Supreme Court of India
Union Of India And Others vs Major A. Hussain, Ic- 14827 on 8 December, 1997
Author: D Wadhwa.
Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:
UNION OF INDIA AND OTHERS

Vs.

RESPONDENT:
MAJOR A. HUSSAIN, IC- 14827

DATE OF JUDGMENT: 08/12/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T D.P. Wadhwa. J.

Appellants are aggrieved by the judgment dated February 21, 1994 of the Division Bench of the High Court of Judicature: Andhra Pradesh dismissing their appeal against judgment date April 25, 1991 of the learned single Judge of that High Court whereby the learned single Judge allowed writ petition filed by the respondent and quashed the court martial proceedings held against him including the confirmation of sentence passed upon him by the court martial.

A General Court Marital (GCM) under the Army Act, 1950 (for short 'the Act') was convened to try the respondent holding the rank of Major in the army on the following charge:

> "Charge Sheet"
>
> The accused IC-14827F Major Arshad Hussain, 225 Ground Liaison Section Type 'C' attached to AOC Centare, an officer holding a permanent commission in the Regular Army, is charged with :-

Army Act AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY Section 63' DISCIPLINE, in

that he, at Field, between 17 Sep 84 Ground Liaison Section Type 'C', lost by neglect twelve (12) pages of the Commander's Operational Brief taken on charge at Serial 115 on the Incoming TOP SECRET Register of HW 150 Inf Bde which were entrusted to in for safe custody.

Place: Secunderabad Sd/-
Date: 14 Aug 87 (Gautam Mitra)
Brig
Commandant
AOC Center

To be tried by General Court Martial.

Station: Madras - 9 Sd/-
Dated: 25 Aug 87 (Deepak Sehdev)
Colonel
Colonel A
For General Officer Commanding
Andhra Tamil Nadu Karnataka
and Kerala Area."

Section 63 of the Act reads as under;

"63. Any person subject to that Act who is guilty of any or omission which, though not specified in this act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned."

After conclusion of the GCM proceedings the respondent was held guilty of the charge and was sentenced to be dismissed from service by order dated December 26, 1987 of the General Court Martial. The sentence passed against the respondent was confirmed by the confirming authority as required under the Act.

The respondent challenged his conviction and sentence in a writ petition filed by him in the High Court which, as noted above, allowed the same and quashed the court martial proceedings and confirmation of sentence against the respondent. The ground which appealed to the High Court in setting aside the court martial proceedings and subsequent confirmation of sentence may be stated from the judgment of the of the single Judge which is as under:

> " The Petitioner has been denied a reasonable opportunity to defend himself by not communicating the conclusion reached in Rule 22 Inquiry as contemplated by Army Order 70/84. In the proceedings under Section 22 by not supplying the copies of statements in earlier court of Inquiry: (i) during General Court Martial by not giving assistance of a defending officer of his choice; (ii) not providing him load which was already sanctioned to manage a new counsel as the earlier counsel engaged by him had retired for no fault of the petitioner; (iii) by not providing him the documents for which he had made a request to the convening authority long before assembly of the Court Martial and for which his counsel had also made a request."

Now to understand if the High Court rightly exercised its power of judicial review of the court martial proceedings, we may refer to a few relevant facts and briefly to the court martial proceedings.

