



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

Case No. : Crl.Petn. 84/2022

1:Huzar Lollen
S/o Late M. Lollen,
R/o Bogdo Village, PO and PS Aalo, District West Siang, AP 791001

VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Chief Secretary to the Govt. of AP, Itanagar.

2:The Commissioner and Secretary
Vigilance Department
Govt. of AP
Itanagar.

3:The Superintendent of Police
SIC (VIG)
Itanagar
Arunachal Pradesh.

4:The Officer in Charge
SIC (VIG) PS
Chimpu
Itanagar
Arunachal Pradesh

Advocate for the Petitioners : Mr. M. A. Islam

Advocate for the Respondent : Ms. R. Basar, G.A.

Mr. O. Pada, S.C., SIC

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 29.11.2022

Date of judgment & order : 05.01.2023

JUDGMENT & ORDER (CAV)

Heard Mr. M. A. Islam, learned counsel for the petitioner. Also heard Ms. R. Basar, learned Government Advocate for the State respondent No. 1 and Mr. O. Pada, learned Standing Counsel, SIC, for the respondent Nos. 2, 3 & 4.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973, praying for setting aside and quashing the F.I.R., dated 01.08.2007, in SIC(VIG) P.S. Case No. 04/2007, registered under Sections 120(B)/420/468/471 of the Indian Penal Code *read with* Sections 13(1)(c)(d) and 13(2) of the Prevention of Corruption Act, 1988, and also prayed to set aside and quash the Supplementary Charge-Sheet No. 1, dated 14.09.2015, in connection with SIC(VIG) P.S. Case No. 04/2007.

3. The brief facts, leading to filing of the present petition, is that the petitioner is an IAS Officer of 2002 Batch (Selection Grade), who was originally an APCS Officer of 1985 Batch and posted in various capacities under the Government of Arunachal Pradesh from time to time. During the period of 1999-2004, the petitioner was posted as the Deputy Commissioner, Daporijo, Upper Subansiri District, and thereafter, he was posted as Deputy Commissioner, Aalo, West Siang District. Subsequently, the petitioner retired from his service as the Commissioner, Public Libraries & Research, in the year 2019. During the entire

tenure of his service, the petitioner had discharged his duty as a civil service officer very honestly and with integrity without any blemish.

4. In the year 2007, the Special Investigation Cell (VIG), Itanagar, registered an F.I.R., dated 01.08.2007, wherein, it was alleged that as per information received from PIL No. 50/2004 and as per order dated 15.06.2007, passed by the Hon'ble Gauhati High Court, that some officers and officials, Department of Civil Supply, Government of Arunachal Pradesh, Civil Secretariat, Itanagar; Directorate of Civil Supplies, Naharlagun; District Supply Officers & Officials of Upper Subansiri, Lower Subansiri, Papum Pare and Kurung Kumey Districts, entered into a criminal conspiracy with PDS wholesale nominee-cum-carriage contractors to cheat the Government of Arunachal Pradesh and siphoned off huge amount involving crores of rupees by submitting and claiming false bills and thereby causing undue favour to PDS wholesale nominee-cum-carriage contractors by abusing their official position as public servants. It is further alleged that in pursuance of the criminal conspiracy during the period of 2002-2004, officers and officials of Department of Civil Supply, Govt. of Arunachal Pradesh, A.P. Civil Secretariat, Itanagar, fixed exorbitant rates for Hills Transport Subsidy (HTS) and Road Transport Charge (RTC) and wrongly appointed some wholesale nominee-cum-carriage contractors of Upper Subansiri, Lower Subansiri, Papum Pare and Kurung Kumey Districts for food grains in order to favour them for wrongly gain to parties and themselves by abusing their official position as public servants and thereby causing wrongful loss to the State exchequer to the tune of several crores of rupees. The food grains reportedly had not been delivered with allotted quantity under PDS to the targeted consumers in above mentioned Districts and prepared some false bills by falsifying the records for payments. Some payments have reportedly made to

them without observing settled norms. Based on the aforesaid allegations, the F.I.R. was registered as SIC(VIG) P.S. Case No. 04/2007, under Sections 120(B)/420/468/471 of the Indian Penal Code *read with* Sections 13(1)(c)(d) and 13(2) of the Prevention of Corruption Act, 1988.

