

Serial No. 20
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Rev. P. No. 18 of 2022

Date of Decision: 21.04.2023

Shri. Tony T.C. Marak Vs. State of Meghalaya & 5 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Yobin, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Mr. A.H. Kharwanlang, GA (For R 1-4)
Mr. F.L. Iawbor, Adv. (For R 5)
Mr. H.L. Shangresio, Sr. Adv. with
Ms. E. Wanniang, Adv. (For R 6)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. P. Yobin, learned counsel for the petitioner, who has submitted that the petitioner being aggrieved by the charge sheet No. 11/2016 dated 21.06.2016 submitted by the Investigating Officer (I/O) in Dawki P.S. Case No. 2(1)/2010 under Section 13(2) read with Section

13(1) (c) of the Prevention of Corruption Act, 1988 whereby a *prima facie* case for prosecution against the petitioner herein was said to have been found well established and the related order dated 28.10.2022 passed by the learned Special Judge, West Jaintia Hills District, Jowai in GR Case No. 10/2010, re-registered as Special CID Case No. 1/2016 by which order, the prayer of the petitioner/accused for discharge from the case was not allowed and the consequential order for framing of charge being made, the petitioner has accordingly approached this Court with this instant application under Section 397 read with Section 482 Cr.P.C and also under Article 227 of the Constitution of India.

2. The learned counsel has submitted that the brief facts of the case is that the petitioner at the relevant point of time was the State's Chief Conservator of Forest, SF & Env. There was a Centrally Sponsored Scheme (CSS) for establishment of a park at Syndai, Amlarem Sub-Division under the Border Area Development Department Programme, which Scheme amounting to ₹ 30,60,800/- (Rupees thirty lakhs sixty thousand eight hundred) only was proposed by the Department of Soil Conservation, Government of Meghalaya, the same being accordingly approved by the State Level Screening Committee was Special Central Assistant under the Border Area Development Department Programme.

3. The Forest Department was however, given the responsibility for implementation of the said project, the petitioner being the Chief Conservator of Forest, SF & Env., he was accordingly tasked for completion of the same. As to the utilization of funds for the said project, the petitioner finding that there is no appropriate channel for exclusive use of the funds meant thereof, had accordingly opened a special Current Account with the Canara Bank, Garikhana Branch, Shillong in the name of Chief Conservator of Forest, (SF & Env.) for transaction of money meant for the said project. The learned counsel has submitted that it is clarified that the said account was opened and operated in the name and Office of the Chief Conservator of Forest and not in the petitioner's personal capacity.

4. The learned counsel has submitted that the petitioner has then entrusted the task of implementation of the project to the Divisional Forest Officer (DFO) and was functioning only as the Drawing and Disbursing Officer (DDO) for the project.

5. The project was carried out and duly completed to the satisfaction of all concerned and a Utilization-cum-Completion Certificate for an amount of ₹ 26,32,800/- (Rupees twenty six lakhs thirty

two thousand eight hundred) only was submitted by the DFO vide certificate dated 30.06.2010. It is also mentioned that the inspection of the project was earlier carried out by a team headed by the Secretary to the Government of Meghalaya, Border Area Development Department and the inspection team was satisfied with the work done but, has however suggested that the construction of two unit Grade-IV staff quarter amounting to ₹ 4,28,200/- (Rupees four lakhs twenty eight thousand two hundred) only may not be started. The inspection report dated 13.03.2010 was also brought on record.

6. In the meantime, on 17.01.2010, the respondents No. 5 and 6 have lodged an FIR before the Officer-in-Charge, Muktapur Police Station alleging misappropriation of Government fund and conspiracy to defraud the Government by the petitioner in the execution of the work for implementation of the said construction of the park at Syndai and the FIR was registered as Dawki P.S. Case No. 2 (1) of 2010 under Section 409 IPC and investigation was launched.