In the year 1984 respondent was serving as Ground liaison Officer in a Brigade which was situated somewhere in Rajasthan in close proximity of international border with Pakistan. One Major P.C.Bakshi was also posted a Brigade Major in that Brigade. brig. A.S. Bains was the commander of the Brigade. Major Bakshi was on annual leave with effect from 17.9.84 to 16.11.84 but before proceeding on leave he handed over certain classified documents to the respondent. Under provisions of Handing of Classified documents, the secret/top secret documents are to be in safe custody of an officer not below the rank of Major. Accordingly, Brig. Bains ordered the respondent to take charge of classified documents from Major Bakshi which classified documents from Major Bakshi which classified documents the respondent took over charge and duly signed the handing/taking over of these documents by signing a certificate to that effect. When Major Bakshi rejoined from his annual leave, he was required to take back the charge of classified documents from the respondent. When handing/taking over was commenced it. was discovered that 12 pages of "Top Secret" documents were missing. A detailed search was carried out but the documents could not be traced and a report of this fact was communicated to all concerned in accordance with laid procedure. Major Bakshi declined to take charge and under orders of brig. Bains the charge of the documents was ordered to be handed over to one Major D.K. Sharma, Deputy Assistant and Quarter Master General in the Brigade, which he did. it is stated that these "Top Secret" documents contained vital information adversely affecting the security of the country as these documents reflected deployment of troops along the international border with Pakistan. In accordance with Army Rules, 1954 framed under Section 191 of the Act "staff court of inquiry' was ordered under Rule 177 to investigate the loss, apportion blame and to suggest remedial measures to prevent such loss occurring in future but the court of injury, however, failed to give any definite findings. Additional court of inquiry was ordered which examined additional witness. Appellants submitted that respondent was afforded full opportunity to be present throughout the proceedings in the court of inquiry in accordance with Army Rule 180 and for submitting anything in his defence. The Court of Inquiry apportioned blame on the respondent and it was recommended to initiate disciplinary proceedings against him.

In accordance with Rule 22(1) of the Army Rules read with Army Order No. 70/84 respondent was brought before the Commanding Officer on April 8, 1985 and hearing of the charge was conducted in the presence of Major. D.K. Sharma. Summary of Evidence was recorded by Lt. Col. B. P. Singh from April 15, 1985 onwards in which the respondent participated. He cross-examined witnesses during the recording of Summary of Evidence. The respondent did not complain about the non-supply of the Court of Inquiry proceedings which were provided to him before the commencement of the Central Court Martial in accordance with Army Rule 184.

The Commanding Officer of the respondent requested the trial of the respondent by General Court Martial which was approved by the convening authority. The respondent was informed that he would be tried by General Court Martial and was advised to submit a list of defence witnesses as well as his choice for a defending officer. The respondent instead proceeded on leave for sixty days with

effect from 10.6.85 to 8.8.85 which was granted. He did not rejoin his duty and instead got himself admitted in Military Hospital in Secunderabad which the appellants contend was to avoid the trial by General Court Martial. The appellants complain that the respondent adopted tactics to delay the commencement of the General Court Martial . He filed a writ petition (No. 17828/86) in the Andhra Pradesh High Court at Hyderabad. The High Court by order dated August 3,1987 directed the appellants to post the respondent at Secunderabad. Respondent was thus attached to AOC Center at Secunderbad. He was supplied with copy of the chargesheet, copy of the Court of Inquiry proceeding and summary of evidence. He was also informed that General Court martial was likely to be convened by August 28, 1987. The respondent again moved the High Court by filing another writ petition (No. 12561/87) and obtained an order staying the General Court martial proceeding. It is not necessary to refer to proceedings in the High Court in that writ petition in any detail, except to note that Court Martial proceeding was interrupted though ultimately the stay granted by the High Court was vacated. The General Court Martial assembled on September 14, 1987 and on being arraigned the respondent pleaded "not guilty" to the charge. Thereafter General Court Martial was adjourned.

For the purpose of recording of evidence. General Court Martial resembled on November 30, 1987. In the absence of the Judge-advocate, it was adjourned to the following day. On December 1, 1987, the record shows that defending officer stated that full facilities in accordance with the Army Act, Army Rules and Regulations for the Army had been afforded to the respondent in the preparation of his defence and that the respondent had also been given full opportunity to consult and confer with him as also his defence counsel. The respondent had engaged the services of a civilian defence counsel the respondent was given an advance of Rs. 10,000/- on his request by the Army authorities. The Court also recorded submission of the defence counsel that all papers pertaining to preparation of defence of the respondent as requested earlier on August 24, 1987 and of which reminder was also sent on November 26, 1987 be made available to the defence counsel for proper conduct of the defence of the case. During the course of the proceedings, it was submitted by the define counsel that a copy of the Summary of Evidence recorded against the respondent, a copy of the court of enquiry proceedings and a copy of the additional court of enquiry proceedings had been received by the respondent in due time an that he had no grievance to that extent. He, however, submitted that there were some other documents which had not been made available to the respondent and as a result he was unable conduct the defence case effectively. Proceedings of the court martial, however, show that whatever documents the respondent had asked for, he was given opportunity to inspect the same and in spite of the documents being made available to the respondent and his defence counsel, no attempt was made to inspect the same. We find that most of the documents which the respondent had asked for were quite irrelevant to the proceedings. During the course of the proceedings of the Court martial, respondent had submitted certain applications which were duly considered by the General Court Martial and orders passed. We find that full opportunity was granted tot he respondent to conduct his case and proceedings could not be more fair. However, request of the defence counsel for a long adjournment wad declined. His submission that the court martial proceedings were being conducted with great haste had no basis. On one day only one witness was being examined and his cross-examination was being deferred at a request of the defence counsel himself. Court Martial was convinced for the trial of the respondent. It was not a regular court in the sense. that where many cases are fixed and adjournments granted. Under Army

