

GAHC040001592023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Crl.Pet/21/2023

1. Millo Lalyang
S/o Lt. Millo Tana,
Permanent Resident of Village Tajang, PO and PS Ziro,
District Lower Subansiri,
Arunachal Pradesh,
PIN 791120

Petitioner

-Versus-

1. The State of Arunachal Pradesh
Through Public Prosecutor
2. Ms. Jipemai Mepo Kri
W/o Shri Bomkey Kri
Permanent Resident of Village Dhanbari
PO and PS Khupa, District Anjaw
Arunachal Pradesh.
Present resident of near Govt. Hr. Sec. School Ground Tezu
PO and PS Tezu, District Lohit
3. Bomkey Kri
S/o Sotai Kri

Permanent Resident of Dhanabari Village
PO and PS Khupa District Anjaw
Arunachal Pradesh.

Present Resident of near Govt. Hr. Sec. School Ground Tezu
PO and PS Tezu District Lohit
Arunachal Pradesh

Respondents

For Petitioner(s) : Mr. D. Laji, Advocate

For the Respondent(s) : Mr. T. Ete, Additional Public Prosecutor

Mr. M. K, Singh, Advocate

Date of Judgment :21.12.2023

BEFORE

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

1. Heard Mr. D. Laji, the learned counsel for the petitioner. Also heard Mr. T. Ete, the learned Additional Public Prosecutor for the State of Arunachal Pradesh and Mr. M. K. Singh, the learned counsel for the private respondent.

2. This application under Section 482 of the Code of Criminal

Procedure, 1973 has been filed by the petitioner, namely, Millo Lalyang, praying for quashing of the CR Case No. 08/2020 under Section 330 of the Indian Penal Code, which was registered against the petitioner on the basis of an order dated 09.11.2020 passed in G. R. Case No. 54/2020 passed by learned Judicial Magistrate, 1st Class, Hawai, Anjaw, Arunachal Pradesh.

3. The facts relevant for consideration of the instant criminal petition, in brief, are as follow: -

(i) That on the night of 15.07.2019 at about 10.00 pm, one Shri A Upendhar, HR & Administrative Officer of Sushee Infra & Mining Private Limited had informed the petitioner who was at that time posted as the Officer-in-Charge of Hayuliang Police Station, that some miscreants have physically assaulted the staff of their company at Dhanbari Hot Mix Plant Complex and when those miscreants were caught while they were dismantling the generator, the said miscreants fled away in a white coloured Bolero Pickup Van which was without any registration plate. Accordingly on receipt of the said information, the petitioner alerted the police guards at Khupa police check point. Later on, around 11.00 pm on the said date, the said Mr. Shri A. Upendhar again called the petitioner and informed him that the staff of the company have managed to apprehend four miscreants and the stolen generator was also found loaded in their vehicle. The apprehended miscreants were brought to Hayuliang Police Station

at around 11.30 PM.

- (ii)** During the preliminary interrogation of the apprehended miscreants, it was revealed that when they were attempting to lift the stolen 63 KVA generator at Dhanbari Hot Mix Plant Complex, they were accosted by the employees of the company and the miscreants tried to physically assault the said employees of the company and even one of them tried to strangle the driver Shri Anil Tegu. It also came out during preliminary interrogation that in order to overpower the miscreants there was a scuffle between the staff of the company and the apprehended miscreants and one of accused fell down on the hard surface of the road and sustained injury on his right hand and other miscreants also sustained some minor injuries during the scuffle.
- (iii)** Thereafter, on the next date an FIR was lodged by one Ashish Nair and on receipt of the written FIR from Shri Ashish Nair, Project Manager Sushee Infra & Mining Private Limited at about 12.00 hour on 16.07.2019, the Hayuliang P. S. Case No.09/2019 under Section 320/447/379/34 of the Indian Penal Code was registered and thereafter, the three of the arrested accused persons were forwarded along with the victim to the hospital.
- (iv)** It is pertinent to mention herein that one of the apprehended miscreants namely, Bomliso Kri was found to be juvenile and therefore, he was allowed to go from the police station. It is also pertinent to mention herein that the petitioner

has stated that on the previous day though injuries were found on the person of the apprehended miscreants including one Bomkey Kri i.e. respondent no. 3, however, they were not sent to the hospital for treatment as the petitioner was informed by one head constable, namely, CW Lohan that the entrance of the hospital is found to be closed and no medical staff is seen there.

