

**HIGH COURT OF TRIPURA  
AGARTALA**

**Crl..Rev.P. No.17/2025**

Dy. Inspector General, SHQ, BSF, Singhpura, Baramulla, Jammu and Kashmir.  
..... Petitioner (s).

**V E R S U S**

1. The State of Tripura.

2. HC/GD Vishnu Charan Pradhan, Son of Sri Dayanidhi Pradhan, 112 Bn  
BSF, Match Factory, Baramulla (J&K).

..... Respondent(s).

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For Petitioner (s) : Mr. Bidyut Majumder, Deputy S.G.I.

For Respondent(s) : Mr. Raju Datta, P.P.

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

Date of hearing and judgment: **18<sup>th</sup> June, 2025.**

Whether fit for reporting : **YES.**

**JUDGMENT & ORDER(ORAL)**

Heard Mr. Bidyut Majumder, learned Deputy S.G.I. appearing for  
the revision petitioner and Mr. Raju Datta, learned Public Prosecutor appearing  
for the respondents No.1-State.

2. Two FIRs were lodged for the same incidence, one by the Deputy  
Commandant/Adjutant for Commandant, 80 BN BSF vide written complaint  
dated 30.07.2021 (Annexure-R/6) and the other by one Sri Pintu Shil, S/O. Sri  
Narayan Chandra Shil bearing Teliamura P.S. case No.2021/TLM/097 dated  
30.07.2021 (Annexure-R/4) instituted under Sections 279/338/304A of the  
Indian Penal Code (IPC, for short) read with Section 184 of the Motor Vehicles  
Act, 1988 (M.V. Act, for short). Both the FIRs narrate the alleged incidence of  
collision of the BSF vehicle bearing No.TR-01-E-0837 (TATA 5 Ton) on

operational duty from International Border to Battalion Headquarter Khasiamangal, Teliamura carrying 11 BSF personnel with one motorcycle bearing No.TR-06-9601 driven by Pintu Shil, the bike owner allegedly with two pillion riders. As a result of the collision, rider Pintu Shil and two pillion riders received grievous injuries on their person. Out of the three riders of the motorcycle, one of them died, pillion rider Mithun Oriya was referred to GBP Hospital and complainant Pintu Shil was admitted at Teliamura Hospital. Both the informants alleged rash driving at high speed against each other as the cause of accident. Both the FIRs were clubbed together. The police after investigation filed a charge-sheet on 30.09.2022 (Annexure-R/5) under Section 173 of the Cr.P.C. bearing No.105/2022 under Sections 279/338/304A of the IPC read with Sections 184/196 of the M.V. Act against the owner-cum-driver of the offending vehicle bearing No.TR-01-E-0837 namely Sri Vishnu Charan Pradhan, respondent No.2, (Registration No.010870222) and under Section 194C of the M.V. Act for triple riding against the rider of the motorcycle bearing No.TR-06-9601 (Hero Extreme) namely Sri Pintu Shil, S/O. Sri Narayan Shil of Dwarikapur, P.S. Kalyanpur.

3. It appears that after filing of the charge-sheet, the case lingered on till an application was filed by the Deputy Inspector General, Sector Headquarters, BSF, Baramulla (J&K) before the learned Chief Judicial Magistrate, Khowai Tripura on 25.02.2025 (Annexure-R/2) with request to stay the proceedings against accused Head Constable Vishnu Charan Pradhan under Section 80 of the Border Security Force Act, 1968 (*hereinafter referred to as "the Act"*) and forward requisite documents to the undersigned for the purposes

of instituting proceedings against the said accused under the BSF Act and the Rules. The letter indicated that the outcome of the trial of the accused by the BSF Court or the result of effectual proceedings instituted or ordered to be taken against the above accused shall be intimated as per Rule 7 of the Criminal Courts and Border Security Force Courts (Adjustment of jurisdiction Rules 1969). This application has been rejected by the impugned order dated 27.02.2025 with which the petitioner is aggrieved. By the same impugned order, the substance of accusation as per Section 251 of the Cr.P.C. has been framed, read over and explained in Bengali to the accused person for committing the offences under Sections 279/338/304A of the IPC and under Sections 184/196 of the M.V. Act to which he pleaded not guilty and claimed to be tried. The trial has not progressed further in the sense that no charge-sheeted witnesses have been examined till date as per submission of learned Deputy S.G.I. appearing for the petitioner, which remains unrefuted by the learned Public Prosecutor.