Rule 82, when a court is once assembled and the accused has been arraigned, the court shall continue the trial from day-to-day in accordance with Rule 81 unless it appears to the court that an adjournment was necessary for the ends of justice or that such continuance is impracticable. That the defence counsel had other case to attend to would hardly be a ground to adjourn the court martial. At one stage in midst of the case, the defence counsel withdrew. Grievance of the respondent that since further advance of Rs. 15,000/- was not given to him to engage another defence counsel, he could not effectively defend his case found favour with the High Court. The High Court, however, failed to take notice of the fact that the respondent was not entitled to any advance for the purpose of engaging the defence counsel and earlier as a special case an advance of Rs.10,000/- had been sanctioned. No Rule or Army Instruction has been shown under which the respondent was entitled to an advance. The respondent refused to cross-examine the witnesses on the specious ground that services of defence counsel were not made available to him due to paucity of funds. We noted that during the curse of enquiry proceedings, the respondent himself extensively cross-examined the witnesses. It is not therefore possible to accept the submission of the respondent that due to lack of funds he could not engage the services of a defence counsel particularly when during the course of court martial proceedings, he knocked the doors of the High Court thrice.

On being asked by the convening officer respondent had given names of three officers one of whim he wanted to be his defending officer. A defending officer is to be provided to the respondent in terms of the Army Rule 95. The services of none of the named officers could be provided to the respondent due to exigency of services and particularly when the officers belonged to the Judge Advocate General branch and were not available. The names of the officers which the respondent gave were (1) Maj. Gen. A.B. Gorthi, (2) Brig. Mohinder Krishan and (3) Lt. Col. R.P. Singh. It was submitted before us that though there is no bar in the Rules to provide the services of an officer of the JAG Branch as a defending officer but as a general policy it is not done. That would appear to be a sound policy considering the nature of functions and duties of an officer of JAG Branch when appointed to a court martial as hereinafter mentioned. Moreover we find that General Court martial was presided over by an officer of the rank of Colonel. The respondent was asked to give the name of any other officer to be appointed as his defending officer but he declined to do so. The appellants provided the services of three defending officers one after the other but the respondent declined to avail of their services and did not give them right of audience. All the three officers were of the rank of lieutenant Colonel and two of them were experienced and were legally qualified. prosecution examined Six witness including Major. P.C. Bakshi, Lieutenant colonel A.K. Sharma and Brigadier A.S. Bains and also brought on record various documents. The respondent was also examined by the Court. In the absence of any cross-examination by the respondent, the court itself put several questions to the witnesses in the nature of cross-examination.

At this stage we may refer to the relevant provisions of law. Section 1 of Chapter V of the Army Rules deals with investigation of charges. Under Rule 22 every charge against a person subject to the Act other than an officer shall be heard in the presence of the accused who shall have the full liberty to cross-examine any witness against him and to call any witnesses and make any statement in his defence. The commanding officer shall dismiss the cargo brought before him if, in his opinion, the evidence does not show that an offence under the Act has been committed. However, if he is of the opinion that the charge ought to be proceeded with, he has four options, one of which is to adjourn

the case for the purposes of having the evidence reduced to writing. Under Rule 23 procedure is prescribed for taking down the summary of evidence and statement taken down in writing shall either remand the accused for trial by court martial and in that case apply to the proper military authority to convene a court martial. Under Rule 25 where an officer is charged with an offence under the Act, the investigation shall, if he requires it, be held, and the evidence, if he so requires, be taken in his presence in writing, in the same manner as nearly as circumstances admit, as is required by Rules 22 and 23 in the case of other persons subject to the Act . Army Order No. 70/84 which deals with hearing of a charge by the commanding officer may be set out as under :

"AO 70/84 Discipline: Hearing of a Charge by the commanding Officer.