- (v)** Thereafter, on completion of investigation in Hayuliang P. S. Case No.09/2019 charge sheet was laid against the accused person including respondent no. 3 under section 323/447/392/34 of the IPC.
- (vi)** In the meanwhile, the respondent no. 2 i.e., Smt. Jipemai Mepo Kri, who is the wife of the respondent no.3 namely, Bomkey Kri had lodged an FIR against the present petitioner alleging that the present petitioner had mercilessly beaten up the respondent no. 3 in police custody in front of other police personnel in the name of interrogation.
- (vii)** On receipt of the aforesaid FIR, on 02.08.2019, Hayuliang P. S. Case No.09/2019 under section 330 of the Indian Penal Code was registered. Thereafter, on completion of the investigation, the Investigating Officer namely, Shri Kakit Duggong, Deputy Superintendent of Police submitted Final Report dated 22.01.2020 on the ground of insufficient evidence to support the allegations levelled in the FIR by wife of the respondent no. 3.
- (viii)** On receipt of the Final Report in Hayuliang P. S. Case

No.09/2019, learned Judicial Magistrate 1st Class, Hawai issued notice to the respondent no. 2 who was the complainant of the said case and next date of hearing was fixed on 09.11.2019 and on that date the learned Judicial Magistrate 1st Class, Hawai took cognizance of the case and rejected the Final Report and next date was fixed for examination of the complainant and her witness regarding their statement under Section 200 of the Code of Criminal Procedure, 1973. Thereafter after recording the statement of the complainant as well as one witness under Section 200 of the Code of Criminal Procedure, 1973 the learned Judicial Magistrate 1st Class, Hawai issued summons to the present petitioner.

(ix) Thereafter, on an application moved by learned counsel for the complainant, the learned Judicial Magistrate 1st Class, Hawai altered the charges from Section 330 of Indian Penal Code to Section 331 of the IPC and committed the case to the Court of learned Sessions Judge, Tezu.

(x) After committal of the case to the Court of learned Session Judge, Tezu, the said Court issued the summons to the present petitioner and next date was fixed for consideration of charges by learned Sessions Judge on 13.02.2023.

(xi) However, in the meanwhile, the petitioner has preferred the instant Criminal Petition and by order dated 08.02.2023, the further proceeding of Sessions Case No. 9(ANJ)/2022 was kept in abeyance

4. Learned counsel for the petitioner has submitted that on receipt of the final report by the Investigating Officer who investigated the Hayuliang P. S. Case No.09/2019 on the basis of an FIR lodged by the respondent No.2, namely Smt. Jipemai Mepo Kri, the learned Judicial Magistrate 1st Class, Hawai, issued notice to the complainant by order dated 28.09.2020 and thereafter, on 09.11.2020, the learned Judicial Magistrate 1st Class, Hawai took cognizance on the basis of objection petition read with the FIR. However, it is submitted by learned counsel for the petitioner that on 09.11.2020, no objection petition/protest petition was filed before the learned Judicial Magistrate, hence, the learned Judicial Magistrate 1st Class, Hawai was wrong in taking cognizance, in the absence of the protest petition, which was only filed later on 14.12.2020. Learned counsel for the petitioner has also submitted that though the learned Judicial Magistrate 1st Class, Hawai issued processes/ summons on the basis of the protest petition filed by respondent No.2, however, no list of witness prosecution witnesses were annexed in the said protest petition, and therefore, the learned Court below had erred in issuing the processes against the present petitioner.

5. It is further submitted by the learned counsel for the petitioner that on 24.11.2021, charges were altered on the basis of a petition filed by the learned counsel for the complainant. However, the present petitioner was not heard before altering the charges. It is also submitted by learned counsel for the petitioner that the case of the present petitioner was committed to the Court of learned Sessions Judge, Teju, without following the procedural requirement as prescribed in Section 209

of the Code of Criminal Procedure, 1973. It is also submitted by the learned counsel for the petitioner that in the instant case, no prosecution sanction under Section 197 of the Code of Criminal Procedure, 1973 was obtained by the complainant side and as the alleged offence was done in connection with and during the course of performance of official duty by the present petitioner, the learned Court below had erred in taking cognizance of the alleged offence against him without any prosecution sanction under Section 197 of the Code of Criminal Procedure, 1973.