7. In spite of the said FIR, the respondents No. 5 and 6 also approached the Guahati High Court by filing a Public Interest Litigation No. 26 of 2010 alleging that the Government is not taking any action

against the petitioner on the complaint made. The PIL was disposed of vide order dated 12.12.2011 with the observation that the Investigating Officer may submit a report to the concerned court and the court to decide the matter in accordance with law.

8. In course of time, the respondents No. 5 and 6 respectively have filed a petition before the competent court at the relevant point of time and has made a prayer that it has come to their knowledge that the allegation made against the petitioner was totally false and misleading and as such, has decided to withdraw the compliant/FIR. The matter was heard by the learned court and vide order dated 13.12.2011 was satisfied that the petition was made bonafide and since the prosecution has no objection to the same, the charge against the accused/petitioner herein was dropped and he was accordingly discharged from all liabilities in the case. This, submits the learned counsel virtually is a closure of the allegations made against the petitioner and his innocence was retained.

9. The learned counsel has further submitted that surprisingly after a gap of about five years from the date when the order of discharged was passed, the Investigating Officer submitted a charge sheet No. 11 of 2016 on 21.06.2016 in the same case that is, Dawki P.S Case No. 2(1) of 2010

opining that a case under Section 13(2) read with Section 13(1) (c) of the PC Act, 1988 was found well established against the petitioner.

10. As submitted above, the learned Special Judge taking cognizance of the charge sheet filed has cause registration of the Special CID Case No. 1 of 2016 and vide the impugned order dated 28.10.2022 has directed for framing of charges against the petitioner.

11. The learned counsel has submitted that the learned Trial Court has failed to exercise its judicial discretion on the facts and circumstances of the case by passing the impugned order. The same being without jurisdiction, it is therefore liable to be set aside and quashed.

12. The learned counsel has submitted that the issue to be considered is whether a criminal court after passing the final order, has the power to recall or review its own order and secondly, whether the principle of *res judicata* would be applicable in criminal proceedings.

13. In answer to this, the learned counsel has firstly led this Court to the provision of Section 362 Cr.P.C which provides that no court when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error.

14. It is submitted that the I/O who is expected to be aware of the order dated 13.12.2011 passed by the competent court having chosen not to assail the same before a higher court or as provided by the relevant provision of law has instead submitted the charge sheet, albeit after a delay of about five years and accordingly the action of the I/O is in error and the learned Trial Court by accepting the said charge sheet has also acted without any provision of law.

15. The learned counsel on the issue of *res judicata* has submitted that the charges against the petitioner having been set to nought, nothing remains and the subsequent filing of the chargesheet on the basis of the original charge or alleged offence complaint of in the FIR, the same would indeed attract the application of the principle of *res judicata*. In support of this contention, the learned counsel has cited the case of *Bhagat Ram v. State of Rajasthan: (1972) 2 SCC 466* at para 13 and has specifically referred to an extract of such paragraph which reads as follows:

“13. ...It was, in our opinion, not within the competence of the learned judge to reopen the matter and pass the above order of conviction in the face of earlier order of the Division Bench whereby the order of acquittal of Bhagat Ram made by the trial Judge in respect of the said three charges had been affirmed. The order of the Division Bench unless set aside in appeal to

this Court, was binding and conclusive in all subsequent proceedings between the parties. The principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings or in some other subsequent proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. The plea of autrefois acquit as a bar to prosecution embodied in Section 403 of the Code of Criminal Procedure is based upon the above wholesome principle.”

16. Mr. H.L. Shangreiso, learned Sr. counsel appearing for the respondent No. 6 has submitted that the impression or rather information received by the respondent and his organisation is that the petitioner has misused the fund meant for the project for his personal gain by diverting the same to his personal bank account. Accordingly, the said FIR dated 17.01.2010 was lodged to register their complaint.