4. Mr. Bidyut Majumder, learned Deputy S.G.I. appearing for the revision petitioner, submits that the powers under Section 80 of the Act have been exercised for conduct of the proceedings against the respondent No.2/accused in PRC(SP) No.100 of 2022 since respondent No.2, the constable driver, was under active duty in terms of Section 2(1)(a) of the Act carrying BSF personnel from International Border to Battalion Headquarters at Khasiamangal, Teliamura, Tripura.

It is submitted that the Director General or Inspector General or Deputy Inspector General of the Force has the discretion to proceed before the

Security Force Court against such an accused person when both a Criminal Court and a Security Force Court each have jurisdiction in respect of such an offence.

It is submitted that the impugned order is a non-speaking order as it suffers from complete non-application of mind while rejecting the prayer of the DIG, BSF, Baramulla.

It is submitted that the Apex Court in the case of ***State of Jammu and Kashmir vrs. Lakhwinder Kumar and others*** reported in ***(2013) 6 SCC 333*** has in so many words held that the Force can exercise such an option for trial of the accused immediately on submission of charge-sheet and before the commencement of the trial. In the present case, the application was made before commencement of trial though after delay from the date of filing of the FIR and the charge-sheet. The impugned order may, therefore, be set aside. The trial Court may be directed to stay the proceedings and transmit the records to the BSF Court for conducting the proceedings in terms of Section 80 of the Act read with the relevant rules prescribed thereunder. The outcome of the proceedings would be communicated to the trial Court.

5. Mr. Raju Datta, learned Public Prosecutor, has objected to the prayer. He submits that the application to exercise the option for conducting the proceedings against the accused/respondent No.2 has been made at a belated stage since the FIR was instituted on 30.07.2021 and the charge-sheet was filed on 30.09.2022 itself. However, he does not dispute that on the date on which such application was made i.e. 25.02.2025, the trial had not commenced since the substance of accusation was not framed, read over and explained to the

accused person. The same was done on 27.02.2025 while rejecting the application of the DIG, BSF, Baramulla on the same date. He, however, also points out that the application suffers from some defects as it does not fulfill the ingredients to invoke the power under Section 80 of the Act. The application does not indicate as to whether the accused was on active duty in terms of Section 2(1)(a) of the Act and that the Force considers such proceedings to be conducted before the Border Security Force Court in order to maintain discipline.

6. Learned Deputy S.G.I. submits that if the matter is remitted to the authority, a fresh application fulfilling the necessary ingredients under Section 80 of the Act read with Rule 41 thereof could be made without any waste of time since the trial had not commenced when such application was made on 25.02.2025 and has even thereafter not progressed by examination of any witnesses.

7. I have considered the submissions of learned counsel for the parties. The relevant chronology of facts referred to hereinabove indicate that the application to exercise option under Section 80 of the Act has though been made belatedly but before commencement of the trial. The learned trial Court has rejected the application simpliciter without recording any reasons which reflects non-application of mind. As such, the ratio rendered by the Apex Court in the case of **Lakhwinder Kumar** (supra) that such an option is to be exercised by the Force immediately after submission of the charge-sheet and before the commencement of the trial seems to have been complied with. The application, however, appears to be defective since it does not show whether the respondent

No.2 was in active duty and the other necessary ingredients which are required to be satisfied. The Commanding Officer or the DIG, BSF has nowhere stated that the trial of the accused by the Security Force Court is necessary in the interest of discipline of the Force. A statutory guideline has been issued for giving effect to the provisions of the Act under Rule 41 which has apparently not been complied with while moving such an application. It is undisputed that even after framing of the substance of accusation and reading it over to the accused in terms of Section 251 of the Cr.P.C., the trial has not progressed further as no charge-sheeted witnesses have been examined.

8. In view of the aforesaid reasons, the part of the impugned order by which the application under Section 80 of the Act has been rejected is set aside. Since the application suffers from apparent defects in complying the guidelines prescribed under Rule 41 read with Section 80 of the Act, liberty is granted to the petitioner to make a fresh application before the learned trial Court in accordance with law under Section 80 of the Act.

9. Needless to say, if such an application is made within a period of 2(two) weeks, the learned trial Court would consider it in accordance with law.

10. The instant revision petition is accordingly disposed of.  
Pending application(s), if any, also stands disposed of.

**(APARESH KUMAR SINGH), CJ**