6. Learned counsel for the petitioner has also submitted that for want of the prosecution sanctions, as well as for other procedural irregularities as mentioned hereinabove, the proceeding against the present petitioner in Sessions Case No. 09(ANJ)/2022 is liable to be quashed. In support of his submissions, learned counsel for the petitioner has cited the following rulings:

- (i) “Sankaran Moitra Vs. Sadhna Das and Another” reported in (2006) 4 SCC 584
- (ii) “State of Orissa Vs. Ganesh Chandra Jew” reported in (2004) 8 SCC 40.
- (iii) “Sunil Mehta and Another Vs. State of Gujarat and Another” reported in (2013) 9 SCC 209.
- (iv) “State of Himachal Pradesh Vs. M.P. Gupta”, reported in (2004) 2 SCC 349.
- (v) “Vishnu Kumar Tiwari Vs. State of Uttar Pradesh through Secretary Home, Civil Secretariat, Lucknow and Another” reported in (2019) 8 SCC 27

(vi) “D. Devaraja Vs. Owais Sabeer Hussain” reported in (2020) 7 SCC 695

(vii) “D.T. Virupakshappa Vs. C. Subhash” reported in (2015) 12 SCC 231.

7. On the other hand, learned Additional Public Prosecutor as well as learned counsel for the private respondents have submitted that in the instant case, the offence alleged against the present petitioner does not attract Section 197 of the Code of Criminal Procedure, 1973, as the allegation against the present petitioner is that he had mercilessly beaten the respondent No.3 in front of other police personnel and said act of the petitioner is not reasonably connected with the discharge of his official duty and the plea of official duty is not to be taken merely as a cloak for an objectionable act by a public servant. Learned Additional Public Prosecutor has submitted that as per provisions of Section 161 and Section 163 of the Code of Criminal Procedure, 1973, a police officer is prohibited from beating or confining a person with a view to induce him from making statement and in view of this said statutory provisions, it cannot be said that the act of beating the respondent No. 3 by the present petitioner are acts done under the color of his duty or authority. Learned Additional Public Prosecutor has also submitted that it is not the duty of the Police Officer to beat any person after detaining him in order to extort confession, and such an act falls outside the scope of his duty and same cannot be said to have been done in discharge or in purported discharge of his duty, therefore, the protection under Section 197 of the Code of Criminal Procedure, 1973 is not applicable in the instant case.

8. As regards taking cognizance by the learned Judicial Magistrate, 1st Class on 09.11.2022, it is submitted by the learned Additional Public Prosecutor that though the learned Judicial Magistrate, 1st Class has mentioned that he took cognizance on 09.11.2022, however, the processes were issued to the present petitioner only on 14.12.2022 after filing of the protest petition by the respondent No. 3, and therefore, according to learned counsel for the private respondents as well as learned Additional Public Prosecutor, mere mentioning of the fact of taking cognizance in order dated 09.11.2022 may not be a ground for quashing the Criminal Proceedings pending against the present petitioner.

9. As regards the question of alteration of charges is concerned, learned Additional Public Prosecutor has submitted that as during the pendency of the case, on the basis of material on record, it appeared to the learned Judicial Magistrate, 1st Class, Hawaii that the case ought to have been tried by the Court of Session, therefore, she had committed the said case to the Court of Session and charges are not framed, as same is pending for consideration before the learned Sessions Judge, Tezu and question of altering of charges may be agitated by the petitioner before the learned Sessions Judge, Tezu when same would be considered by learned Sessions Judge, and therefore, it may not in itself be a ground for quashing of the criminal proceeding against the present petitioner.

10. Learned Additional Public Prosecutor has also submitted that this case is not a fit case, where the entire proceedings should be quashed. It is submitted by the learned Additional Public Prosecutor that unless the errors pointed out by the petitioner are so patently and unobtrusively

defective or erroneous that by allowing the trial to progress it might cause miscarriage of justice, the Court should not interfere in the pending criminal proceeding against the present petitioner by quashing the same.

