

GAHC040008382023



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

Case No. : Crl.Petn./112/2023

Rido Tarak
Resident of C Sector, Itanagar, PO/PS Itanagar, Papum Pare District, Arunachal Pradesh.
Mobile No. 7085697611

VERSUS

THE STATE OF AP
Represented by the Special Public Prosecutor.

Advocate for the Petitioner : Rajesh Sonar

Advocate for the Respondent : Ojing Pada

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 23.08.2023

Heard Mr. R. Sonar, learned counsel for the petitioner. Also heard Mr. O. Pada, learned Special Public Prosecutor for the State.

This is an application filed under Section 482 of the Cr.P.C., 1973, challenging the Order, dated 23.02.2023, passed by the learned Special

Judge (PCA), Yupia in PCA Case No. 02/2021 in SIC (VIG) P.S. Case No. 13/15 & 10/16—State Vrs. Hura Kaku & 3 Ors., as well as the Supplementary Charge-Sheet No. 02(A)/2021, under Sections 120(B)409/420/465/468/471 IPC *read with* Sections 13(1) (c) (d) (ii) & 13(2) PC Act, 1988, filed on 24.04.2023 before the Special Judge, PCA, Yupia.

The impugned order, dated 23.02.2023, passed by the learned Special Judge, PCA, Yupia, in PCA Case No. 02/2021 in SIC (VIG) P.S. Case No. 13/15 & 10/16—State Vrs. Hura Kaku & 3 Ors., under Sections 120(B)409/420/465/468/471 IPC *read with* Sections 13(1) (c) (d) (ii) & 13(2) PC Act, 1988, reads as under:

IN THE COURT OF: GOTE MEGA, SPECIAL JUDGE (PCA) YUPIA:
ARUNACHAL

PCA No. 02/21-In-
SIC (VIG) PS CASE NO. 13/15 & 10/16
Vrs
Accd.Hura Kaku & 3 Ors.
U/Sec.120(B)/409/420/465/468/471 IPC
R/W Sec. 13(1) (c) (d) (ii) & 13(2) PC Act, 1988.

Date	ORDERS	Signature
23.02.2023		

Mr. H. Nikang, I'd SPP SIC (VIG), present.

All four accused persons Hura Kaku, Charu Nera, Rei Talo, Dhiman & Ch. Dey appeared along with their I'd PDC Mr. Teto Taba.

Mr. Nikang has submitted that the investigation has not been carried out thoroughly in all aspects. He submitted that the FIR was lodged on 08.10.2015 before OC/PS, Sangram against Shri Rido Tarak, the then programme Officer-cum-

Block Development Officer of Chambang. However, he has not been made as an accused in the charge sheet.

Mr. Taba, I'd PDC has submitted that Mr. Hura Kaku (A-1) he has executed the work under the guidance and instruction of Mr. Rido Tarak and should not have been made an accused.

A careful perusal of the charge sheet and the documents (Exhibits) filed in the charge sheet clearly shows that Shri Rigo Tarak has disbursed money (bills) to the beneficiaries (job card holder under MGNREGA) and disbursed bills amounting to Rs. 38,98,817/- by cheques. There are sufficient materials available in the record to order for further investigation under Section 173(B) of CrPC against Shri Rido Tarak.

In the attending facts, the OC/PS SIC (Vig.), Itanagar is directed to endorse the case to eligible officer for carrying out further investigation and file the supplementary charge sheet within 60 days from the date of receipt of this order.

List the case again on 03.05.2023 for necessary order.

Communicate to S.P SIC, Itanagar for taking cognizance of the matter.

Sd/-
23.02.2023

Special Judge (PCA)
West Sessions Division, Yupia.

From perusal of the aforesaid impugned order, dated 23.02.2023, it is noticed that the learned Special Judge, PCA, Yupia, vide the order, had directed the OC/PS SIC (VIG) to endorse the case to eligible officer for carrying out further investigation and file a supplementary charge-sheet within 60 days from the date of receipt of the order. Pursuant thereto, it appears that the supplementary charge-sheet no. 02(A)/2021, under Sections 120(B)409/420/465/468/471 IPC *read with* Sections 13(1) (c) (d) (ii) & 13(2) PC Act, 1988 against the petitioner was filed on 24.04.2023 before the Special Judge, PCA, Yupia.

The petitioner contends that after a charge-sheet is filed, though the learned Trial Court has the power to order for a further investigation of the case, but, it does not have the power to direct the investigating authority to file a supplementary charge-sheet thereafter.

The petitioner, therefore, contends that since the supplementary charge-sheet No. 02(A)/2021 has been filed pursuant to a direction of the learned Special Judge, PCA, Yupia, vide the impugned order, dated 23.02.2023, the order dated 23.02.2023 as well as the charge-sheet no. 02(A)/2021 filed on 24.04.2023 needs to be interfered with by this Court as the charge-sheet no. 02(A)/2021 has been filed pursuant to a direction of the learned Special Judge, PCA, Yupia, vide order dated 23.02.2023, which is not sustainable in law.

The learned Special Public Prosecutor, Mr. Pada, has fairly admitted that though the learned Trial Court has the power to order for a further investigation in the case, but, it does not have the power to direct the investigating authority to file a supplementary charge-sheet.

I have heard the learned counsels for the contesting parties and the materials placed on record, have been perused.

It is a settled proposition of law that once a supplementary charge-sheet is filed, the Trial Court, in a given case, having regard to the facts and circumstances of the case, has the power to direct the investigating authority to carry-out further investigation of the case, which power, however, does not necessarily extend to direct the investigating authority to file a supplementary charge-sheet, for, it is within the exclusive domain of the investigating authority to, either, file a charge-sheet, or, a final report

depending on the result of the further investigation carried out. Therefore, to the extent, the challenge is made to the order, dated 23.02.2023, that has directed the investigating authority to file a supplementary charge-sheet; is found to be correct.

However, this petition, under Section 482 of the Cr.P.C., has been filed by the petitioner on 23.06.2023, challenging the order of the learned Special Judge, PCA, Yupia, dated 23.02.2023, after the supplementary charge-sheet no. 02(A)/2021 was filed on 24.04.2023.

Though the learned Special Judge, PCA, Yupia, vide the order, dated 23.02.2023 could not have directed the investigating authority to file a supplementary charge-sheet while directing the investigating authority to carry-out further investigation of the case and therefore the order, dated 23.02.2023 passed by the learned Special Judge, PCA, Yupia, to the extent, it had directed the investigating authority to file a supplementary charge-sheet; needs interference by this Court, but, the supplementary charge-sheet no. 02(A)/2021 filed on 24.04.2023, however, does not indicate that the supplementary charge-sheet has been filed because of the direction given by the learned Special Judge, PCA, Yupia, vide the impugned order, dated 23.02.2023, irrespective of the nature of materials that have been collected against the petitioner during the course of further investigation carried out by the investigating authority.

Since the investigating authority can be directed by the learned Trial Court to carry out the further investigation of the case and on such investigation carried out by the investigating authority, if, adequate materials are found by the investigating authority for filing of a supplementary charge-

sheet, it will be well within the competence of the investigating authority to file a supplementary charge-sheet on the basis of the further investigation that has been carried out.

Under the aforesaid circumstances, though the Order, dated 23.02.2023 passed by the learned Special Judge, PCA, Yupia, in PCA Case No. 02/2021 in SIC (VIG) P.S. Case No. 13/15 & 10/16, to the extent, it had directed the investigating authority to file a supplementary charge-sheet needs interference of the Court; but, I am not inclined to interfere with the supplementary charge-sheet no. 02(A)/2021, filed on 24.04.2023, for the reason that the said supplementary charge-sheet no. 02(A)/2021 does not necessarily indicate that the same has been filed, only, because of the direction issued by the learned Special Judge, PCA, Yupia, in the order, dated 23.02.2023 irrespective of the materials or evidences collected against the petitioner for filing of the supplementary charge-sheet against the petitioner.

In that view of the matter, this petition, under Section 482 of the Cr.P.C., filed by the petitioner partly succeeds and the same stands disposed of by setting aside the order, dated 23.02.2023, passed by the learned Special Judge, PCA, Yupia in PCA Case No. 02/2021 in SIC (VIG) P.S. Case No. 13/15 & 10/16, under Sections 120(B)409/420/465/468/471 IPC *read with* Sections 13(1) (c) (d) (ii) & 13(2) PC Act, 1988, to the extent, it had directed the investigating authority to file a supplementary charge-sheet without, however, interfering with the supplementary charge-sheet no. 02(A)/2021, filed on 24.04.2023 before the learned Special Judge, PCA, Yupia, against the petitioner.

It is, hereby, ordered accordingly.

JUDGE

Comparing Assistant