17. On the perceived notion that the Government is not doing anything in the matter nor was any action taken against the petitioner, the said PIL No. 26 of 2010 was filed. The PIL being accordingly disposed of, the I/O of the criminal case was directed to file his report. However, in the meantime, the respondent No. 6 and his organisation has come to know of the factual aspect of the matter inasmuch as it was confirmed that there was no misutilization of the fund by the petitioner and that the fund amount was deposited in a government account in the name of Chief Conservator of Forest and not in the name of the personal account of the

petitioner.

18. Being seized of the truth, the respondent No. 6 had accordingly approached the Trial Court by way of a petition dated 26.09.2011 with a prayer for withdrawal of the said FIR/complaint dated 16.01.2010 which prayer was allowed and the proceedings against the petitioner was dropped vide order dated 13.12.2011.

19. Mr. Shangreiso has further submitted that the events that took place after the proceedings against the petitioner was dropped is beyond comprehension as a competent court having passed a judicial order, in this case an order of discharge as could be contemplated under the provision of Section 227 Cr.P.C, the I/O cannot by any stretch of the imagination continue with the investigation of the case. This would be an affront to the authority of the court and an act of insubordination.

20. As to the issue of *res judicata* the learned Sr. counsel has also agreed that the principle of *res judicata* would apply to the facts of the case of the petitioner and even assuming but not admitting that the order of discharge was passed on a misplaced or erroneous application of the law, even then since the order was not challenged at the relevant point of time, the principle of *res judicata* will apply. The case of *Kalinga Mining*

Corporation v. Union of India & Ors.: (2013) 5 SCC 252, para 42 is cited by the counsel in support of his contention. The said para reads as follows:

“42. Considering the principle of res judicata, this Court in the Mohanlal Goenka v. Benoy Kishna Mukherjee [AIR 1953 SC 65] held as under:

“22. There is ample authority for the proposition that even an erroneous decision on a question of law operates as ‘res judicata’ between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as ‘res judicata’.”

This Court also held that:

“14. ...A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides.”

21. It is therefore submitted that appropriate order may be passed in this case to assert the authority of the court in view of the facts and circumstances as was portrayed in these proceedings.

22. Mr. F.L. Iawbor, learned counsel for respondent No. 5 has submitted that the submission and contention advanced by the learned Sr. counsel for the respondent No. 6 is also adopted by the respondent No. 5 herein.

23. Mr. N.D. Chullai, learned AAG appearing for the State respondents has submitted that admittedly by the order dated 13.12.2011 passed by the learned Additional District Magistrate, West Jaintia Hills, Jowai the charges against the petitioner herein have been dropped, however the initial offence was one under Section 409 IPC. The I/O while filing his charge sheet has come to the conclusion that on the basis of his investigation, a case under Section 13(2) read with Section 13(1) (c) of the PC Act 1988 has been found well established against the petitioner/accused and accordingly, the learned Trial Court has taken cognizance of the same and has cause initiation of the trial.

24. It is the fair submission of the learned AAG that in the event this Court finds that the I/O is estopped from filing the charge sheet after the petitioner has been discharged, then the prosecution cannot make out any case for proceeding against the petitioner.

25. This Court has duly considered the submission and contention raised by the learned counsels appearing for the parties herein and from what has been brought to the fore, it appears that the only issue to be decided is whether the impugned order dated 28.10.2022 can be sustained in the light of the facts and circumstances of the case of the parties.

26. The factual aspect of the matter need not be repeated as the same has been elaborately brought out through the submission of the parties, however what can be noticed is that there is a project for establishment of a park at Syndai, Amlarem Sub-Division, under the CSS for which an amount of ₹ 30,60,800/- (Rupees thirty lakhs sixty thousand eight hundred) only which project was given under the charge of the petitioner for completion of the same. The petitioner, as submitted by the learned counsel has thought it prudent to put the money in a separate bank account under his official designation. This was perhaps the cause which has arose the suspicion in the minds of the complainants who, without verifying the facts has assumed that the petitioner has siphoned of the money for his personal gain. This is belied by the fact that the subsequent inspection of the project by the competent authority has returned a positive finding that the project was well executed. Furthermore, the fact that the utilization certificate was issued by the DFO indicating the actual amount spent on the project has not been questioned by any authority. This only goes to prove that there was no misuse of the fund for the project.

