

## IN THE SUPREME COURT OF INDIA

## ORDER XXI/RULE 2 (1) (A)

## (CRIMINAL APPELLATE JURISDICTION)

Crl. M. P. No. 15925

## SPECIAL LEAVE PETITION (CRIMINAL.) NO. \_\_\_\_ OF 2016

[Against the Impugned Final Judgment and Order dated 27.04.2016 passed by the Hon'ble High Court of Jammu & Kashmir at Srinagar, in OWP No. 513/2016]

MEMO OF PARTIES

<u>POSITION OF PARTIES</u>	Hon'ble High Court	In this Court
1. Nazir Ahmad Dalal, S/o Ghulam Rasool Dalal, R/o Moominabad, Anantnag District, Jammu and Kashmir.	Petitioner No. 1	Petitioner No. 1
2. Rasheed Ahmad Khan, S/o Jumma Khan, R/o Village Brari Angan, Anantnag District, Jammu and Kashmir.	Petitioner No. 2	Petitioner No. 2
3. Shakoor Khan, S/o Jumma Khan, R/o Village Brari Angan, Anantnag District, Jammu and Kashmir	Petitioner No. 3	Petitioner No. 3

4. Ghulam Nabi Malik, S/o Petitioner Petitioner  
 Abdul Qadeer Malik, R/o No. 4 No. 4  
 Village Halan, Anantnag  
 district, Jammu and  
 Kashmir.
5. Ghulam rasool Bhat, S/o Petitioner Petitioner  
 Abdul Aziz Bhat, R/o Village No. 5 No. 5  
 Halan, Anantnag district,  
 Jammu and Kashmir.

### VERSUS

1. Union of India, through  
 Secretary, Defence Minsitry,  
 New Delhi Respondent Respondent  
 No.1 No.1
2. General Officer Commanding, Respondent Respondent  
 16 Corps, C/O 56 APO No.2 No.2
3. Central Bureau of Respondent Respondent  
 Investigation, Plot No. 5-B, No.3 No.3  
 CGO Complex, Lodhi Road,  
 New Delhi:110003
4. State of Jammu & Kashmir Respondent Respondent  
 Through the Commissioner/ No.4 No.4  
 Secretary to Government,  
 Home Department, J&K Civil  
 Secretariat, Srinagar

- |   |            |            |
|---|------------|------------|
| 5. Brigadier Ajay Saxena, c/o 56 APO                                      | Respondent | Respondent |
|   | No.5       | No.5       |
| 6. Lt. Col. Brajendra Pratap Singh, c/o 56 APO                            | Respondent | Respondent |
|   | No.6       | No.6       |
| 7. Major Sourabh Sharma, c/o 56 APO                                       | Respondent | Respondent |
|   | No.7       | No.7       |
| 8. Subedar Idrees Khan, c/o 56 APO  | Respondent | Respondent |
|   | No.8       | No.8       |
| 9. Major Amit Saxena, c/o 56 APO  | Respondent | Respondent |
|   | No.9       | No.9       |
| 10. SI Gazanfar Syed, PS Achabal, Dist. Ananthang Jammu & Kashmir-192201. | Respondent | Respondent |
|   | No.10      | No.10      |
| 11. ASI Bashir Ahmad, PS Achabal, Dist. Ananthang Jammu & Kashmir-192201. | Respondent | Respondent |
|   | No.11      | No.11      |

To

The Hon'ble Chief Justice of India

And his companion Justices of

The Supreme Court of India,

The humble petition of the  
petitioner above-named;

**MOST RESPECTFULLY SHOWETH:**

1. The present SLP is against the Impugned Final Judgment and Order dated 27.04.2016 passed by the Hon'ble High Court of Jammu and Kashmir at Srinagar in OWP No.



513/2016. The petition was filed by the families of five men killed in Pathribal by Army Officials, who have been shielded from the consequences of murder by the Respondents 1 and 2. The death of the five men at the hands of the Respondents 5-9 was admitted by the Army and army record establishes the same. The original claim that these were foreign militants killed in an encounter has been exposed as a lie by the scientific reports of two impartial and highly regarded forensic institutes. The dead men are the kin of the petitioners as the DNA examinations by CDFD, Hyderabad and CFSL, Kolkata reveal. Therefore the case is one of cold blooded murder as found by the CBI. Yet the Army, by resort to the special procedure under the Army Act and Rules, has declared it to be a case of no evidence, which finding has been arrived at in a wholly opaque process and in the face of established record. The order for dismissal of the case and its basis are kept secret, even as the relevant material and witnesses have been kept totally out of consideration in arriving at this conclusion. The order of dismissal is motivated and unjustified. The petitioners contend that the Pathribal fake encounter which occurred on 25.03.2000 must in all justice be tried by the open system of the general criminal law, for the Army has

resorted to impunity in this regard. The petitioners sought the High Court's intervention against the impunity and prayed for appropriate directions to quash the said order and enable trial by the regular procedure of the law. The High Court dismissed the petition *in limine* as not maintainable and held that the petitioners had an alternate efficacious remedy.