5. The Special Investigation Cell (VIG), Itanagar, registered the aforesaid F.I.R. *suo moto* and started investigating the case. During the course of investigation, the Investigating Authorities allegedly seized some Bill documents for the period of 2022-2004 pertaining to the consumers of Upper Subansiri District, which revealed that total of 4095 quintals of Levy Sugar was allotted to Upper Subansiri District and a total 7 (seven) numbers of false HTS bills for transportation of Levy Sugar of Rs. 2,11,70,876/- were fraudulently claimed by Carriage Contractors of Arunachal Pradesh causing wrongful loss to the State exchequer. Accordingly, the Investigating Authorities submitted the Charge-Sheet, vide Charge-Sheet No. 01/2010, dated 16.07.2010, against as many as 5 (five) persons, but the name of the present petitioner was not shown in the Charge-Sheet. Subsequent to the Charge-Sheet No. 01/2010, the Investigating Authorities submitted Supplementary Charge-Sheet No. 01, dated 14.09.2015, against the present petitioner along with 8 (eight) other persons. The allegation leveled in the said Supplementary Charge-Sheet are that the petitioner, as Deputy Commissioner of Upper Subansiri District, passed a bill on 25.06.2003 for the month of January, 2003, for Rs. 1,17,977/- against the Release Order No. 19328, dated 29.01.2003, for 400 quintals of Sugar, which in the opinion of the Investigating Authorities amounted to criminal misconduct by a public servant and accordingly, filed Charge-Sheet under Sections 120(B)/420/468/471 of the Indian Penal Code *read with* Sections 13(1)(c)(d) and 13(2) of the Prevention of Corruption Act, 1988.

6. Though the allegation brought against the present petitioner is that he passed the bill for Rs. 1,17,977/- for 400 quintals of Sugar, but there is no specific allegation of misappropriation of any amount by the petitioner. During the course of investigation also, the Investigating Agency did not put any question or made any enquiry with the petitioner about the allegations made against him and carried out the entire investigation behind the back of the petitioner and he was completely in dark about the registration of the F.I.R. or investigation of the case.

7. Further, it is stated that the since the charges leveled against the petitioner pertains to his official capacity as Deputy Commissioner, the Investigating Authority, to prosecute against the petitioner, sought prosecution sanction from the competent authorities, vide Letter No. SIC/VIG/17/PRO-SAN/05-10/296, dated 12.07.2010. But the competent authority, on assessment of the materials placed before it, did not find any *prima facie* case of criminal misconduct on the part of the petitioner and as such, rejected the prosecution sanction vide Order No. VIG-125/15, dated 28.09.2015.

8. After receipt of the aforesaid rejection order of prosecution sanction issued by the Chief Secretary, Government of Arunachal Pradesh, the Investigating Authority intimated the same to the learned Special Judge, Lakhimpur, vide Letter No. SIC/VIG/PS/FIR-04/2007, dated 07.10.2015. The matter of granting prosecution sanction lies within absolute domain of the competent authorities and in the absence of such sanction, the jurisdiction of Courts in taking cognizance is absolutely barred. In other words, no Court can take cognizance of an offence against a public servant without the previous sanction under Section 19 of the Prevention of Corruption Act, 1988, and under Section 197 of

the Code of Criminal Procedure, 1973. That being the position and in spite of the complete bar on the jurisdiction of the Court in taking cognizance, the learned Special Judge, Lakhimpur, took cognizance of the offence and issued summon to the petitioner vide the impugned order dated 09.10.2015.

9. In pursuance of the said summon, the petitioner had appeared before the learned Special Judge, Lakhimpur, and filed a petition on 12.01.2021, vide No. 76/2021, for his discharge. But, the learned Special Judge, Lakhimpur, rejected the said petition of the petitioner taking the view that cognizance was taken in the case way back in the year 2012 and accordingly, framed charges against him vide impugned order dated 26.02.2021.