27. The complainants have also awakened to this fact and in all fairness have thought it fit to pray for withdrawal of the FIR and the

discharge of the accused/petitioner from all liabilities.

28. When the application for withdrawal of the FIR was heard by the court of the learned Additional District Magistrate, the prosecution was also present and has not objected to the prayer made, accordingly the order dated 13.12.2011 was passed discharging the accused/petitioner from the liabilities of the case.

29. As submitted, the legal position as it stood, taking into consideration the provision of Section 227 Cr.P.C the order dated 13.12.2011 suffers from no legal infirmity. This order was never challenged in appeal before any higher judicial forum. The same has accordingly attained finality.

30. It is not understood under what provision of law, the I/O has continued with the investigation post 13.12.2011, but all the same, he has done so and that too, after five years, the charge sheet was filed. The action of the I/O is de hors the prevalent provisions of law and rules and the same cannot be condoned.

31. It is also to be understood that once the order dated 13.12.2011 has attained finality, the same court or one of equal jurisdiction cannot

alter or review the order as such an act would attract the provision of Section 362 Cr.P.C.

32. The learned court of the Special Judge, by acknowledging the charge sheet dated 21.06.2016 filed by I/O has acted without jurisdiction as the said charge sheet was filed in connection with Dawki P.S. Case No. 2(1) of 2010 which has already lost its relevance in view of the order dated 13.12.2011.

33. It is also seen from the materials on record that the learned Special Judge was aware of the order dated 13.12.2011, since the same was brought to its notice by way of a petition No. 2 of 2017 filed by the petitioner herein. However, in utter disregard to the relevant provisions of law, the impugned order dated 28.10.2022 was passed.

34. It is also well settled by relevant judicial pronouncements, brought to the notice of this Court by the parties herein as regard the issue of *res judicata*, reference being had to the case of Bhagat Ram (supra) as well as in the case of Kalinga Mining Corporation (supra) that a matter once settled cannot be reopened in the same proceedings.

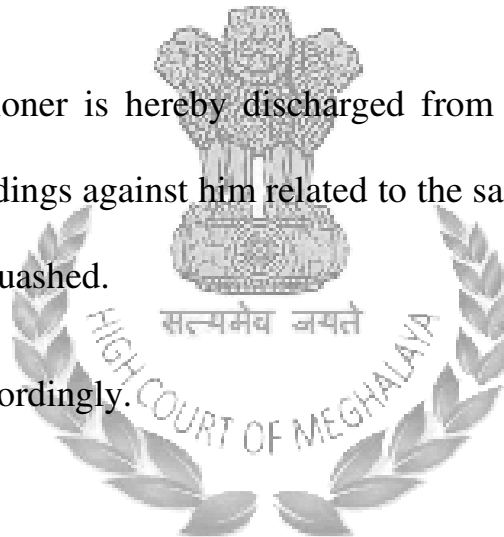
35. In the light of the above submissions, this Court finds that the

impugned order dated 28.10.2022 whereby the charge sheet dated 21.06.2016 being taken cognizance of was passed without taking into account judicial propriety and also without jurisdiction. The same is therefore liable to be set aside and quashed.

36. This petition is accordingly disposed of by setting aside and quashing the impugned order dated 28.10.2022 along with the related charge sheet.

37. The petitioner is hereby discharged from all liabilities in the case and all proceedings against him related to the said Special CID Case No. 1 of 2016 are quashed.

38. Order accordingly.



Judge

Meghalaya
21.04.2023
"Tiprilynti-PS"