

GAHC040009262022



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

CRIMINAL PETITION NO. 88(AP) of 2022

Shri Sodin Chikro, aged about 46 years,
S/o Late S. Chikro, Political Assistant,
Deputy Commissioner's Office,
Hawai, P.O. & P.S.- Hawai,
District – Anjaw, Arunachal Pradesh.

.....Petitioner.

-Versus-

1. State of Arunachal Pradesh,
Through Public Prosecutor.

2. Shri Lesamso Minin, aged about 29 years,
S/o Late Greso Minin,
Wahal village, Hawai Cicle,
P.O. & P.S.- Hawai,
District- Anjaw,
Arunachal Pradesh.

.....Respondents.

Advocates for the petitioner : Mr D K Deori,

Advocate for the respondents: Mr T Ete, Addl. P.P., Arunachal Pradesh,
Mr C W Mantaw.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of hearing : 24.05.2023
Date of judgment : 26.09.2023

JUDGEMENT AND ORDER

This petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC', in short) and Article 226 of the Constitution of India is preferred, challenging the Order dated 18.05.2022, passed by the learned Special Judge (PCA), Tezu, in Criminal Complaint Case No. 05 (ANJ)/2021, and also with a prayer to quash the FIR No. 09/2022, dated 03.06.2022, under Sections 409/466/471/477/468 of the Indian Penal Code, 1860 ('IPC', for short), registered as Hawaii PS Case No. 9/2022. State of Arunachal Pradesh is arrayed as respondent No. 1 and Shri Lesamso Minin is arrayed as respondent No. 2, (hereinafter also referred to as the informant).

2. On 07.10.2011, an application was submitted by Angangso Minin and Greso Minin before the Deputy Commissioner ('DC', for short), district- Anjaw, Arunachal Pradesh, for holding Kebang against land encroachers belonging to Ngi and Pul clan of Khraulang clan from Hayuliang Circle. The DC then issued the order dated 18.10.2011, whereby a local Keba was fixed on 02.11.2011 at 10:00 am, at Wahal Village Community Hall, for peaceful and amicable settlement and under the supervision of the petitioner, Sri Sodin Chikro. On

27.10.2011, an application was submitted before the DC, Anjaw District, Hawaii, to change the venue of the Kebang and an order was issued by the DC on 09.11.2011, refixing the date of local Kebang on 21.11.2011 at 10:00 am at the Venue of Hawaii Community Hall and also under the supervision of the petitioner. On 21.11.2011, the Kebang was conducted and 97 individuals attended the Kebang and they also affixed their signatures on the minutes of the meeting to endorse their presence in the local Kebang. The present petitioner had supervised the proceedings of the local Kebang on 21.11.2011 and the decision of the Kebang proceeding was prepared vide Order Memo No. ANJ/JUD(LK)-41/11-12/1207 dated 12.12.2011. When Sri Greso Minin, Smt Basamlu Minin and Shri Arumso Minin had violated the aforementioned order, Shri Basim Ngi had filed an application dated 20.02.2012, under Section 188 of the IPC, before the learned JMFC, at Hawaii. The office of the DC then issued an Executive Order vide memo No. Anj/jud-005/2012-13/9224-27 dated 21.03.2012, directing Sri Greso Minin and Smt Basamlu Minin to stop the unlawful activities and a direction was given to maintain the *status quo*. It was informed to Sri Angangso Minin and Others by the Court of the EAC (J) and JMFC, Hawaii, vide Notice dated 27.09.2016, that an appeal dated 16.04.2012 was filed against the Kebang decision dated 12.12.2011 in the matter of the land dispute between Angangso Minin and Others vs. Shri Basim Ngi, after 114 days from the date of the Kebang order, which was filed after a lapse of the admissibility period. Under Section 51 of the Assam Frontier (Administration of Justice) Regulations, 1945 (hereinafter, in short, referred to as 'AFR'), every appeal has to be filed within 30 days from the date of such order. The office of the DC, Hawaii, issued order vide Memo No. ANJ/JUD (Land case)-01/14286-89 dated 11.09.2019, wherein it was stated that-

“Perused petition dated 27.08.2019, filed by Basim Ngi in the matter of land

dispute at Wahal village in connection with land case dispute at Wahala area of Wahal village under Hawaii circle and provoking a breach of law and order in the area. Whereas, the record shows that Kebang was conducted on 21.11.2011 at 1000 Hours in Community Hall, Hawaii and the Kebang Board had passed an order in favour of Shri Basim Ngi on 12.12.2011. In response to the Kebang order, an appeal dated 18.12.2023 was filed by Shri Greso Minin aned Other after a lapse of admissible period. "

3. Vide order dated 27.09.2016, the learned JMFC directed the complainant to submit documents within 2 (two) weeks to prove that their petition was filed within the admissible period of appeal.