10. The substance of the allegation is that the Levy Sugar was not a HTS claimed item and in spite of that, the petitioner passed the said Bill causing wrongful loss to the State exchequer and wrongful gain to the Carriage Contractors. However, there is no specific allegation that the petitioner made any wrongful gain by passing the said Bill. Further, whether Levy Sugar was an HTS claimed item, there was no order or instruction from the higher authorities of the Food and Civil Supplies Department. Therefore, merely passing the Bill in the official capacity cannot amount to a criminal misconduct on the part of the petitioner without any criminal intention in doing the said act. Hence, the competent authorities, Government of Arunachal Pradesh, after assessment of the materials placed before it, did not find any *prima facie* case of criminal misconduct on the part of the petitioner and as such, rejected the prosecution sanction against the petitioner. Thus, it becomes apparently clear that the petitioner, while serving as a Deputy Commissioner and allegedly passed/certified the HTS claimed Bills in respect of Levy Sugar, did not commit

any criminal misconduct and therefore, the impugned F.I.R., dated 01.08.2007, and the Supplementary Charge-Sheet No. 01, dated 14.09.2015, in connection with SIC(VIG) P.S. Case No. 04/2007, are not sustainable and hence, the same are liable to be quashed. The Vigilance Superintendent was himself guilty of conspiracy in registering false case and falsification of record for which he had to face criminal charges and investigation by SIC and CBI.

11. The allegations leveled against the petitioner as to passing the Bill in respect of Levy Sugar pertains to his official duties as the Deputy Commissioner and apparently there was no previous sanction of prosecution against the petitioner. Therefore, the learned Court below could not have taken cognizance of offence and issued summon to the petitioner in view of Section 19 of the Prevention of Corruption Act, 1988, and Section 197 of the Code of Criminal Procedure. Hence, the impugned order dated 09.10.2015, passed by the learned Special Judge, Lakhimpur, taking cognizance of the offence against the petitioner, is without jurisdiction and is liable to be quashed.

12. It is further stated that the Investigating Authorities registered several cases against various officials and Deputy Commissioners leveling almost the same allegations and in some of those cases, the Hon'ble Gauhati High Court, Itanagar Permanent Bench, quashed the criminal proceedings on the ground of want of prosecution sanction. The case of the petitioner being similarly situated with those cases, the petitioner prays for a similar consideration. More so, the petitioner retired from his service in the year 2019 and in his post retirement days, it is very difficult for the petitioner to appear before the learned Trial Court at a far distant place, which is more than 300 k.m. far from the petitioner's home address at Aalo. Accordingly, it is stated that it is a fit case for

interference of this Court and invoking the inherent jurisdiction vested under Section 482 of the Code of Criminal Procedure for quashing the criminal proceeding initiated against the present petitioner and also to quash the F.I.R., dated 01.08.2007, in SIC(VIG) P.S. Case No. 04/2007, registered under Sections 120(B)/420/468/471 of the Indian Penal Code *read with* Sections 13(1)(c)(d) and 13(2) of the Prevention of Corruption Act, 1988, and the Supplementary Charge-Sheet No. 01, dated 14.09.2015, in connection with SIC(VIG) P.S. Case No. 04/2007.

13. The learned counsel for the petitioner has relied on the following case laws:

- (i) **Surinderjit Singh Mand & Anr. Vs. State of Punjab & Anr.**, reported in **(2016) 8 SCC 722**;
- (ii) **D. Bevaraja Vs. Owais Sabeer Hussain**, reported in **(2020) 7 SCC 695 [(2020) AIR(SC) 3292]**;
- (iii) **Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh**, reported in **AIR 1979 SC 677**; and
- (iv) **Arambam Thomchou Singh Vs. Union of India & Ors.**, reported in **(2010) 1 GLR 714**.

14. Relying on the abovementioned decisions, it is submitted by the learned counsel for the petitioner that the Court cannot take cognizance without previous sanction in terms of Section 197 of the Code of Criminal Procedure or Section 19 of the Prevention of Corruption Act, 1988. But, here in the instant case, after rejection of the prayer for prosecution sanction by the competent authority, the learned Special Judge, Lakhimpur, took cognizance against the

present petitioner.

15. Further, the learned counsel for the petitioner has relied on a decision of Hon'ble Apex Court in **State of Maharashtra Vs. Dr. Budhikota Subbarao**, reported in **(1993) 3 SCC 71**, wherein, it has been held that "so far public servants are concerned the cognizance of any offence, by any court, is barred by [Section 197](#) of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The Section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. Very cognizance is barred."

16. In this context, Ms. R. Basar, learned Government Advocate for the State respondent No. 1 and Mr. O. Pada, learned Standing Counsel, SIC, for the respondent Nos. 2, 3 & 4, have also submitted that it is admitted fact that no prosecution sanction was issued by the competent authority and the prayer of previous sanction made before the competent authority by the Investigating Authority was rejected and the learned Special Judge, Lakhimpur, took cognizance of the offence against the present petitioner without any proper sanction and the learned counsels appearing on behalf of the respondents did not dispute the fact that the learned Special Judge, Lakhimpur, took cognizance against the present petitioner without proper sanction from the competent

authority as required under Section 197 of the Code of Criminal Procedure or Section 19 of the Prevention of Corruption Act, 1988.

