

ITEM NO.19

COURT NO.7

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(Criminal) No. 265/2022

RABINA GHALE & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.94379/2022-EXEMPTION FROM FILING O.T.)

WITH

W.P.(Cr1.) No. 250/2022 (X)

(FOR ADMISSION and IA No.88717/2022-EXEMPTION FROM FILING O.T. and
IA No.88716/2022-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 19-07-2022 These petitions were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. Vikas Singh, Sr. Adv.
Ms. Astha Sharma, AOR
Mr. Nipun Saxena, Adv.
Ms. Deepika Kalia, Adv.
Mr. Mrityunjai Singh, Adv.
Ms. Suman Rani, Adv.
Mr. Sanjeev Kaushik, Adv.
Ms. Mantika Haryani, Adv.
Mr. Shantanu Sharma, Adv.
Mr. Archit Adlakha, Adv.
Ms. Somya Saxena, Adv.

Mr. K. Sultan Singh, Sr. Adv.
Mr. Aditya Vikram Singh, Adv.
Mr. Ajit Sharma, AOR

For Respondent(s) Ms. Aishwarya Bhati, ASG
Mr. Rajat Nair, Adv.
Ms. Shivika Nair, Adv.
Mr. Manvendra Singh, Adv.
Mr. Aman Sharma, Adv.
Mr. B.L.N. Shirani, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Issue notice.

Mr. Arvind Kumar Sharma, learned Advocate-on-Record accepts notice on behalf of the Union of India and Ministry of Defence.

These Writ Petitions under Article 32 of the Constitution of India, have been filed by the wives of officers of the Indian Army for quashing of Suo Moto FIR, bearing State Crime Police Station (SCPS) Case No.07/2021 registered against the personnel of 21 PARA(SF), Unit of the Indian Army including the respective husbands of the Writ Petitioners under Sections 302, 307, 326, 201, 34 read with Section 120-B of the Indian Penal Code, 1860 (IPC) the findings and recommendations of the Special Investigation Team (SIT) dated 24th March 2022 constituted by Respondent No.2. The proceedings in this case emanate out of an incident dated 4th December 2021 which led to a firing in which 6 persons were killed. The incident flared up leading to more killings and also killing of one of the Army personnel. It is stated that a finger of the husband of Anjali Gupta, the Writ Petitioner in Writ Petition (Cr1.) No. 250 of 2022, was also chopped off.

The Armed Forces (Special Powers) Act, 1958 is applicable to the place in Nagaland where the incident took place, as stated by the learned Additional Solicitor General.

Section 6 of the Armed Forces (Special Powers) Act, 1958 reads as under:-

*“Protection to persons acting under Act.-
No prosecution, suit or other legal proceedings shall be instituted except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”*

From the report bearing No. PHQ/IGP/CID/SCPS/CN0/07/2021/25 dated Kohima, 24th March 2022 of the Chief Investigation Officer being the range IGP, it appears that sanction of prosecution is to be obtained under Section 197(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) and Section 6 of the Armed Forces (Special Powers) Act, 1958. The Section 197(2) of the Cr.P.C. has inadvertently been typed as Section 197(2) of the IPC in the said report of the Chief Investigation Officer.

Section 197(2) of the Cr.P.C. applies to taking cognizance by the Court. However, Section 6 of the Armed Forces (Special Powers) Act, 1958 clearly provides, no prosecution, suit or other legal proceedings shall be instituted except with the previous sanction of the Central Government.

On the query of this Court, the learned Additional Solicitor General submitted that no previous sanction has been granted by the Central Government. The question of sanction is awaiting consideration at the appropriate level.

In view of the admitted position that mandatory previous sanction as required under Section 6 of the Armed Forces (Special

Powers) Act, 1958 has not been obtained, we are constrained to pass an interim order staying further proceedings pursuant to FIR No. 27 of 2021/Final Report of the Special Investigation Team/Charge-sheet.

In the past, this Court has entertained similar Writ Petitions filed by close family members of officers of the Indian Army including Writ Petition (Cr1.) No. 36/2018 (*Vineet Dhanda vs. Union of India & Ors.*) and Writ Petitioner (Cr1.) No.42 of 2018 (*Lt. Col. Karamveer Singh vs. The State of Jammu and Kashmir & Others*). The copies of the orders in the aforesaid writ petitions are annexed to the writ petition.

List the matters after eight weeks.

(MANISH ISSRANI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)