

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1273 OF 2013
(Arising out of SLP(Cr1.) No.4808/2012)

SOWMITHRI S.

Appellant(s)

:VERSUS:

STATE OF ASSAM & ORS.

Respondent(s)

O R D E R

Leave granted.

2. Heard Mr. Radhakrishnan, learned senior counsel in support of this petition and Mr. Balasubramaniam, learned counsel appearing for the respondents.

3. This appeal has been filed to challenge the judgment and order dated 5th June, 2012 rendered by the Gauhati High Court in Criminal Petition No.43/2010 which was filed by the appellant herein under Section 482 of the Code of Criminal Procedure to quash the criminal case filed against him bearing

GR Case No.965/2004. The appellant was being prosecuted under Section 302 of the Indian Penal Code for, allegedly, being responsible for the death of a civilian. The appellant filed Criminal Petition No.43/2010 submitting that he could not be proceeded in the regular criminal court. At the highest, he could be proceeded in the Court Martial. He relied upon the judgment of this Court in General Officer Commanding, Rashtriya Rifles Vs. Central Bureau of Investigation & Anr., (2012) 6 SCC 228 and particularly paragraphs 82 and 95.2 thereof in support. The High Court did not accept that submission, holding that the murder was committed while the appellant was not on active service. Being aggrieved by that judgment and order of the High Court, appellant has filed this appeal.

4. We have perused the above referred judgment - rendered by this Court. This judgment clearly states in paragraph 95.2 that in such cases, it is the authorities of the Armed Forces who have to take a decision as to whether the trial would be by a court martial or criminal court. Now, an affidavit has been filed by one Mr. Anil Yadav, who is a Major in

the Army and in paragraph 8 of the affidavit he has stated that the Armed Forces have decided to take over the case from civil authorities to hold a more comprehensive and detailed inquiry and thereafter proceed further in accordance with Army Act and Rules.

5. The complainant has been served in July, 2012 but he neither entered appearance before this Court nor cared to file any reply. In the facts and circumstances of the case, we allow this appeal, set aside the order passed by the High Court as also the prosecution which is lodged against the appellant. The Armed Forces will now proceed with the inquiry as per the affidavit filed by Major Anil Yadav.

JUDGMENT

.....J
(H.L. GOKHALE)

.....J
(J. CHELAMESWAR)

New Delhi;
August 26, 2013.