4. It is contended by the petitioner that the appeal was filed beyond the period of limitation in violation of Section 51 of the AFR, 1945. It was also observed that as the appeal was filed beyond the period of limitation, the Keba decision dated 12.12.2011 stands and the copy of the order dated 11.09.2019 was served to Shri Angangso Minin of Wahal village. Through a corrigendum, the typographical error of Wahala area was corrected as Wahal area.

5. Against the order dated 11.09.2019, passed by the DC, Shri Arumso Minin preferred a revision before the Court of Sessions Judge, East Session Division, Tezu, Lohit District, which was registered as Criminal Revision No. 10 (ANJ)/2019 and the learned Sessions Judge vide order dated 16.10.2019, directed the DC to send all the records along with the documents related to the Kebang decision dated 12.12.2011. In compliance to the order, the DC forwarded the Land Case Record/ file of dispute between Sri Greso Minin Vs. Sri Basom Ngi of Wahal Village under Hawaii Circle. The DC also forwarded brief facts of the case, stating

therein that Kebang was held on 21.11.2011 and an appeal was preferred by Sri Greso Minin and Others on 18.12.2013, after the expiry of the period of limitation of appeal and the appellants were given 2 (two) weeks' time, but no documents have been submitted by the appellants, Sri Greso Minin, Sri Angangso Minin and Others, to prove that the appeal was filed within the admissible period.

6. The Court of the learned Sessions Judge, Tezu, vide order dated 18.03.2020, dismissed the Criminal Revision Petition No. 10 (ANJ)/2019, with an observation that-

“This Court on perusal of the record concluded that the application dated 11.01.2019 is related to Section 145 CrPC and that has been filed by the present revisionist, which is pending before the Court of Executive Magistrate, Hawai, but the present order dated 11.01.2019, is passed on having received the application dated 27.08.2019, filed by the respondent No. 4. Thus, I am convinced with the submission made by the counsel Mr S Singh for respondent Nos. 1 to 3 and Mr J Manyu for respondent no. 4. I, therefore, opine that the question of hearing the revisionist as per provision given under Section 145 CrPC, while passing the order dated 11.09.2019 does not arise at all as this order dated 11.09.2019 is related to a land situated at lower Wahal, but not connected in any way with the application filed by the revisionist, which is a case related to law under Section 145 CrPC and which is still pending in the Court of Executive Magistrate, Hawai. More so, the counsel for the revisionist remained absent consecutively for the third time. Accordingly, this petition stands dismissed.”

7. It is averred that the opposite party No. 2, Shri Lesamso Minin filed a complaint under Section 200 CrPC, read with Section 5 of the Prevention of Corruption Act, 1988 ('PC Act', for

short), before the Court of the learned Special Judge (PCA), Tezu, Lohit District, for initiation of a criminal proceeding under Sections 409/466/468/471/477A IPC, read with Section 7 and 13 (d) (i) (ii) (iii) of the PC Act, 1988, relating to fake and forged Kebang Order bearing No. ANJ/JUD/LK-41/11-12/1207 dated 12.12.2011, prepared and signed by the petitioner, with a prayer to criminally prosecute and punish the petitioner for having committed offences under the aforesaid sections of law, and in the interim, to direct a preliminary enquiry to be conducted by the SP, Special Investigating Cell (SIC) (Vig) PHQ, Itanagar. The complaint was taken up by the learned Special Judge, Tezu and vide order dated 11.08.2021, directed the SP, SIC (Vig) PHQ, Itanagar, to enquire into the matter.