## **2. QUESTIONS OF LAW**

This SLP raises the following important Questions of Law:

- I.** Whether the option given by this Court to hold a trial by Court Martial or a Civil Court, would justify an army decision to close the case as one of no evidence, in spite of a CBI charge-sheet and detailed investigation?
- II.** Was the option given by this Hon'ble Court not a direction in effect to act in pursuance of the CBI charge-sheet, and if so was the Army not wrong in substituting the detailed CBI investigation with a swift Summary of Evidence calculated to exonerate the implicated officials?
- III.** Was the High Court right in holding that all manner of exercise of the option of the nature of trial, would hereafter be immune from judicial scrutiny?



- IV. Ought the High Court not have seen that the exercise of power under the Army law was mala fide and unjust and therefore liable to judicial review?
- V. Ought the High Court not have seen that the entire writ petition was a challenge to the army's decision and thus not amenable to a revision under the CrPC or any other remedy but judicial review?
- VI. Ought the High Court not have seen that the main challenge in reference the writ petition was to the army's decision and the challenge to the Magistrate's refusal to direct copies of Army record was one of many issues related to the unjust closure of a serious violation by army personnel?
- VII. Whether the provisions of the Army Act 1950 (Section 125), and the Army Rules 1954 (Rules 22-24) operate to negate official record and scientific data that establish wanton abduction and murder, and whether investigation by the CBI preceding such a special process can be completely ignored by the Army authorities in purported exercise of these special powers?
- VIII. Whether the bar on the normal criminal process imposed by S.7 of the AFSPA is meant to shield cold blooded murder, when it is the admitted case that the

deaths were caused by Army personnel and record indicates that the deaths were of civilians abducted from their villages before they were killed?

- IX** Can the option given for trial by Court Martial be utilized to terminate the case itself and if so, is such exercise of power not malafide and liable to be struck down?
- X** Where an investigation has been done by the CBI on the orders of the State Government, can the Army revisit the same in the guise of Rules 22 -24 of the Army Act? In other words can a summary procedure overwrite competent investigation?
- XI** Is resort to Rules 22-24 not a violation of the law settled by the *Union of India through Major General H.C. Pathak v. Major S.K. Sharma AIR 1987 SC 1878*; and in the present case was the Army not bound to put the accused officials to trial, in view of the terms of the Supreme Court's order in this case?
- XII** Is not the process under Rule 22 of the Army Rules completely vitiated when crucial witnesses are not examined, irrelevant testimonies are recorded and important record is eschewed from consideration?



**XIII** Is it not mandatory that the report to the Magistrate under Rule 7 of the Criminal Court and Court Martial Adjustment of Jurisdiction 1983 be accompanied by the actual order passed by the Army authorities and the basis of the same?

**XIV** Can a complete wiping out of all liability of admitted killing be considered “effectual proceedings” as envisaged by law?

**XV** Article 21 envisages that “[T]he State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.” (*State of West Bengal v. Committee for Protection of Democratic Rights* (2010) 3 SCC 571). Is the dismissal of the case against the officers responsible for the abduction and killing of 5 innocent men not a violation of Article 21?

**XVI** If The Army Act, Rules and the AFSPA are put to such misuse, are these provisions not liable to be held to be ultra vires the Constitution? At any rate is the manner of exercise of the said provisions in the present case not ultra vires the Constitutions and the provisions themselves as interpreted?



**XVII** Can a writ petition raising such questions be dismissed *in limine* as not maintainable and is there any alternate efficacious remedy for the resolution of the issues so raised?

**3. DECLARATION IN TERMS OF RULE 2 (2):**

That the petitioners state that they have previously not filed any other petition seeking leave to appeal, writ or appeal against the Impugned Final Judgment & Order dated 27.04.2016 passed by the Hon'ble High Court of Jammu & Kashmir at Srinagar in OWP no. 513/2016 as no Writ Appeal lies either before this Hon'ble Court or before any other Court of law.

