

# IN THE HIGH COURT OF MANIPUR

## AT IMPHAL

### Cril.Petn. No. 50 of 2022

Mrs. Jebun, aged about 46 years, W/O Late Md. Abdullah of Kwakta Khuman, at present Lilong Haorou Hangamthabi, P.O. & P.S. Lilong, Thoubal District, Manipur

**.....Petitioner**

*versus*

1. The State of Manipur represented by the Principal Secretary (Home), Government of Manipur, Babupara, Old Secretariat (South Block), P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The Director General of Police, Manipur, Police Head Quarter, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. The Superintendent of Police, Thoubal, SP, Office Complex, P.O. & P.S. Thoubal, Thoubal District, Manipur-795138.
4. The Officer-in-Charge, Lilong Police Station, P.O. & P.S. Lilong, Thoubal District, Manipur-795130.

**.....Official Respondent/s**

5. Md. S. Daulat Khan, MCS, the then Sub-Divisional Officer, Lilong having its office at DC Office Complex, Thoubal, P.O. & P.S. Thoubal, Thoubal District, Manipur-795138, resident of Minuthong Mana Ingkhol, P.O. & P.S. Porompat, Imphal East District, Manipur-795005

**.....Private respondent**

## **B E F O R E**

**HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

|                     |    |                                                                   |
|---------------------|----|-------------------------------------------------------------------|
| For the Appellants  | :: | Mr. T. Rajendra, Sr. Adv. assisted by Mr. Bikash Sharma, Advocate |
| For the respondents | :: | Mr. H. Samarjit, PP.                                              |

Date of Hearing :: 14.08.2023  
Date of Order :: **11.12.2023**

### **JUDGMENT & ORDER (CAV)**

**[1]** Heard Mr. T. Rajendra, learned senior counsel assisted by Mr. Bikash Sharma, learned counsel for the petitioner and Mr. H. Samarjit, learned PP for the State respondents. Learned PP has submitted the case record along with diary.

**[2]** The present criminal petition has been filed under Section 482 Cr.PC for quashing/setting aside the FIR No. 86(9) 2021 LIL-PS, u/s 436, 34 IPC and Section 3 & 4 of the Prevention of Damage to Public Property (PDPP) Act, 1984.

**[3]** The petitioner was appointed as a Chowkidar vide Government order dated 03.12.2016 and posted at the Office of SDO, Lilong until further orders vide order dated 02.01.2017. The petitioner is staying with her unmarried daughter at the Quarter of the Chowkidar in the SDO Office Complex. On the fateful intervening night of 31.08.2021-01.09.2021, there was a fire incident took place at the SDO, Office Complex, Lilong. The SDO, Lilong, who is respondent No. 5, lodged a report dated 01.09.2021 to the Officer-in-Charge, Lilong Police Station with regard to the said incident. As per the report of respondent No. 5, the Officer-in-Charge, Lilong Police Station registered an FIR being No. 86(09) 2021 LIL-PS u/s 436, 34 IPC and 3/4 PDPP Act against some unknown persons.

**[4]** On 02.09.2021, the petitioner and one Md. Abdul Hakim, who was LDC, LA/Sub-Registrar, SDO's Office Lilong were arrested in connection with the said FIR and

on 04.09.2021, they were remanded to the judicial custody for a period of 15 days with effect from 04.09.2021 to 18.09.2021. On the same day of arrest i.e. 04.09.2021, the Ld. Magistrate released Mr. Md. Abdul Hakim on bail on medical grounds and remanded the petitioner to judicial custody till 18.09.2021. The petitioner being detained for more than 48 hours in custody, this led her suspension from her service.

**[5]** Vide order dated 12.10.2021 passed by the Ld. Session Judge, Thoubal in Cril. Misc (B) Case No. 167 of 2021, the petitioner was released on bail in connection with the said FIR by imposing certain terms and conditions and while releasing her on bail, she fully complied with the terms and conditions as imposed by the Ld. Session Judge, Thoubal. While the petitioner was in police and judicial custody, she was fully co-operating with the investigating authorities to find out the exact truth and after her release on bail, she gave full co-operation in investigating the said FIR.

**[6]** The concerned authorities are still not issuing any revocation order of the suspension of the petitioner. However, the State Government issued an order dated 25.04.2022 for affording subsistence allowance at an amount equal to 50% of the leave salary.