11. Learned counsel for the respondent No. 2, i.e., the private respondent has also submitted that the Government of Arunachal Pradesh had found the allegation of custodial torture of respondent no. 3 to be true and genuine, and therefore it also paid a compensation amount of Rs. 1,00,000/- to the respondent No. 3. On the other hand, learned counsel for the petitioner has submitted that the said compensation was not given as a compensation for custodial torture of respondent no. 3, but it was directed to be paid by the State Government as per the direction of the National Human Rights Commission on the failure to follow proper procedure of getting medical checkup done of the respondent No. 3 and others before taking them in custody.

12. In support of his submissions learned Additional Public Prosecutor has cited following rulings:

- (i) “Sushil Kumar Baruah Vs. Golok Chandra Kalita” reported in (2009) 2 GLR 654
- (ii) “State of Gujarat Vs. Girish Radhakrishnan Varde” reported in (2014) 3 SCC 659
- (iii) “Supriya Jain Vs. State of Haryana and Another” reported in 2023 SCC online SC 765

13. I have considered the submissions made by learned counsel for both sides, and have perused the materials available on record very

carefully as well as gone through the rulings cited by learned counsel for both the sides.

14. The principles to be borne in mind while considering an application under Section 482 of the Code of Criminal Procedure, 1973 with regard to quashing of a criminal proceeding has been discussed by the Apex Court in “**Amit Kapoor Vs. Ramesh Chander**” reported in **(2012) 9 SCC 460** wherein the Apex Court has laid down the following guiding principles:

“27. ... 27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be

committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

15. In the instant case, the main ground pressed by the petitioner for quashing the criminal proceeding against him is that the said proceedings against him are ex-facie bad in law for want of sanction under Section 197 of the Code of Criminal Procedure, 1973. In ***Sankaran Moitra Vs. Sadhna Das (Supra)***, the Apex Court had quashed the criminal proceeding against the accused on the ground that the sanction for prosecution was not taken, though the accused was accused of killing of a person by use of excessive force.

16. However, the criteria to be applied to attract the applicability of section 197 of the Code of Criminal Procedure, 1973 was also discussed in the "***Sankaran Moitra Vs. Sadhna Das (Supra)***", by the Apex Court, where it was observed that the real test is that whether the act which is done by the public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity, though what he did was never his duty nor his right to do as such a public officer. The act complained of may be in exercise of the duty, or in absence of such duty, or in dereliction of duty, if the act complained of is done while acting as a

public officer, and in such a course of same transaction in which official duty was performed or purported to be performed, the public officer would be protected. Now, to find out as to whether the act, which was complained of, was done by the petitioner while acting as a public officer in purported exercise of his duties or not, we have to look into the allegations made against him. The respondent No. 2 has, in her protest petition, made categorical allegations against the present petitioner that he had mercilessly beaten up her husband, i.e., respondent No. 3 in presence of other police personnel.

17. In this connection, the provisions of Section 163 of the Code of Criminal Procedure, 1973 are very much relevant in this instant case. The Section 163 of the Code of Criminal Procedure, 1973 provides that no police officer or other person in authority shall offer or make or cause to be offered or made any inducement, threat or promise as is mentioned in the Indian Evidence Act, Section 24. In "***Sushil Kumar Barua Vs. Gulab Chand Kalita***" (***Supra***), this Court has observed as follows:

"From a careful reading of what has been observed in Atma Ram (supra), it is abundantly clear that though a Police Officer is entitled to interrogate any person, he is prohibited by law from beating or confining any person in order to force him to make statement or with a view to extort confession from him. Whether, as a matter of fact, what the complainant has alleged is true or not is a question, which can be determined at the trial and not in this revision. For determining the question as to whether, in the present case, sanction under Section 197 Cr.P.C. was required or not, we have to assume that the contents of the complaint are true and if so construed, it will clearly transpire that what the accused-petitioner had allegedly done were, in the light of the what has been laid down in Atma Ram (supra), prohibited by law."