**4. DECLARATION IN TERMS OF RULE 4:**

The annexures produced along with the SLP are true copies of the pleadings/documents which formed part of the records of the case in the Court/Tribunal below against whose order, the leave to appeal is sought for in this petition.

**5. GROUND**

**A.** The High Court has completely misunderstood the import of this Hon'ble Court's direction and option. It was an option only as to the nature of the trial, not an option to substitute an entire investigation by the CBI by a farcical summary of evidence, geared

towards impunity to serious offenders. In any event, any executive action taken subsequently or consequently will be open to a challenge on its own terms. The manner of exercise of the option, and the decision making process itself is that it is mala fide, incompetent and manifestly unjust is not immune from correction. Indeed this Court had directed trial- either under the CrPC or by Court Martial. A specious investigation, that pre-empts trial was not even envisaged by this Court's order, much less enabled by it. In fact the Army has acted in contravention of the letter and spirit of this Court's order.

- B.** The law and this Court's order required "effectual proceedings" against the army officials. The whitewashing of their liability by a summary procedure in the face of the detailed CBI investigation and record, is a frontal violation of the individual's right to life.
- C.** The Chief Judicial Magistrate's order dated May 28, 2014 was merely one that recorded the refusal to grant copies of Army Proceedings to the petitioners. It was certainly one among several prayers and though unhappily worded, was no basis for the High Court to conclude that the main challenge was to the said



order dated May 28 2014. The main challenge was to the decision of the army to close the case and the main prayer was for trial in an open system of criminal justice. A writ Court, is not bound by technicality, and must do justice. As only one of the many prayers pertained to this, the high court ought not to have dismissed the petition in limine as also on the point of maintainability with regard to this one prayer

- D.** As held by the Supreme Court in *Union of India through Major General H.C. Pathak v. Major S.K. Sharma AIR 1987 SC 1878*, it is not open to the Army to refrain from holding a trial by court martial, once a Magistrate has taken cognizance of a complaint. As a corollary, it must follow that it is not open to the army to reopen matters of investigation upon which a court may take cognizance. The army must go forward from that point the criminal court already has reached. Indeed even the directive of the Supreme Court was to hold a court martial or trial in open court. The Army failed to to conduct a trial.
- E.** Inasmuch as the Army has failed to conduct a trial, and in fact has not taken effectual action, the



criminal courts should resume jurisdiction of the matter.

- F.** Special Powers are given to the army so that its personnel do not escape the consequences of gross violations. The Army in this case has made these powers a cloak for wanton murder. The Army, has, to all intents and purposes defied the order of Hon'ble Supreme Court and refused to conduct trial of the accused personnel even through Court-Martial. By virtually holding that there was no evidence, by a preliminary dismissal, the Army has set at naught the entire investigation done until date and their own admission that the abovenamed persons were killed in an army operation by the 7 RR.
- G.** Because the Army Act ordinarily bars trying of accused for offences such as rape, murder and culpable homicide not amounting to murder through court-martial, they can be tried through court-martial when they are committed 'while on active service' as per S. 70, Army Act. Since the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 is in force, the army claimed that the murder of five civilians was committed 'while on active service' and therefore court-martial could be convened to try the accused.

The Army tried to invoke its jurisdiction as per S. 125, Army Act, 1950. The Hon'ble Supreme Court therefore issued the direction to the army to hold the trial of the accused either through court-martial or criminal court at the earliest.

*"67. In view of the above, the appeals stand disposed of with the following directions:*

- I. The competent authority in the Army shall take a decision within a period of eight weeks from today as to whether the trial would be by the criminal court or by a court-martial and communicate the same to the Chief Judicial Magistrate concerned immediately thereafter." (ANNEXURE P 2).*

- H.** Because if the army was unable/unwilling to carry out a trial through court martial then it should have in the least followed the orders of the Hon'ble Supreme Court as well where it issued an alternate direction-

*"III. In case the option is made that the accused would be tried by the criminal court, the CBI shall make an application to the Central Government for grant of sanction*



*within four weeks from the receipt of such option and in case such an application is filed, the Central Government shall take a final decision on the said application within a period of three months from the date of receipt of such an application.” (ANNEXURE P 2).*

- I. Because this Hon'ble Court in **(Abdullah Baba v. State of J& K 2014 (3) JKJ 495)** did not accept the refusal to grant sanction to prosecute senior police official for murder and custodial death of an individual and sent it back to the Competent Authority to examine the case afresh on whether or not to accord sanction in terms of Section 7 of The Armed Forces (Jammu & Kashmir) Special Power Act, 1990. The Hon'ble J & K High Court held that in the above case, it had to be appreciated in the light of aforesaid facts where as per the investigation carried out in the case there were torture marks, on the dead body and prima facie the facts point to custodial killing. The Hon'ble J & K High Court had said “It stated that it is nowhere provided that a person who is arrested can be tortured to death. Perhaps the officer concerned exercising the special powers under Act of 1990 does not enjoy that immunity even if we



interpret the immunity clause with wider scope keeping in mind that the army officials have to meet the dangerous conditions where they have to deal with a person who are adversely affecting the social fabric by striking terror in people." The facts of the present case squarely fall within the interpretation provided by the Hon'ble J & K High Court in the aforesaid decision.

- J. Because** the Army Rules, 1954 were framed only to facilitate disciplinary proceedings through court-martial process. The Rules do not envisage rights of and safeguards for civilian victims. And due to this lapse, Hon'ble CJM, Srinagar could not even pass an order directing the army to handover documents pertaining to summary of evidence carried out to the applicants, as applicants (family of deceased) were not party to the proceedings. The victim families were not even handed over 'order' or 'findings' of the army in the summary of evidence. And further since the army had illegally decided to discharge the accused and not hold Court-Martial, the victim families cannot even file an appeal challenging the 'summary of evidence' before Armed Forces Tribunal. The

petitioners therefore have no alternative efficacious remedy except to move this Hon'ble Court.

- K.** Because by no stretch of imagination can the death of villagers at home or work be ever caused in the line of duty. Section 7 of Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 provides that no prosecution, suit or legal proceeding ought to be instituted without prior sanction from central government where the armed personnel is 'acting in good faith'. Such heinous acts can never be committed in 'good faith' and hence ought not to be covered by S. 7 of the 1990 Act.

**L. Scope for abuse of power and arbitrariness:**

**Because** the exercise of Army powers in this manner is abuse of the law and ultra vires the statute itself besides violating the Constitution.

- M.** Because this the dismissal of charges are arbitrary and have been passed contrary to principles of due process and fairness and there has been no speaking order for dismissing such serious charges against the accused. The letter dt. 20.01.2014 issued by General Officer Commanding of the Army notifying the CJM that no evidence has been found against the accused at the stage of 'summary of evidence' and thus



charges have been dismissed, is lacking of reasons and explanations regarding how the General Officer Commanding reached such decision. (ANNEXURE P\_3). This is not merely denial of due process of justice to the victims, but also it is a process which is neither fair nor just nor reasonable and thus fails the test laid down by (Hon'ble Supreme Court in *Maneka Gandhi v. Union of India* AIR 1978 SC 597).

**N. Because the summary of evidence held by the Army was illegal, arbitrary,** violative of principles of natural justice, and amounted to mockery of the entire judicial system. There were several discrepancies which took place during Summary of Evidence stage. Persons who had nothing to do with the fake encounter were made witnesses, and since they couldn't testify against the accused, the evidence was deemed to be 'prima facie' lacking.

**O. Because the summary of evidence severely compromised due process and fundamental criminal law principles.** While the family members of the deceased were incessantly cross-examined and made to come on two consecutive days, they were not given any opportunity to question the accused. There is no procedural safeguard made available to the



victims under the Army Rules, 1954 in order to give them a right to cross-examine the accused.

**P. Because** the victims were denied any legal representation of their own. The Army Rules, 1954 again fail to provide such an important safeguard to the victims.

**Q. Because** the UN International Convention against Enforced Disappearances, which has been signed by India, binds State Parties to the Convention to undertake criminal prosecution for acts amounting to Enforced Disappearance. Even otherwise, this Hon'ble Court has read into Indian law various UN Conventions and Treaties that oblige the government to undertake credible criminal prosecutions for heinous crimes, including enforced disappearances, and consequent killings of the persons abducted.