8. The order dated 11.08.2021 is reproduced hereinbelow verbatim:-

“This Court after hearing the counsel and after having perused the citation is of the opinion that this Court being Special Court has the original jurisdiction of a Magistrate under Section 190 CrPC. Therefore, relying on the citation mentioned by the learned counsel, this Court is of the opinion that the SP, SIC (Vig) PHQ, Itanagar, A.P. should be directed to make an enquiry to satisfy himself before any criminal case is registered against the said accused person, Sri Sodin Chikro.

Accordingly, SP, SIC (Vig) PHQ Itanagar A.P. shall make an enquiry and submit his report to this Court on or before next date of hearing so that this Court can issue an order under Section 156(3) CrPC for registration and investigation of the case and then to submit his report under Section 173 (2) CrPC.....”

9. It is submitted that vide order dated 12.04.2022, the learned Special Judge stated that

the report of the IO depicts that corrupt practices adopted by Sri Sodin Chikro/petitioner could not be made out. The relevant original file bearing No. ANJ/JUL-(lk)-41/11-12 of the DC Office, Hawaii was examined, but there was no process of putting up the Kebang order before the DC and it has been admitted by the petitioner, PA that he did not put the matter before the DC and the Kebang order was signed by him as PA, as was the usual practice. The Special Judge then held that the petitioner was found to have committed offences under the aforementioned sections of law and as the IO has stated that no case against the petitioner exists relating to corrupt practices, the matter requires clarification. Summonses were also issued to the petitioner.

10. On the direction given by the Special Court, Tezu, in Criminal Complaint No. 05 (ANJ)/2021, the SIC (Vig) Police conducted investigation and submitted report before the learned Special Judge, which reflects that:- the petitioner has admitted that the relevant file of Kebang decision was not put up before the DC and he has admitted that the Kebang orders are usually signed by him by affixing his signature in place of DC after the letters SD/-. The order of the learned Special Judge further reflects that no corrupt practices could be attributed to the petitioner and the complainant/respondent No. 2 had himself failed to furnish any incriminating materials in this regard and it was observed by the learned Special Judge that the allegation against the petitioner could not be proved.

11. It is further contended on behalf of the petitioner that the learned Special Judge at Tezu, had no jurisdiction to try cases under the PC act as the Legislative and the Department of Justice under the Government of Arunachal Pradesh, had issued Notification Memo No. JUD/82-86. PT (Vol-I) dated 03.02.2022, empowering the District and Sessions Judge, Yupia,

Papumpare district as the only designated Special Court for trial of cases investigated by the SIC (Vig). After the notification, all the proceedings undertaken and initiated by the learned Sessions Court at Tezu is illegal and *ultra vires* and hence, the learned Special Judge cannot act as a Magistrate, having power of a Court with criminal original jurisdiction under the PC Act. The Court of the Special Judge had erroneously assumed himself to be the Special Court, having the power of a Magistrate. On 18.05.2022, the learned Special Judge, Tezu passed the order, disposing of the complaint petition, with a liberty to the complainant/respondent No.2, to lodge an FIR against the present petitioner with the Police at Hawaii PS, relating to offence of cheating and forgery and criminal breach of trust by a Government Servant and in the event of the lodgment of such an FIR, the OC shall register a case against the accused-petitioner herein. On the strength of the order dated 18.05.2022, the respondent No. 2 lodged an FIR, which was registered as Hawaii PS Case No. 09/2022 under the aforesaid sections of law. The Investigating Officer issued notice under Section 41-A, directing the petitioner to appear on 15.06.2022. When the petitioner appeared before the Investigating Officer he was arrested in connection with this case and produced before the learned JMFC, Hawaii, on 16.06.2022, but on the same day, the petitioner was granted bail.

12. The respondents have contended that in the prayer portion, the petitioner has prayed to quash the FIR No. 9/2022 dated 03.06.2022 and thus, this case is not maintainable. The FIR was lodged after the respondent No. 2 was accorded liberty to lodge the FIR vide order dated 18.05.2022. The petitioner has not come against the order dated 18.05.2022 in connection with the Criminal Complaint Case No. 5 (ANJ)/2021. Moreover, the petition was filed beyond the period of limitation i.e., after expiry of 90 days, when the order dated 18.05.2022 was passed and thus, this case is also barred by limitation. The learned Additional

Public Prosecutor has also fairly submitted that the prayer for setting aside and quashing the FIR No. 9/2022 dated 03.06.2022 has to be read in conjunction with the petition, wherein there is also a prayer for quashing and setting aside the order dated 18.05.2022, in Criminal Complaint Case No. 5(ANJ)/2021.