**[7]** A Single Judge passed an order dated 09.08.2022 in Cril.Petn. No. 37 of 2021 filed by one Md. Abdul Hakim (co-accused) for quashing the said FIR and allowed the petition by quashing the FIR No. 86(09) 2021 Lil-PS on the ground that no headway has been made in terms of implicating the petitioner in any wrongdoing. When the allegations made in the FIR or the complaint and the evidence collected in support of the same do not even made out a case against the accused and the police has not even

determined whether the fire in question was caused by human hand or otherwise and no incriminating material has been gathered by them against the petitioner till date.

**[8]** Respondent Nos. 3 & 4 filed affidavit-in-opposition wherein it is stated that as per the disclosure of the complainant, respondent No. 5 herein, the petitioner and others were suspected of committing the offence and they were accordingly arrested and interrogated. Beyond this, the affidavit-in-opposition is of no assistance as it is mostly rhetorical and made reference to case law without addressing factual aspects.

**[9]** Mr. T. Rajendra, learned senior counsel for the petitioner, who also appeared on behalf of the co-accused in CrI. Petn. No. 37 of 2021, submits that there are no materials against the petitioner herein with respect to the offences alleged against her. In the counter affidavit of the State, it is stated that the cause of the fire was by 'some unknown person' and the petitioner and other co-accused were only suspected without any material as there were staying in the office complex. Vide order dated 09.08.2022 in CrI. Petn. No. 37 of 2021, learned Single Judge quashed the FIR No. 86(09)2021 LIL PS along with all proceedings consequential there qua the co-accused Md. Abdul Hakim. While passing the above order, learned Single Judge relied on the decision in the case of **State of Haryana v. Bhajan Lal: 1992 Supp (1) SCC 335**. Learned senior counsel has pointed out that in the case of the present petitioner, the prosecution has not able to find out any cogent material to implicate her in the FIR case.

[10] Mr. T. Rajendra, learned senior counsel for the petitioner further relies on the case laws of **State of Haryana v. Bhajan Lal: 1992 Supp (1) SCC 335** and **Ashok Chaturvedi v. Shiyul H. Chanchani: AIR 1998 SC 2796** to the points that no materials are found against the petitioner for her involvement in the case and the petitioner has been implicated on the basis of mere suspicion and counter affidavit of State indicate possibility of involvement of 'some unknown persons'. It is prayed that as held earlier order by this Court in the case of co-accused, the FIR against the petitioner be quashed due to absence of any material for proceeding against her.

[11] Per contra, Mr. H. Samarjit, learned PP draws the attention of this Court to the fact that the case of the petitioner is different from that of co-accused Abdul Hakim. It is pointed out that as the petitioner was a chowkidar staying in the office campus for its safety, she had a bigger role and she would be responsible for any lapses. It is submitted that she cannot get the benefit of order dated 09.08.2022 passed by this Court quashing the same FIR against the co-accused Md. Abdul Hakim. It is prayed that the present petition be dismissed and the petitioner ought to face the trial.

[12] This Court has considered the rival submissions made at bar, the materials on record and the original case record submitted by the prosecution.

[13] On perusal of the statements recorded under Section 161 CrPC of the witnesses including eyewitnesses who were present when the fire broke out, none of the witnesses named the petitioner as one of the suspects. One of the witnesses named

three persons as probable suspects, but he did not mention the name of the petitioner. There is not much headway in the investigation. Even though the petitioner was present at the spot along with many other people, nothing is indicated for her involvement. Perhaps her presence is quite natural, as she was staying in the office complex as a chowkidar.

**[14]** In the famous case of **State of Haryana v. Bhajan Lal: 1992 Supp (1) SCC 335 @ Para 102 & 103**, a 2 Judge Bench of the Hon'ble Supreme Court illustrated circumstances under which criminal proceedings could be quashed exercising inherent power under Section 482 CrPC of extraordinary power under Article 226 of the Constitution of India.

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not

disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

**[15]** Considering the facts of the present case juxtaposing with the seven tests laid down in **Bhajan Lal case (supra)**, conditions Nos. (1), (3) & (5) are satisfied. Forcing the petitioner to face the rigors of a criminal proceedings with these insufficient materials collected by the prosecution would amount to abuse of criminal proceeding. The higher court, as a harbinger for the custodian of personal liberty of a citizen, shall not shy from exercising its inherent jurisdiction to terminate such criminal proceedings.

**[16]** Accordingly, the criminal petition under Section 482 CrPC is allowed and FIR No. 86(09)2021 Lilong PS under Sections 436 & 34 IPC and Sections 3 & 4 of the Prevention of Damage to Public Property, 1984 along with all incidental proceedings is quashed qua the petitioner. Return the case record along with a copy of this order.

**JUDGE**

**FR/NFR**

*joshua*

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