1. Discipline process under the Military law commences with Army Rule 22 which lays down that every charge against a person subject to the Army Act, other than an officer, shall be heard in the presence of accused. The accused shall have full liberty to cross- examine any witness against him. this is a mandatory requirement and its non-observance will vitiate any subsequent disciplinary proceedings. In the case of officers, the rule becomes equally mandatory if the accused officer requires its observance under Army Rule 25.

2. It is, therefore, incumbent on all Commanding Officers proceeding to deal with a disciplinary case to ensue that "Hearing of Charge " enjoined by Army Rule 22 is scrupulously held in each and every case where the accused is a person other than an officer and also in case of an officer, if he is so requires it. In case an accused officer does not require "Hearing of the Charge " to be held, the Commanding Officer may, at his discretion, proceed as described in Army Rule 22(2) or Army Rule 22(3).

3. It may be clarified that the charge at this stage is a 'Tentative' charge which may be modified after the hearing or during the procedure as described in Army Rule 22 (3) (c) or during examination after completion of the procedure under Army Rule 22(3) (c) , depending on the evidence adduced. Further, as long as the Commanding Officer hears sufficient evidence in support of the charge

(s) to enable him to take action under sub-rules (2) and (3) of Army Rule 22, it is not necessary at this stage to hear all possible prosecution witnesses. As a matter of abundant caution it would be desirable to have one or two independent witnesses during the hearing of the charge(s).

4. After the procedure laid down in Army Rule 22 has been duly followed, other steps as provided in Army rules 23 to 25, shall be followed both in letter and spirit. It may be clarified that the statutory requirements of Army Rules 22 to 25 cannot dispensed with simply because the case had earlier been investigated by a court of Inquiry where the accused person (s) might have been afforded full opportunity under Army Rule

180."

Army Rules 180 and 184 which fall in chapter VI of Army Rules relating to Courts of Inquiry are as under :

"180. Procedure when character of a person subject to the Act is involved.- Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-

examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the Court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified, receives notice of and fully understands his rights, under this rule

184. Right of certain persons to copies of statements an documents.- (1) any person subject to the Act who is tried by a court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of Inquiry, as are relevant to his prosecution or defence at his trial.

(2) Any person subject to the Act whose character or military reputation is affected by the evidence before a court of Inquiry shall be entitled to copies of such statements and documents as have a bearing on his character or military reputation as aforesaid, unless the Chief of the Army Staff for reasons recorded by him writing, orders otherwise."

Present Rule 184 was substituted by SRO 44 dated January 24, 1985 and prior to its substitution Rule 184 reads as under:

" 184. Right of certain persons to copies of proceedings.- The following persons shall be entitled to a copy of the proceedings of a court o inquiry including any report made by the court on payment for the same of a sum not exceeding eight annas for every two hundred words:-

(a) any person subject to the Act, who is tried by a court-martial in respect of any matter or thing which has been reported on by a court of inquiry, or

(b) any person subject to the Act, whose character or military reputation is, in the opinion of the Chief of Army Staff affected by anything in the evidence before, or in the report of a court of inquiry, unless the Chief of the Any Staff sees reason to order otherwise."

Under Rule 95 in any General Court Martial an accused person may be represented by any officer subject to the Act who shall be called "the defending officer". Sub-rule (2) of Rule 95 Casts duty on the convening officer to ascertain whether the accused person desires to have a defending officer assigned to represent him and if he does so desire, the convening officer shall use his best endeavors to ensure that the accused shall be so represented by a suitable officer. This sub-rule (2) is as under:

> "(2) It shall be the duty of the convening officer to ascertain whether an accused person desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavors to ensure that the accused shall be so represented by a suitable officer. If owning to military exigencies, or for any other reason, there shall in the opinion of the convening officer be no such officer available for the purpose, the convening officer shall give a written notice to the presiding officer of the Court- martial, and such notice shall be attached to the proceedings."