18. The allegations made in this case against the present petitioner is that he had mercilessly beaten up the respondent No. 3 and from the observations made by this Court in the case of “***Sushil Kumar Baruah Vs. Golap Chandra Kalita (Supra)*** it appears that what has been alleged against the present petitioner is prohibited by law, now whether the said allegation is true or not is a question which can be determined only in a trial and not in this criminal petition and as the acts alleged against the present petitioner, completely falls outside the scope of the duties of the present petitioner, hence, it cannot be said that the merciless beating up of respondent No. 3 was done by the petitioner in purported exercise of his official duty, and therefore, this Court is of considered opinion that the protection of Section 197 of the Code of Criminal Procedure, 1973 is not available to the present petitioner for the acts alleged by the respondent No. 2, in her protest petition.

19. As regards the objection raised by learned counsel for the petitioner that learned Judicial Magistrate, 1st Class, Anjaw took cognizance, on 09.11.2020, on the basis of objection petition read with the FIR, however, on that day no objection petition was there on record, it is to be noted that though in order dated 09.11.2020, learned Magistrate has mentioned that the final report is rejected and cognizance is taken on the basis of objection petition, however, it also appears that no summons was issued on that day, rather, the summons to the present petitioner was issued only on 14.12.2020 after going through the complaint petition and initial deposition of the complainant and the statement of her witness, which was recorded on that day. It is true that the learned Magistrate ought to have clearly specified in her order as to for which offences, she

took cognizance and before issuing the summons to the present petitioner, it ought to have been made clear as to under what provision the materials are found against the present petitioner, however, mere not mentioning of the same in the order dated 14.12.2020, and mere mention of the fact that cognizance is taken on the basis of objection petition in order dated 09.11.2020 appears to be an irregularity, which would not vitiate the entire proceeding, justifying the quashing of the entire proceeding for that ground only.

20. As regards the question of alteration of charges under Section 216 of the Code of Criminal Procedure, 1973 from Section 330 of the Indian Penal Code to 331 of the Indian Penal Code by the learned Magistrate is concerned, this Court is of considered opinion that the applicability of Section 216 of the Code of Criminal Procedure, 1973 would arise only after framing of charges. In the instant case, the learned Magistrate had only found that the case is one which ought to have been tried by the Court of Sessions, as there are ingredients of Section 331 of the Indian Penal Code on record and therefore the said case has been committed to the Court of Sessions. The power of committal by the Court of learned Judicial Magistrate, 1st Class, under aforesaid circumstances, is also there in Section 323 of the Code of Criminal Procedure, 1973. Mere not mentioning of the said provision in the order of committal dated 24.11.2021 would not in itself be a sufficient ground to quash the entire criminal proceedings.

21. The Apex Court has observed *in "Amit Kapoor Vs. Ramesh Chandra (Supra)"* that where the exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 is absolutely essential to prevent

patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate Courts, even in such cases, the High Court should be loath to interfere, at the threshold to throttle the prosecution in exercise of its inherent power.

22. In the instant case also, the trial against the petitioner is yet to commence, the case against the petitioner is pending for consideration of charges before learned Sessions Judge, and during the stage of consideration of charges, the petitioner would get ample opportunity to bring the errors which are alleged to have been committed by the learned Judicial Magistrate, 1st Class to the notice of learned Sessions Judge so that same may be taken into consideration in the case pending against the petitioner. However, at this stage, this Court is of considered opinion that under the circumstances of this case and for the reasons mentioned in the foregoing paragraphs this is not a fit case where the entire criminal proceeding against the present petitioner, which is pending before the Court of learned Sessions Judge, Tezu may be quashed.

23. In view of discussions and the reasons mentioned in foregoing paragraphs, this Court does not find any just ground for quashing the CR Case No. 9(ANJ)/2022 pending in the Court of learned Sessions Judge, Anjaw at Tezu.

24. Hence, this Criminal Petition is hereby dismissed and the interim order passed by this Court on 08.02.2023 is hereby vacated.

25. Let the record of this case be sent by Registry of the Principal Seat to the Registry of Itanagar Bench at Yupia, immediately.

26. Thereafter, a copy of this judgment shall be sent by the Registry

of Itanagar to the Trial Court.

JUDGE

Comparing Assistant