**R.** The Special powers that have been granted to the army under Section 125 are to ensure that justice is speedily done and casts a special duty on them to fairly prosecute even their own. These special powers cannot become an excuse to circumvent the due process of law and shield their own officers from punishment when serious offences are committed by them. Accordingly *Criminal Courts and Court-Martial*

(Adjustment of Jurisdiction) Rules, 1977 were framed by the Central Government and subsequently J&K Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1983 were adopted. The CrPC, Army Act and the Adjustment of Jurisdiction Rules, all envisage that in case where both the criminal court and court-martial can exercise jurisdiction, investigation and inquiry has to be first conducted by the CJM, and only after the findings, can the Army be given the option to exercise its discretion under S. 125 of the Army Act. S. 125 does not empower the Army to supersede the proceedings held before hon'ble CJM and dismiss charges by holding a parallel inquiry process through Summary of Evidence or Court of Inquiry. The Hon'ble Supreme Court in *Union of India through Major General H.C. Pathak v. Major S.K. Sharma* AIR 1987 SC 1878 noted: ✓

*"12. Our attention has been drawn by learned Counsel for the appellants to Section 125 of the Army Act. Section 125 provides that when a Criminal Court and a Court Martial have each jurisdiction in respect of an offence it will be in the discretion of the Commanding Officer*



*of the accused to decide before which Court the proceedings shall be instituted. This provision is of no assistance in deciding whether it is open to the Army authority to take proceedings for determining prima facie whether there is substance in the allegations made against the accused and decline to try him by a Court Martial or take other effectual proceedings against him even where a Magistrate has taken cognizance of the offence and finds that there is a case for trying the accused.*

- S.** Furthermore, S. 549 of Jammu and Kashmir Code of Criminal Procedure. S 549 empowers the central government to make rules regarding delivery of accused by CJM to be **tried** before court-martial, where the accused is a person subjected to Army Act, 1950. The Sections reads- **“549. Delivery to commanding officers of persons liable to be tried by Court- martial. (1)** The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950 ), the Navy Act, 1957 (62 of 1957 ), and the Air Force Act, 1950 (45 of 1950 ), and any other law, relating to the Armed Forces of the



Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be **tried** by a Court to which this Code applies or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be **tried** either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, **for the purpose of being tried by a Court-martial.**” Clearly it can be seen, that Section 549 envisages handing over of the accused personnel to the army where the army chooses to hold the **trial** of the accused before court-martial for the purposes of **holding trial.**

- T. Because the Court-Martial process was never meant to try such grave offences:** A thorough reading of the Army Act, 1950 alongwith the prescribed offences clarifies that it was primarily designed for punishing disciplinary offences within

the army. The procedure prescribed in the Army Act is inadequate to try heinous offences. Moreover, the Army Act falls short of many crucial procedural safeguards that are integral to any criminal code of procedure.

- U. Section 70 of the Army Act is an admission that it is not fully equipped to deal with the serious offences of murder and rape against civilians. Most of the offences described in the Army Act, and the punishments therein do not envisage instances of serious human rights violations. Consequently, the framework of procedural laws that would be required for prosecuting serious crimes is absent from the Army Act, 1950 even in comparison with the Indian Criminal Procedure Code that codifies the procedure for criminal trials.

- V. **Denial of equality and unequal treatment before law: Because of the** the present scheme of law, Art. 14 enshrined by the Indian Constitution is being violated of not just the deceased and their relatives, but also of all the populace living in areas where Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 and Armed Forces Special Powers Act, 1958 is in force.



- W.** Because the victims have/are being denied their right of being heard which is a basic principle of natural justice. Further they are being denied 'right to appeal against acquittal' which is made available to citizens elsewhere in the country as per S. 372, CrPC. This right to appeal is being denied to them. Once the charges are dismissed, there is no right or protection made available to the victims. Thus, the current interpretation allows extremely wide power to the Commanding Officer to dismiss charges of even heinous offences such as rape and murder. This overreaching power as observable from the present case, is very likely to be abused and used arbitrarily.
- X.** Because unlike the ordinary criminal courts, court martials simply do not have the inbuilt mechanisms to independently and effectively prosecute severe human rights violations because the Army Act was drafted primarily to maintain military discipline. The present Pathribal Fake Encounter Case exposes further weaknesses of Army Act and court martial process. The Court-Martial process gives the discretion to the Commanding Officer at the pre-trial stage of 'summary of evidence' to decide whether or not to press charges upon the accused to proceed

with trial. The intention as aforementioned was that the Commanding Officer would be interested in maintaining order and discipline amongst the Army Personnel. However, this mechanism fails to address a problem such as the one which arises in the present case-what if instead, the Commanding Officer is also on the same page as the accused are regarding particular incident?

- Y.** Article 21 protects the right of victims to a fair trial as well. This Hon'ble Court has observed as follows: "Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. In certain situations even a witness to the crime may seek for and shall be granted protection by the State." In light of the above, the intervention of this Hon'ble Court is absolutely necessary.
- Z.** Because, in the Pathribal case, quite apart from the fact that evidence could hardly have appeared doubtful to lead to conviction, what certainly cannot be denied is that it was *important* that the guilt or



innocence of the 5 accused officers be definitely decided – the same being evident by virtue of an Apex Court order being passed directly on this point. Thus, there was no reason for the Commanding Officer of the 5 accused officers to dismiss the charges against them under Rule 23(1)(c) read with Rule 22 of the Army Rules 1954. Regulation 405(c) of the Defense Services Regulations, 1987 provides that:

*“Except when it is important that the guilt or innocence of the accused should be definitely decided, it is undesirable to send a case before a court martial when it appears doubtful whether the evidence will lead to a conviction. In such a case the charges should ordinarily be dismissed under the provisions of the Army Rule 22(2).”*

By virtue of this Hon’ble Court’s order it is evident that a court martial should have been conducted to definitively determine the guilt or innocence of the accused.

**AA.** Because by allowing the army to hold court-martials in the cases of human rights violations by the army itself, the basic principle of natural justice- *Nemo judex in sua causa* (No one should be judge in their

own cause) is being violated. In this case despite the findings of DySP Abdul Rehman Sheikh, denials by local police and STF, and the CBI Chargesheet, the army maintains that it was a genuine encounter. In the letter dt. 20.01.2014 sent by Lt. Gen. DS Hooda, the Commanding Officer of the accused to the Hon'ble CJM, Srinagar the Commanding Officer states- *"After further having dispassionately examined the evidence contained in the Summary of Evidence, it is clearly established that a joint operation was launched by the Army (7 Rashtriya Rifles) along with Civil Police on 25 March 2000 based on the precise information given by the civil police to the local Army Commander, on 24 March 2000. There is no evidence on record which in any way connects any of the five accused persons (namely IC-34544F Major General (Retired) Ajay Saxena, IC-47773L Colonel Brajendra Pratap Singh...) with the murder, wrongful confinement, abduction/causing disappearance etc. of the five deceased persons."* Thus by allowing the army to assume jurisdiction in a matter where the army itself is accused of gross human rights violations, it amounts to allowing them to be judge in their own cause.



**BB. Because there is an international consensus against military courts trying human rights abuses:** The flouting of natural justice principles amongst other reasons has also propelled global consensus to challenge the jurisdiction of military courts for serious crimes. Over the last decades, international human rights and criminal law has consolidated towards not trying serious human rights crimes in military tribunals but in regular criminal courts. Successive UN Special Rapporteurs on the independence of judges and lawyers who have been mandated to ensure the independence of the judiciary have come out strongly in their reports to the Human Rights Council & the UN General Assembly against military tribunals trying serious human rights abuses.

**CC.** It is submitted that Article 21 protects the right of victims to a fair trial as well. In *(State of West Bengal v. Committee for Protection of Democratic Rights)* (2010) 3 SCC 571, this Hon'ble Court has observed as follows: "Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its

- (b) a special court is already constituted, for such offences under any other law for the time being in force.”

It is clear from a reading of the above that only a special court already constituted for such offences under any other law can oust the jurisdiction of a Human Rights Court, which is a Sessions Court. The Commanding Officer of the implicated officers carrying out an inquiry cannot be considered a Court so as to oust the jurisdiction of the Courts under ordinary criminal law or under the Protection of Human Rights Act.

**6. GROUND FOR INTERIM RELIEF:**

Not Applicable.

**7. MAIN PRAYER:**

In view of the submissions made above, it is prayed that this Hon'ble Court may be pleased to direct:

- a) grant special leave to appeal against the impugned final judgment & order dated 27.04.2016 passed by Hon'ble High Court of Jammu & Kashmir at Srinagar in OWP No. 513/2016; and/or
- b) pass such further or other order/s as this Hon'ble Court may deem fit and proper in the interest of justice



**8. PRAYER FOR INTERIM RELIEF:**

Not Applicable.

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE  
PETITIONER AS IN DUTY BOUND SHALL FOREVER PRAY

**DRAWN BY:****FILED BY:**

Warisha Farasat, Advocate

**SETTLED BY:**

Nitya Ramakrishnan, Advocate

**SHADAN FARASAT****DRAWN ON:** 23/07/2016**Advocate for the Petitioner(s)****FILED ON:** 27/07/2016