Under Rule 96 a civil counsel can also be allowed in General Court Martial to represent the accused subject to his being allowed but he convening officer which in the present case was done and the accused was represented by a counsel of his choice.

Judge Advocate administers path to the members of t he court-martial (Rule 47) and he himself be sworn as per the forms prescribed (Rule 46). It is he who sums up in an open court the evidence and advise the court upon the law relating to the case. If we refer to Rule 105 we fine the powers and duties of the judge-advocate. This rule is as under:

> "105. Powers and duties of judge- advocate.- The powers and duties of judge-advocate are as follows:- (1) The prosecutor and the accused, respectively, are at all times after the judge-advocate is named to act on the Court, entitled to his opinion on any question of law relative to the charge or trial whether he is in or out of Court, subject, when he is in Court to the permission of the Court.
>
> (2) At a Court-martial, he represents the Judge-Advocate General.
>
> (3) He is responsible for informing the Court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in charge, or in the constitution of the Court, and shall give his advice on any matter before the Court.
>
> (4) Any information or advice given to the Court, on any matter before the Court shall, if he or the Court desires it, be entered in the proceedings.
>
> (5) At the conclusion of the case, he shall sum up the evidence and give his opinion upon the legal bearing of the case, before the Court proceeds to deliberate upon its finding.

(6) The Court, n following the opinion of the judge-advocate on a legal point, may record that it has decided in consequence of that opinion.

(7) The judge-advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or if his ignorance or incapacity to examine or cross-examine witnesses or otherwise and may, for that purpose, with the permission of the Court, Call witnesses and put questions to witnesses which appear to him necessary or desirable to elicit the truth.

(8) In fulfilling his duties, he judge-advocate must be careful to maintain and entirely impartial position."

No fault could be found with the recording of summary evidence. Respondent has been unable to show if there was any non-compliance with the provisions of Rules 22, 23 and 24 and Army Order No. 70/84. We have been referred to two decisions of the Supreme Court in Lt. Col. Prithi Pal Singh Bedi vs. Union of India and Ors. [(1982) 3 SCC 140] and Major G.S. Sodhi vs. Union of India [(1991) 2 SCC 382] laying the scope of the provisions regarding recording of summary of evidence. In G.S. Sodhi's case this Court with reference to Rules 22 to 25 said that procedural defects, less those were vital and substantial, would not affect the trial. The Court, in the case before it, said that the accused had duly participated in the proceedings regarding recording of summary of evidence and that there was no flagrant violation of any procedure or provision causing prejudice to the accused.

Provisions of Rules 180 and 184 had been complied. Rule 184 does to postulate that an accused is entitled to a copy of the report of court of inquiry. Proceedings before a court of inquiry are not adversarial proceedings and is also not a part of pre-trial investigation. In Major General Inder Jit Kumar vs. Union of India & Ors. [(1997) 9 SCC 1] this Court has held that the Court of Inquiry is in the nature of a fact-finding enquiry committee. The appellant in that case had contended that a copy of the report of the Court o Inquiry was not given to him and the had vitiated the entire court martial. He had relied upon Rule 184 in this connection. With reference to Rule 184, the Court said that there was no provision for supplying the accused with a copy of the report of the Court of Inquiry. This Court considered the judgment in Major G.S. Sodhi's case and observed that supply of a copy of the report of enquiry to the accused was not necessary because proceedings of the court of enquiry were in the nature of preliminary enquiry and further that rules of natural justice were not applicable during the proceedings of the court of enquiry though adequate protection was given by Rule 180. This Court also said that under Rule 177, a court of inquiry can be set up to collect evidence and to report, if so required, with regard to any matter which may be referred to it. Rule 177, therefore, does not mandate that a court of inquiry must invariably be set up in each and every case prior to recording of summary of evidence or convening of a court- martial.

As noted above, when none of the three officers who were all from JAG Branch could be made available to the respondent as defending officer he was asked to give the name of any officer who could be deputed his defending officer. It is not the case of the respondent that the convening officer did not use his best endeavor to ensure that the respondent was represented by a suitable defending

officer. It was the respondent himself who declined to give any other name. Nevertheless the convening officer did depute three officers one after the other to represent as defending officer for the respondent. But the respondent declined to avail their services.

We may also refer to Rule 149 which lays down that a Court-martial would not be held to be invalid even if there was an irregular procedure where no injustice was done. This Rule is as under:

> "Validity of irregular procedure in certain cases. - Whenever it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to ass thereon may be confirmed, and shall, if so confirmed and in the case of a summary court-martial where confirmation is not necessary, be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an path or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any willful or negligent disregard of any of these rules."

We find t he proceedings of the General Court Martial to be quite immaculate where trial was fair and every possible opportunity was afforded to the respondent to defend his case. Rather it would appear that the respondent made all efforts to delay the proceedings of the court martial. Thrice he sought the intervention of the High Court. Withdrawal of the defence counsel in the midst of the proceedings was perhaps also a part of plan to delay the proceedings and to make that a ground if the respondent was ultimately convicted and sentenced. Services of qualified defending officer was made available to the respondent to defend his case, but he had rejected their services without valid reasons. He was repeatedly asked to give the names of the defending officers of his choice but he declined to do so. The court martial had been conducted in accordance with the Act and Rules and it is difficult to find any fault in the proceedings. The Division Bench said that the learned single Judge minutely examined the record of the court martial proceedings and after that came to the conclusion that the respondent was denied reasonable opportunity to defend himself. We think this was fundamental mistake committed by the High Court. It was not necessary for the High Court to minutely examining the record of the General Court martial as if it was sitting in appeal. We find that on merit, the High Court has not said that there was no case against the respondent to hold him guilty of the offence charged.

Though Court-martial proceedings are subject to judicial review buy the High Court under Article 226 of t he Constitution, the Court-martial is not subject to the superintendency of the High Court under Article 227 of the Constitution. If a court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed,

the High Court or for that matter and court must stay its hands. Proceedings of a court-martial are not to be compared with the proceedings in a criminal court under the Code of Criminal Procedure where adjournment have become a matter of routine though that is also against the provisions of law. It has been rightly said that Court-martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. it is for the especial need for the armed forces that a person subject to Army Act is tried by court-martial for an act which is an offence under the Act. Court-martial discharges judicial function and to a great extent is a court where provisions of Evidence Act are applicable. A court-martial has also the same responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safeguards. If one looks at the processions of law relating to Court-martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court martial unless it is shown that accused has been prejudiced or a mandatory provisions has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the Challenge to the validity of conviction and sentence of the accused when evidence is sufficient, court-martial has jurisdiction over the subject matter and has followed the prescribed procedure and is within its powers to award punishment.

After ourselves examining the record of the court- martial, we find that the high Court completely misdirected itself in coming to the conclusion that the respondent was denied reasonable opportunity to defend himself. He was given copies of all the relevant papers and also given opportunity to inspect whatever record he wanted; allowed services of a civilian counsel; special advance was given to engage the services of civil counsel as requested by the respondent; there was no rule to give further advance to engage yet another civil counsel when first one withdrew; respondent was not hampered by paucity of funds as made out by him; no fault could be found with the covening officer if the respondent himself did not avail the services of a defending officer when provided; cross-examination of important witnesses was deferred at the request of the respondent; and he had participated in the recording of Summary of Evidence without raising any objection. The General Court Martial took into consideration all the evidence and other materials produced before it; found the respondent guilty of the charge and sentenced him to be dismissed from service. Pre-confirmation petition submitted by the respondent was rejected by the Chief of the Army Staff and finding and sentence of the General Court Martial were confirmed by him. Thus, examining the case of the respondent from all angles which led the High court to set aside his conviction and sentence, we are satisfied that there was no irregularity or illegality and respondent was provided with reasonable opportunity to defend himself and the proceedings were fair. We, therefore, set aside the impugned judgment of the High Court and dismiss the writ petition filed by the respondent.

The appeal is allowed with costs.