17. For ready reference, Section 19 (1) of the Prevention of Corruption Act, 1988, reads as under:

"19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction —

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office."

18. From the record, it reveals that vide order dated 28.09.2015, the competent authority, i.e. the Chief Secretary, Government of Arunachal Pradesh, Itanagar, rejected the prayer for prosecution sanction with an observation that there is no substantial evidence of involvement of the present petitioner, who is a government servant, to warrant the issue of prosecution sanction as

requested, and also observed that there is no specific allegation against the present petitioner and it was also observed that the present petitioner cannot be held to be responsible for discharge about the sanction of Levy Sugar Bill, which is based on a document which was not communicated to him. Thus, it is seen that the prosecution sanction was rejected by the competent authority with the above observation that the present petitioner is not involved in the alleged offence and there is no substantial evidence against him to accord the prosecution sanction.

19. The Hon'ble Supreme Court in **Dilwar Singh Vs. Pervinder Singh @ Iqbal Singh & Anr.**, reported in **(2005) 12 SCC 709**, has held as under:

"Thus, it appears that this section creates a complete bar on the power of the court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 & 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant."

20. Again, in the case of **Prakash Singh Badal & Anr. Vs. State of Punjab & Ors.**, reported in **AIR 2007 SC 1274**, the Hon'ble Apex Court also expressed the similar view and the paragraph No. 35 of the said judgment reads as under:

"35. The protection given under [Section 197](#) is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public

servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before [Section 197](#) can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. This aspect makes it clear that the concept of [Section 197](#) does not immediately get attracted on institution of the complaint case."

21. So, from the discussions made above, it is seen that the Investigating Agency could not produce any relevant evidence or substantial evidence before the competent authority to obtain prosecution sanction against the present petitioner and for the want of any substantial evidence or proof for offence, the competent authority refused to issue any sanction against the present petitioner.

But, the learned Special Judge, Lakhimpur, without any prosecution sanction against the present petitioner, took cognizance against the present petitioner under Sections 120(B)/420/468/471 of the Indian Penal Code *read with* Sections 13(1)(c)(d) and 13(2) of the Prevention of Corruption Act, 1988, in SIC(VIG) P.S. Case No. 04/2007. Thus, the cognizance taken by the learned Special Judge, Lakhimpur, under the above mentioned sections, is void *ab initio* and is liable to be set aside.

22. The Hon'ble Supreme Court in the case of **Gian Singh Vs. State of Punjab & Anr.**, reported in **(2012) 10 SCC 303**, has held that "the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under [Section 320](#) of the Code – Cases where power to quash criminal proceedings may be exercised where the parties have settled their dispute, held, depends on fact and circumstances of each case – Before exercise of inherent quashment power under Section 482, High Court must have due regard to nature and gravity of the crime and its societal impact."

23. The Hon'ble Apex Court, in paragraph No. 56 of the aforesaid judgment, has held as under:

"56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under [Section 482](#). No precise and inflexible guidelines can also be provided."

24. Here in the instant case, considering the entire facts and circumstances of the case, this Court is of the view that this is a fit case where extra-ordinary power under Section 482 of the Code of Criminal Procedure can be invoked to quash the criminal proceeding.

25. Accordingly, the impugned F.I.R., dated 01.08.2007, in SIC(VIG) P.S. Case No. 04/2007, registered under Sections 120(B)/420/468/471 of the Indian Penal Code *read with* Sections 13(1)(c)(d) and 13(2) of the Prevention of Corruption Act, 1988, and the Supplementary Charge-Sheet No. 01, dated 14.09.2015, in connection with SIC(VIG) P.S. Case No. 04/2007, are hereby set aside and quashed. Further, the impugned order dated 09.10.2015, passed by the learned Special Judge, Lakhimpur, in Spl. (VIG) (T) Case No. 06/2012, taking cognizance of the offences and issuing summon to the petitioner, as well as the impugned order dated 26.02.2021, passed by the learned Special Judge, Lakhimpur, framing charges against the petitioner, are also hereby set aside and quashed.

26. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant