



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

Case No. : Crl.Rev.P./7/2023

Tapak Natam
S/o Late Tareng Natam,
Resident of Niti Vihar, Itanagar, PO/PS Itanagar, District Papumpare, Arunachal Pradesh.

VERSUS

THE STATE OF AP and Anr.
Represented by the Public Prosecutor, Arunachal Pradesh.

2:Techi Gubin
Age: 0
Occupation

Advocate for the Petitioner : N. Danggen, O Duggong, K Chotton, P Siga, Y. Dagiam,
H T Tara, D Droma, R Tani

Advocate for the Respondent : Ms. L. Hage, Additional Public Prosecutor

Date of Hearing : **16.11.2023**

Date of judgment & order : **21.11.2023**

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (CAV)

Heard Ms. N. Danggen, learned counsel for the petitioner. Also heard

Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh representing the respondent no. 1. None appeared for the respondent No. 2 despite service of notice.

2. By filing this criminal revision petition under Section 401 of the Code of Criminal Procedure, 1973, the petitioner has assailed the order dated 03.03.2023 passed by the learned Chief Judicial Magistrate, Yupia, in G.R. Case No. 363/2020, by which the application filed by the accused petitioner for discharge has been rejected and the charge framed by the learned Chief Judicial Magistrate, Yupia, in G.R. Case No. 363/2020, under Section 3 (1) of the Prevention of Damage to Public Property Act, 1984 (hereinafter referred to as PDPP Act in short) against the petitioner.

3. The case set up by the prosecution is that a complaint by one Shri Nabam Tama was lodged to the Director (Housing) Government of Arunachal Pradesh, who on receipt of the said complaint, filed a written complaint to the Chief Estate Officer-cum-ADM, Itanagar Capital Complex. The complaint was forwarded to the Itanagar Police for investigation. Pursuant thereto, a case was registered being Itanagar Police Station Case No. 144/2020 under Section 3 of the PDPP Act. The allegation against the petitioner is demolition of Government Quarter No. 23/T-I at Niti Vihar, Itanagar.

4. After completion of the investigation, the Police has charge-sheeted the petitioner under Section 3 of PDPP Act. During the course of investigation, 4 (four) witnesses were examined under Section 161 Cr.P.C. The G.R. Case No. 363/2020 under Section 3 of PDPP Act was taken up for consideration of charges against the petitioner on 03.03.2023. The petitioner had filed an interlocutory application being I.A. No. 02/2023 praying for discharge from the case.

5. After hearing the learned counsel for prosecution and the accused

and on consideration of the materials, the learned Chief Judicial Magistrate has rejected the application of the petitioner for discharge on 03.03.2023 and framed the charge against the accused petitioner under Section 3 (1) of the PDPP Act. Hence the present criminal revision petition.

6. Ms. N. Danggen, learned counsel for the petitioner submits that *prima-facie* no case is made out against the petitioner under Section 3 of the PDPP Act. She submits that the learned Court below has committed an error in fact by stating in the charge itself that the accused petitioner has built an RCC building in the compound of the alleged demolished quarter after demolishing the quarter. As the fact clearly visible in the charge-sheet itself that the quarter was a bachelor barrack without any compound wall and the alleged incident of demolition as per the charge-sheet took place in 2019, it is impossible that the accused petitioner would build an RCC building after demolishing the quarter in 2010. She further submits that the learned Court below has committed an error in fact and in law in coming to the conclusion that just because the adjacent quarter to the alleged demolished quarter i.e. Quarter no. 24/T-I is still standing, the accused petitioner must have demolished the quarter, whereas it was pleaded very clearly that the Quarter no. 24/T-I though still standing is in a very bad shape and may collapse any time soon. Referring to the photographs annexed in the petition, she claims that it is clear from the photographs that the area where the alleged demolished quarter stood is vacant and the petitioner has not occupied the same.

7. Ms. Danggen, learned counsel further submits that framing of charge against the accused petitioner is not sustainable inasmuch as there is no witness who has stated specifically implicating the accused petitioner and only on the assumption of non-complaint of collapse of the quarter, the learned Court below has framed the charge. She submits that the learned Court below has

committed a manifest error in rejecting the discharge application and thereafter, framed a charge against the accused petitioner by ignoring the fact that the complainant Shri Nabam Tama is a stranger to the case but has made complaint only on personal grudge and the whole proceeding emanates not from any personal knowledge of the petitioner's alleged offence but due to malafide complaint of one Shri Nabam Tama, who has grudge with the accused petitioner with regard to the allotment of quarters in the vicinity. Therefore, she prays that the impugned order dated 03.03.2023, passed in IA No. 02/2023 rejecting the prayer for discharge and the impugned framing of charge against the accused petitioner dated 03.03.2023 in G. R. Case No. 363/2020 may be interfered with and set aside.

8. In support of her submissions, Ms. Danggen, learned counsel has placed reliance on the following case laws:

1. **Mohindar Singh vs. The State**, reported in 1960 Cri. L J 393
2. **Rukmini Narvekar vs. Vijaya Satardekar and Ors.** reported in (2008) 14 SCC 1.
3. **Nitya Dharmananda alias K. Lenin and Anr. Vs. Gopal Sheelum Reedy also known as Nithya Bhaktananda and Anr.**, reported in (2018) 2 SCC 93.
4. **Sanjay Kumar Rai vs. State of Uttar Pradesh and Anr.**, reported in 2021 SCC online SC 367.

9. *Per-contra*, Ms. L. Hage, learned Additional Public Prosecutor submits that as per the statements recorded under Section 161 Cr.P.C., the accused petitioner had never informed the Housing Department about the problem of the Govt. quarter no. 23/T-I allotted to him. The accused petitioner has removed and disposed of the Government property without any authority. The said quarter was allotted to the accused petitioner in the year 1997 and was

demolished by the accused petitioner. As per the charge-sheet, in between quarter no. 22/T-I and quarter no. 23/T-I an RCC building/private residence for accused petitioner's family was constructed by the accused petitioner in the year 2010. She further submits that the quarter no. 23/T-I and quarter no. 24/T-I are double Unit quarters which were allotted to the accused petitioner and one Shri Tajum Natam and the contention that the said quarter no. 23/T-I which was allotted to accused has completely collapsed due to rain cannot be believed since the adjoining quarter no. 24/T-I still exist. Therefore, the impugned order dated 030.03.2023 and the charge framed against the accused petitioner under Section 3 of PDPP Act is absolutely impregnable as there is a *prima-facie* case against the accused petitioner under Section 3 of the PDPP Act. Thus, the rejection of the application for discharge of the accused petitioner and thereafter, framing of charge are in accordance with law.

10. To buttress her submissions, Ms. L. Hage, learned Additional Public Prosecutor has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Tarun Jit Tejpal vs. State of Goa and anr.**, reported in (2020)17 SCC 556, wherein the Hon'ble Supreme Court has held that true it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter

and hold that the materials would not warrant a conviction. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

11. I have considered the rival submissions advanced by the learned counsel for the parties and perused the materials on record.

12. Section 3(1) of *the Prevention of Damage to Public Property Act, 1984* provides as follows:

“3. Mischief causing damage to public property. –

(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.”

13. On bare reading of the above provision, it is seen that a commission of mischief by doing any act in respect of a public property is punishable with imprisonment up to five years and with fine.

14. The objects and reasons of the PDPP Act indicates to curb acts of vandalism and damage to public property, including destruction and damage caused during riots and public commotion and to strengthen the law to enable the authorities to deal effectively with cases of damage to public property.

15. Section 227 of Cr.P.C provides as follows:

“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and

the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

Section 228 requires the Court to frame charge if he considers that there is ground for presuming that the accused has committed the offence.

16. The Hon'ble Supreme Court succinctly held that reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

17. On perusal of the record it transpires that quarter No. 23/T-I and quarter No.24/T-I are the double Units quarters which were allotted to the petitioner and one Shri Tajum Natam. Quarter No. 23/T-I was alleged to have

been demolished in the year 2019 whereas quarter No. 24/T-I of the same Unit still exist. The debris/remnants of the demolished quarter were already removed and used as open space by the petitioner. It reveals that one RCC building is constructed by the petitioner in between the two quarter No. 22/T-I and quarter No. 23/T-I and the petitioner and his family are residing in the said RCC building. It is alleged that the petitioner has removed and disposed of the Government property without any authority. The said quarter was allotted to the accused petitioner in the year 1997 and was alleged to have been demolished by the petitioner.

18. The statement of the accused petitioner under Section 161 itself shows that after allotment of Government quarter no. 23/T-I he has never informed the authorities regarding the collapse of the Government quarter except a representation in the year 2003 for renovation of the said quarter (introduced by the petitioner at the time of consideration of charge). The statement of the witnesses shows that the said quarter has been dismantled and demolished. Since the quarter was not surrendered by the accused petitioner, it is the duty and obligation on the part of the person who is the allottee of such quarter to protect the public property. It is unbelievable that the accused petitioner who is the occupant and the allottee of the said quarter has no knowledge of such demolition of the Government property. The plea of collapse of the said quarter during rainy season appears to be mere defence as no intimation/report to the authority was given either by the accused petitioner or by any other person.

19. The accused petitioner has filed an application for discharge enclosing the representation claimed to have been filed in the year 2003 but such document may be or may not be looked into at the stage of framing of charge in as much as the trial Court has to consider the Police report and the

documents sent with it under Section 173 of the Cr.P.C. In my considered view such omission to consider the said document by the Court below, if any, at the stage of framing of charge, by itself would not render the impugned order bad in law.

20. Now this court would refer to the case laws relied on by the learned counsel for the petitioner.

In the case of **Mohindar Singh** (Supra), the Hon'ble Supreme Court has held which is reproduced as under:

“26. The offence is constituted by the concurrence of mens rea followed by an actus reus. Both elements of the crime must co-exist; and the proof of guilty intention without the overt act, or of the deed not shown to have been actuated by any criminal intent, cannot result in conviction. Prosecution has to establish both elements of the crime by-proving that the accused did something which in-point of law would be an intention of the commission of an offence, and that in taking that step, he-was inspired by an intention to achieve the definite objective, which constituted the particular crime. The actual steps taken may manifest the guilty intention in furtherance of which he had proceeded.”

In the case of **Rukmini Narvekar** (Supra), the Hon'ble Supreme Court has held as under:

“22. Thus in our opinion, while it is true that ordinarily defence material cannot be looked into by the court while framing of the charge in view of D.N. Padhi case, there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance, In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.”

In the case of **Nitya Dharmananda** (Supra), the Hon'ble Supreme Court has

held as under:

“8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91CrPC de hors the satisfaction of the court, at the stage of charge.”

In the case of **Sanjay Kumar Rai** (Supra), the Hon'ble Supreme Court has held as under:

“16. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law.

17. Further, it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. [Union of India v. Prafulla Kumar Samal]. Likewise, the Court has sufficient discretion to

order further investigation in appropriate cases, if need be.”

21. On perusal the above cases relied on by the learned counsel for the parties, I find that the observations in the above cases are well settled proposition of law by the Hon’ble Supreme Court which in my view does not come to aid of the petitioner.

22. The Hon’ble Supreme Court in catena of decisions held that it is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

23. In **State by Inspector of Police, Chennai -vrs- S. Selvi**, reported in (2018) 13 SCC 455, the Hon’ble Supreme Court has summarised the principles while framing of the charge at the stage of Sections 227/228 CrPC. which is reproduced as under:-

“6. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal, Dilawar Balu Kurane v. State of Maharashtra, Sajjan Kumar v. CBI, State v. A. Arun Kumar, Sonu Gupta v. Deepak Gupta, State of Orissa v. Debendra Nath Padhi, Niranjan Singh Karam Singh Punjabi v. Jitendra BhimrajBijjaya and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja that the Judge while

considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

7. In Sajjan Kumar v. CBI, Hon'ble Supreme Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

‘(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will

be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, shift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.' "

24. In **Mauvin Godinho -vrs- State of Goa**, reported in (2018) 3 SCC 358, the Hon'ble Supreme Court had considered how to determine prima facie case while framing the charge under Sections 227/228 CrPC. In the same decision the Hon'ble Supreme Court observed and held that while considering the prima facie case at the stage of framing of the charge under Section 227 CrPC there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. The Hon'ble Supreme Court has summarised some of the principles as under:

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out.
- (2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean

that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

25. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Sections 227/228 CrPC, in the present case this Court is of the considered opinion that the submissions made by the learned counsel for the petitioner on merits, at this stage, are not required to be considered and are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned counsel for the petitioner against the informant or complainant are required to be dealt with and considered at an appropriate stage during the trial.

26. Having considered the submissions and the materials on record, I am of the considered opinion that there is a prima facie case against the accused petitioner for which he is required to be tried. There exist sufficient material against the accused petitioner and therefore the learned trial court has rightly framed the charge against the accused petitioner under Section 3 (1) of the PDPP Act.

27. In view of the discussion made hereinabove, this court finds no infirmity in the impugned order dated 03.03.2023 passed by the learned Chief Judicial Magistrate whereby the application for discharge of the accused petitioner has been rejected and framing of charge under Section 3 (1) of PDPP Act, 1984. Accordingly, this criminal revision petition is dismissed being devoid of merit.

28. It is made clear that Trial shall be proceeded with in accordance with law without being influenced by the observations in this judgement and order. Needless to observed that guilt or otherwise of the accused petitioner would be

Page No.# 16/16
established in the trial.

Comparing Assistant

JUDGE