13. I have heard Mr D K Deuri, learned counsel for the petitioner and Mr T Ete, learned Additional Public Prosecutor, Arunachal Pradesh. Also heard Mr C W Mantaw, learned counsel for the respondent No. 2.

14. It is contended by learned counsel, Mr D K Deuri that the order dated 18.05.2022 is *ultra vires* and *prima facie* not maintainable, as the order was passed after circulation of the notification vide Memo No. JUD-82/86 Pt (Vol-I) dated 03.02.2022, whereby the learned Sessions Court at Yupia, Papumpare District, was designated as the Special Court for trial of cases investigated by the SIC (Vig.), Arunachal Pradesh Police, with immediate effect. Without jurisdiction, the order dated 18.05.2022 was passed as the Sessions Court at Tezu is not a designated Special Court and thus, cannot act as a Magistrate with criminal original jurisdiction. Furthermore, on 11.08.2021, when the Criminal Complaint Case No. 05(ANJ)/2021 was listed for the first time, the learned Sessions Judge was a designated Special Court, but without taking cognizance of the case and examining the complainant on oath, the Special Judge had directed the SP, SIC (Vig.), Arunachal Pradesh to enquire into the matter and submit a report. The learned Special Court had ignored the findings of the SIC (Vig.) PS after enquiry, that no corrupt practices could be attributed to the petitioner, despite endeavours made by the authority to unearth any wrongful pecuniary gains procured by the petitioner. No incriminating information could be revealed and the petitioner had indeed

admitted that he had affixed his signature on behalf of the DC as was the usual practice prevalent at that time. The SIC (Vig.) had given clean chit to the petitioner and the learned Special Judge could have easily disposed of the complaint, but without examining the complainant and the witnesses and without taking cognizance of the case, the peculiar order was passed by the learned Special Judge. It is submitted that the FIR No. 9/2022 dated 03.06.2022 is liable to be quashed as the FIR was filed only on the strength of the order dated 18.05.2022, passed by the learned Special Judge, Tezu, in Criminal Complaint Case No. 05(ANJ)/2021. It is also submitted on behalf of the petitioner that this FIR is not a fresh FIR and is barred by Article 20 (2) of the Constitution of India and Section 300 CrPC. It is also submitted that the disputed Kebang order which was in appeal before the DC was dismissed. The learned counsel for the respondent No. 2 has submitted that the order dated 18.05.2022 has to be quashed. No relief can be granted without prayer being granted. Without the order dated 18.05.2022 being quashed, the FIR cannot be quashed.

CONSIDERATION OF SUBMISSIONS:

15. I have given due consideration to the submissions at the Bar. It is discernible from the order dated 18.05.2022, that no direction was given to the respondent no. 2 to lodge an FIR. Liberty was granted to the respondent No. 2 to lodge an FIR and direction was given to the OC to register a case, in case, FIR is lodged against the petitioner. This FIR has been linked with the Criminal Complaint Case No. 05(ANJ)/2021, as the complainant had withdrawn his complaint and liberty was given to the complainant to file an FIR against the present petitioner.

16. It is thus submitted by the learned counsel, Mr C W Mantaw that without quashing the

order dated 18.05.2022, the FIR cannot be quashed. There is no prayer for quashment of the order dated 18.05.2022. Moreover, as soon as the petitioner preferred this petition, the proceedings initiated vide FIR No. 9/2022 have been stayed. At this juncture, the FIR cannot be linked to Criminal Complaint Case No. 05(ANJ)/2021, which has already been disposed of on the prayer of the complainant, i.e., the respondent No. 2. The complainant had preferred to withdraw the complaint petition and it was disposed of with a liberty to the complainant to lodge an FIR. The order dated 18.05.2022 cannot be held to be a direction to the complainant to lodge the FIR No. 9/2022 dated 03.06.2022. Moreover, there was no prayer to set aside or quash the order dated 18.05.2022, passed in Criminal Complaint Case No. 05(ANJ)/2021.

17. This Court cannot get into a roving or fishing enquiry regarding the conduct of the political assistant, i.e., the petitioner in this present case. The investigation is to be conducted by the investigating agency to unravel the truth. It is true that the respondent No. 2 is aggrieved by the Kebang order dated 12.12.2011, which was not placed before the DC and the same was signed by the petitioner. When the learned Special Judge had directed the SIC (Vig.) to make an enquiry into the conduct of the P.A., i.e., the present petitioner, no incriminating materials could be found against him, but after going through the enquiry report of the SIC (Vig.) despite any incriminating materials, vide order dated 12.04.2022, the learned Special Judge observed that the petitioner was found to have committed offences under Sections 409/466/468/471/477-A IPC, read with Section 7/13 (d) (i) (ii) (iii) of the PC Act. Then the Court went further to obtain clarification from the Investigating Officer, regarding his report, which had exonerated the petitioner and thereafter, summonses were issued to the petitioner. The learned counsel for the respondent No. 2 laid stress in his

arguments that through this order cognizance was taken by the learned Special Judge.

18. On the other hand, learned counsel for the appellant has submitted that the complainant had withdrawn the petition because he realized his fallacy.

19. The question that whirls around this dispute is that whether further proceeding will be an abuse of the process of the Court and whether probability of conviction appears to be remote and bleak. It has been argued on behalf of the respondent No. 2 that the respondent is highly aggrieved by the conduct of the petitioner. The Kebang decision has highly prejudiced him. He is aggrieved by the Kebang decision being signed by the political assistant and not by the DC. He has been precluded from ownership and possession of his land originally belonging to him.

20. The order dated 18.05.2022, passed by the learned Special Judge (PCA), Tezu, in connection with Criminal Complaint Case No. 05 (Anj) of 2021, cannot be stretched to the extent of quashing the FIR No. 09/2022, registered under Sections 409/466/468/471/477A IPC, despite the fact that a direction was given to the OC to register a case, if any FIR is registered against the present petitioner with allegations of having committed an offence of cheating, forgery and criminal breach of trust by a Government Servant. The respondent No. 2 was given liberty to lodge an FIR and he was not directed to lodge any FIR. The petitioner went into details about the fallacy of the learned Sessions Judge, while dealing with the Criminal Complaint Case No. 05 (ANJ) of 2021, which is not at all related to this case, apart from the fact that the allegations against the petitioner in Criminal Complaint Case No. 05 (ANJ) of 2021, can somewhat be related to the present case. So, by connecting the Criminal Complaint Case No. 05 (ANJ) of 2021 with the Hawai PS Case No. 9/2022, the FIR of the

Hawai PS Case No. 9/2022, cannot be quashed on the basis of the faulty proceedings of the Criminal Complaint Case No. 05 (ANJ) of 2021.

21. The Kebang decision dated 12.12.2011, which has been signed by the PA, if not valid will not remain in force. The question of limitation relating to the FIR lodged in connection with the decision dated as far back as 12.12.2011, can also be raised at the time of framing of charge. It is not clear how the investigation was set into motion as nothing has been brought on record. It is true that the investigation is relating to the Kebang decision of 12.12.2011 and the FIR was lodged against this decision on 29.05.2022. It is true that the respondent appears to be pursuing relentlessly against the petitioner. It is also true that no malafide was detected by the IO or the Superintendent of Police, who were directed by the learned Special Judge to submit report against the present petitioner. It is also manifest from the records that the petitioner had himself admitted that he affixed his signature in the Keba proceeding for the DC as was the usual process. After considering all the materials, the Criminal Complaint Case No. 05 (ANJ) of 2021 was dismissed, on the withdrawal of the complaint by the respondent No. 2. Those materials cannot be intertwined this case, which is under investigation, to exonerate the present petitioner. At this juncture, it cannot be culled out if no offence under Sections 409/466/468/471/477A IPC, exists against the petitioner to invoke the inherent jurisdiction and quash the FIR No. 09/2022. Although at this stage, it cannot be held that the petitioner had acted without malafide as it was the usual practice of the petitioner to affix his signature for the DC. A proper investigation is required to get into the root of the matter. The petitioner can approach with a similar prayer for exoneration at the stage of consideration of charge, if at all charge sheet is laid against him. At this juncture, I am not inclined to quash the FIR No. 09/2022, registered under Sections

409/466/468/471/477 A IPC.

22. No order as to cost(s).

JUDGE

Comparing Assistant