Section 165 empowers a police officer to search for any place which he has reasonable grounds to believe contains something necessary concerning the investigation he is authorised to make. Section 173 requires the investigating officer to submit a final report to the Magistrate upon completion of the investigation. The officer prepares a final report under Section 173 Cr.P.C, detailing the findings of the investigation and whether or not there is sufficient evidence to prosecute the accused. Almost identical provisions are there in the Navy Act and the Navy Regulations as well.

36. Under the Navy Act and the Navy Regulations, an investigating officer is responsible for investigating alleged offences or incidents within the Navy. Chapter X of the Navy Act

deals with the arrest and naval custody of the offender, and Section 86 thereof specifically provides for the investigation after arrest. Section 88 says that the procedure before trial and the manner for investigation shall be as prescribed. In terms of Section 88, the rules and procedures for investigation have been prescribed in Chapter II Section II and Chapter V of the Navy Regulations. Regulation 22 deals with the investigation of departmental offences, and Regulation 25 deals with the investigation of other offences. Regulation 27 deals with the procedure of investigation in general, and Regulation 29 deals with the investigation by the Commanding Officer. Regulation 149 deals with the procedure for investigation of cases triable by Court-Martial. The primary role of the investigating officer is to gather, analyse and document relevant evidence to determine if a case should be pursued further, whether through summary trial or referral to higher authorities. The investigating officer investigates incidents or allegations of misconduct, gathering evidence and questioning witnesses. Based on the investigation, the investigating officer decides whether to recommend a summary trial by the Commanding Officer, refer the case to

higher authorities or take other appropriate action. The investigating officer prepares a report summarising the investigation, findings and recommendations. He also assesses the information collected to determine the facts of the case and whether an offence has been committed. Thus, both under the Navy Act and the Cr. P.C., the role of the investigating officer is substantially the same.

37. Chapter XVIII of Cr.P.C. deals with the procedure for trial before a Court of Session, and Chapter XIII of the Navy Act deals with the procedure of Court-Martial. In every trial before a Court of Session, the prosecution shall be conducted by a public prosecutor. As per Section 226 of Cr.P.C., when the accused appears or is brought before the Court, the prosecutor shall open his case by describing the charge against the accused and stating by what evidence he proposes to prove the guilt of the accused. After framing a charge under Section 226, the judge shall read out and explain the charges and ask the accused whether he pleads guilty of the offence or claims to be tried. If the accused pleads not guilty, the Court shall proceed to try the accused and fix a date for the examination of the prosecution witnesses. On

the date so fixed, the prosecutor shall examine the prosecution witnesses and the defence shall cross-examine them. If, after taking the evidence of the prosecution and hearing both sides, the court finds that there is no evidence that the accused committed the offence, it shall record an order of acquittal under Section 232 of Cr.P.C. Where the accused is not so acquitted, he shall be called upon to adduce evidence in support of his evidence. After the completion of the examination of the defence witness, if any, the prosecutor shall sum up his case, and the accused or his counsel shall reply. After hearing arguments, the Judge shall give a judgment of conviction or acquittal. If convicted, the Judge shall hear the accused and pronounce sentence on him according to law.

38. Section 101 of the Navy Act deals with the commencement of proceedings before the Court-Martial. It says that as soon as the Court has been assembled, the accused shall be brought before it and the prosecutor, the person or persons, if any, defending the accused, and the audience admitted. The trial judge advocate shall then read out the charges and ask the accused whether he pleads guilty or not. If the accused pleads

not guilty, the Court shall proceed to try the accused. The prosecutor shall open his case by reading the circumstantial letter prepared under the Navy Regulations, reading the description of the offence charged and stating shortly by what evidence he expects to prove guilt of the accused (Section 106). The prosecutor then examines his witnesses. When the examination of the witness for the prosecution is concluded, the accused shall be called on for his defence. Before entering on his defence, the accused may raise a plea of no case to answer under Section 111. If such a plea is raised, the Court will decide the plea after hearing the accused and the prosecutor and the advice of the trial judge advocate. If the Court accepts the plea, the accused shall be acquitted on the charge or charges in respect whereof the plea has been accepted. If the Court overrules the plea, the accused shall be called upon to enter on his defence. Then the accused shall be allowed to adduce defence evidence. If he has no defence witness to examine as to the facts, the prosecutor may sum up his case, and the accused shall be entitled to reply. If the accused adduces any oral evidence as to facts other than his own evidence, if any, the

accused may then sum up his case on the conclusion of that evidence and the prosecutor shall reply. When the case for the defence and the prosecutor's reply, if any, have concluded, the trial judge advocate shall proceed to sum up in open court the evidence for the prosecution and defence laid down in the law by which the court is to be guided (Section 113). After the trial judge advocate has finished his summing up, the court will be cleared to consider the finding under Section 116. When the court has considered the finding, the court shall be reassembled, and the president shall inform the trial judge advocate in open court what is the finding of the court (Section 117). The trial judge advocate shall then draw up the findings as announced by the court, which shall be signed by all the members of the court (Section 118). Where the finding on any charges is one of not guilty, the court shall acquit the accused of that charge. If the accused is found guilty, the court shall decide on the sentence (Section 120). The trial judge advocate shall draw up the sentence in the prescribed form, which shall be signed by each member of the court. The court shall then be reassembled and the accused brought in; the trial judge advocate shall, by

direction of the court, pronounce the sentence (Section 121). Thus, the procedure prescribed for trial of sessions cases in Chapter XVIII of Cr.P.C., when compared with the procedure prescribed for trial by a Court-Martial, shows very little deviation or departure and is almost similar.

39. The role of a prosecutor and the judge advocate in a trial before the Court-Martial is distinct and separate. The prosecutor conducts the prosecution before the Court-Martial. The judge advocate is appointed to assist the court. He performs a solemn function to advise honestly and guide dispassionately the Court-Martial to ensure a fair trial. Therefore, the learned ASGI cannot be heard to contend that the presence of the judge advocate would justify the appointment of the investigating officer as a prosecutor in the trial before the Court-Martial.

40. Thus, there is a clear separation between the investigative and prosecutorial roles under Cr.P.C. as well as under the Navy Act and the Navy Regulations. Military law, like civilian law, generally recognises the need for a separation of powers. In *Union of India and Others v. Major A. Hussain* [(1998) 1 SCC 537], the Supreme Court has held that a Court-Martial has

the same responsibility as any Court to protect the rights of the accused charged before it and to follow the procedural safeguards. The roles of the investigating officer and the prosecutor should be kept separate in Court-Martial proceedings to ensure a fair and impartial trial. The potential for bias and conflict of interest is too high when the same individual handles both roles. The prosecutor needs to be an impartial or objective representation of the State's interest, and this objectivity would be compromised if the prosecutor were also the one who conducted the investigation. The accused has a right to a fair trial, and allowing the investigating officer to also be the prosecutor would undermine this right by potentially creating an unfair advantage for the prosecution and a biased presentation of the case. In summary, the Investigating Officer cannot involve himself in two distinct and different roles in the same case. He cannot be allowed to wear two hats at the same time. He cannot don the role of prosecutor too. This is essential to maintain the integrity and impartiality of the Court-Martial process. There may not be any actual bias, but one of reasonable suspicion or likelihood of bias may arise. The phrase ‘justice should not only

be done but manifestly be seen to be done' emphasises that public perception of fairness is as crucial as the actual outcome of the legal process. As per Section 97(8) of the Navy Act, a prosecutor shall not be qualified to sit on the Court-Martial for the trial of the person he prosecutes. This provision ensures that the prosecutor also enjoys the same impartiality as the President and members of the Court-Martial. Thus, an investigating officer who conducted the investigation should not act as a prosecutor in the trial of a case he investigated before a Court-Martial.

41. There is a statutory bar in Cr. P.C. for an investigating officer to conduct the prosecution of the same case he investigated (Sections 302(1) and 25(3)(a) of Cr. P.C.). There is no such restriction in the Navy Act or Navy Regulations. They do not explicitly permit the investigating officer to act as a prosecutor either. In this context, Sections 4 and 5 of the Cr.P.C. assume relevance. I extract them below:

> *"**S.4. Trial of offences under the Indian Penal Code and other laws.**- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained*
>
> *(2) All offences under any other law shall be investigated,*

*inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.*

***5. Saving.*** *- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local 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."*

42. A conjoint reading of Sections 4(2) and 5 of Cr.P.C. would show that all offences, whether under the IPC or any other law, have to be investigated, inquired into, tried and otherwise dealt with according to the provisions of Cr.P.C. unless there be an enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, in which case the enactment will prevail over those of Cr.P.C. It means that if the other enactment contains any provision which is contrary to the provisions of Cr.P.C., such other provision will apply in place of the particular provision of Cr.P.C. If there is no such contrary provision in other laws, then provisions of Cr.P.C. would apply to the matters covered thereby. This proposition has been emphasised by a Constitution Bench of the Apex Court in ***A.R. Antulay v. Ramdas Sriniwas Nayak & Another*** [(1984) 2 SCC

500] and reiterated in *Pradeep S. Wodeyar v. State of Karnataka* [(2021) 19 SCC 62]. In short, the provisions of Cr.P.C. would apply in a situation where a special enactment did not make any provision for investigation, inquiry, or trial independently or was silent on those aspects. Where the Navy Act or the Navy Regulations are silent or do not explicitly contradict Cr. P.C., the relevant provisions of Cr.P.C. could be applied. Thus, in the absence of a specific provision in the Navy Act or Regulations prohibiting or permitting the investigating officer from acting as a prosecutor, the provisions in Cr.P.C. [Sections 302(1) and 25(3)(a)], which creates a bar for an investigating officer to conduct the prosecution of the same case he investigated, would apply in a trial before the Court-Martial under the Navy Act.

*Meaning of the Word "Suitable Person"*

43. The Navy Act or the Navy Regulations do not expressly authorise the Convening Authority to appoint the investigating officer to act as a prosecutor. What Regulation 163 of the Navy Regulations says is that the convening authority shall appoint a suitable person to prosecute the trial before the Court-Martial. A "suitable person" is generally someone who is deemed fit,

appropriate, or qualified for a particular role or task. Black's Law Dictionary (Ninth Edition) defines the word “suitable” as 'fit and appropriate for their intended purpose'. Merriam-Webster's Advanced Learner's English Dictionary (First Edition) defines the word “suitable” as 'having the qualities that are right, needed or appropriate for something'. It suggests a level of appropriateness and fitness for the specific situation. The phrase "suitable person” refers to someone who possesses the necessary qualities, qualifications, or characteristics to fulfil a specific role, task, or meet the requirements of a particular situation. It implies fitness, appropriateness and adequacy for the intended role. In the legal context, 'suitable person’ means someone who meets the exact criteria outlined in a particular legal context. Conversely, someone is deemed ‘not suitable’ who lacks these qualities or is otherwise deemed inappropriate for a specific situation or a role. An investigating officer who conducted an investigation and already formed an opinion, based on the evidence he collected, that the accused has committed the offence can never be a suitable person to act as a prosecutor who is an independent authority serving as an officer of the Court.

Therefore, the word ‘suitable person’ found in Regulation 163(1) of the Navy Regulations cannot be interpreted to include the investigating officer.

## Conclusions and Reliefs

44. The upshot of the above discussions and findings is that the petitioner is not entitled to a declaration that Regulation 178(3) of the Navy Regulations, which allows the prosecutor to be a competent witness, is unconstitutional. However, the word ‘suitable person’ found in Regulation 163(1) of the Navy Regulations cannot be interpreted to include the investigating officer, thereby allowing the investigating officer to act as prosecutor in the very same trial. The right to a fair trial would be infringed when the investigating officer himself assumes the role of a prosecutor in a trial before the Court-Martial. Since the prosecutor in a trial before the Court-Martial is an independent authority detached from the investigating agency, the investigating officer shall not be appointed as prosecutor in the trial of the same case before the Court-Martial under the Navy Act. The question whether, on account of the appointment of the

investigating officer as the prosecutor to conduct the trial before the Court-Martial, any prejudice has been caused to the petitioner resulting in a failure of justice or the trial has been vitiated, is left open to be decided by the Armed Forces Tribunal in the appeal pending before it challenging the conviction and sentence of the petitioner.

The writ petition is disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

**APPENDIX OF WP(CRL.) 1002/2024**

**PETITIONER EXHIBITS**

| | |
|---|---|
| **Exhibit P1** | **THE TRUE COPY OF THE LETTER FROM AREA ACCOUNTS OFFICE (NAVY) TO THE COMMANDING OFFICER, INHS SANJIVANI DATED 15 SEPTEMBER 2023** |
| **Exhibit P2** | **THE TRUE COPY OF THE CONVENING ORDER FOR REMITTANCE OF FRAUDULENT TEMPORARY DUTY CLAIM OF SURG.LT. BALACHANDRAN OF INHS SANJIVANI' DATED 23 JAN 2024** |
| **Exhibit P3** | **THE TRUE COPY OF THE FAX MESSAGE FROM THE RESPONDENT NO.3 TO THE WESTERN NAVAL COMMAND AND THE FAX FROM WESTERN NAVAL COMMAND TO NAVAL PAY OFFICE DATED 15 MARCH 2024** |
| **Exhibit P4** | **THE TRUE COPY OF THE CTM ISSUED BY THE RESPONDENT NO.4 DATED 3 APRIL 2024** |
| **Exhibit P5** | **THE TRUE COPY OF THE CHARGESHEET DATED 11 JULY 2024** |
| **Exhibit P6** | **THE TRUE COPY OF THE CIRCUMSTANTIAL LETTER DATED 11 JULY 2024 SENT BY THE RESPONDENT NO.4 TO THE RESPONDENT NO.3** |
| **Exhibit P7** | **THE TRUE COPY OF THE NOTICE DATED 2 AUGUST 2024** |
| **Exhibit P8** | **THE TRUE COPY OF THE APPLICATION FOR THE DOCUMENTS DATED 7 SEPT 2024** |
| **Exhibit P9** | **THE TRUE COPY OF THE LIST OF WITNESS WITH A REQUEST TO ISSUE SUMMONS FILED BY THE PETITIONERS COUNSEL DATED 7 SEPT 2024** |