

GAHC040013312022



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

Case No. : W.P.(Crl.) 5/2022

1:Dizen Bezbaruah
S/o Lt. A. Bezbaruah,
A Resident of Khelmati,
PO/PS North Lakhimpur, District Lakhimpur, Assam.

VERSUS

1:THE STATE OF AP and Anr.
Represented by the Public Prosecutor.

2:Issac Pertin (Complainant)
S/o Lt. T. Pertin

IGP (Eastern Range)
Namsai District
Arunachal Pradesh

Advocate for the Petitioner : C W Mantaw

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 24-05-2023

Heard Mr. Chow Witho Mantaw, learned counsel for the petitioner.

Also heard Mr. Token Ete, learned Addl. P.P., State of Arunachal Pradesh, appearing on behalf of respondent No. 1. However, none appears on behalf of respondent No. 2 despite service of notice as indicated the Office Note, dated 11.11.2022.

By means of this writ petition, the petitioner has put to challenge the proceedings of Tezu P.S. Case No. 59/1999 u/s. 25(1A) of the Arms Act, which arose out of the First Information Report(FIR), dated 12.09.1999, lodged by the respondent No. 2, herein, before the Officer-in-Charge, Tezu Police Station, contending that there was a registration of an earlier First Information Report(FIR), dated 15.08.1998, lodged by one Shri Ram Bahadur Tamang before the Officer-in-Charge, Tezu Police Station, alleging murder of a girl(name withheld), which was registered as Tezu P.S. Case No. 32/1998 u/s. 302 of the Indian Penal Code and the petitioner was acquitted by the Court of the Deputy Commissioner, Lohit District, Tezu, vide judgment & order, dated 17.02.2009, passed in Sessions Case No. 20/2001 arising out of Tezu P.S. Case No. 32/1998 u/ss. 376/302 IPC. The petitioner, therefore, contends that he has been tried twice for the same offence which is impermissible under the law.

In order to appreciate the contention of the petitioner, it becomes necessary to make a comparative study of the 2(two) First Information Reports, mentioned hereinabove.

Accordingly, the earlier First Information Report(FIR), dated 15.08.1998, lodged by one Shri Ram Bahadur Tamang before the Officer-in-Charge, Tezu Police Station, and the second First Information Report(FIR), dated 12.09.1999, lodged by one Shri Isaac Pertin, Dy. Superintendent of Police, before the Officer-in-Charge, Tezu Police Station, are reproduced hereinbelow:

1. First Information Report(FIR), dated 15.08.1998

Dated 15th August 98

“To

**The Officer in Charge
Police Station Tezu**

Sub: Murder at X Hotel Tezu

Sir

I am inform you that yesterday in between 8-9 Pm SI D.B. Baruah taking liquir in the house of Smti Bina with one girl Jyotna Nath they offered me two peg of Rum which I also consumed at the time of taking liquir Barua Sab took out his pistol and pointed to girl alleging that she had sexual relation with some Bihari. After this I got intoxicated and came back to my room at X hotel around 9 pm and sleep. At 1 Am when I got up I saw room No 1 was open. the girl who was with Baruah was on bed and Baruah was absent then I went nearer to girl and found Blood on bed and body she was dead. I went to Bina house and verified about the matter who informed me that she came earlier also on hearing of gunshot and found the girl lying on bed with hole injury on her back and chest she gave water to girl. After this I ask Bina to accompany me to PS for report accordingly she came with me to PS for reporting.

Therefore you are requested to take of Investigation and action against accused person.

Yours faithfully

Sd/-

Ram Bahadur Tamang

Manager 'Ex' Hotel

Received and registered

Tzu / P.S. Case No. 32/98

U/s 302 I.P.C. Case

will be Investigated

by Sri I. Pertin Dy.SP.

Tezu as directed by SP Tezu

Sd/-

(A.K. Pandey)

OC PS Tezu

Dt. 15/8/98”

2. First Information Report(FIR), dated 12.09.1999

“To,

The Officer-In-Charge

Police Station, Tezu.

While recording the statement of SI D. Bezbaruah accused of Tezu PS Case No. 32/98 U/S 302 IPC he had stated that he had been issued ten rounds of ammunition and on that night i.e. 14.08.98 he left one round at home and taken 09 rounds with the pistol along with him. Accordingly I along with some other Police Officers went to D. Bezbaruah's quarter and recovered one extra round of .9 MM ammunition and seized vide seizure list M.R. No. 35/98. Smti K. Bezbaruah wife of D. Bezbaruah stated that the ammunition was lying at home since three four months. Now that total No. seized ammunition from SI D. Bezbaruah are eleven Nos. including the empty case which was found stuck up in the chamber of the pistol suspected to have been used for committing the murder, it become a fit case to register under appropriate section of Arms Act against SI D. Bezbaruah (U/S). Action may be taken accordingly.

Sd/-

(ISAAC PERTIN) DYSP

IO of the Case.

Age 34 years

F/M .T. Pertin

Tezu,A.P.

Dated 12/9/99

Received on 13/9/99 at 16-15 HRS

and regd vide Tezu P.S. case No 59/99

US 25 (1A) Arms Act

S.I. M. Singh will investigate case.

Sd/-

13/9/99

Officer-in-charge

Police Station

Tezu”

On perusal of the 2(two) First Information Reports, as noted above; it appears

that the allegation made in the First Information Report(FIR), dated 15.08.1998, against the petitioner, is of killing a girl named in the First Information Report(FIR), by a gun-shot, whereas, the second First Information Report(FIR), dated 12.09.1999, is an First Information Report(FIR) made against the petitioner for possession of an ammunition which was recovered from the house of the petitioner.

On a comparative study of both the First Information Reports; it appears that though the allegation made in the earlier First Information Report(FIR), dated 15.08.1998, is killing of a girl, by using a gun but, that, however, does not necessarily make the allegation made in the second First Information Report(FIR), dated 12.09.1999, regarding the recovery of an ammunition from the house of the petitioner, either, to be a part of the same act, or, of the same offence.

The allegation of killing a girl, in the earlier First Information Report(FIR), dated 15.08.1998, and the recovery of an ammunition from the house of the petitioner as alleged in the second First Information Report(FIR), dated 12.09.1999, being found to be for a distinct offence under the Indian Penal Code and the Arms Act, respectively; I am of the view that it cannot be said that the petitioner has been prosecuted twice for the same offence.

Mr. Mantaw, learned counsel, informs this Court that the petitioner has also been charge-sheeted pursuant to the second First Information Report(FIR), dated 12.09.1999.

In view of the above, the instant petition is hereby closed with a liberty granted to the writ petitioner to appear before the learned trial Court and present his case.

It is, however, made clear that the observations made hereinabove; was only for the purpose of determination as to whether the petitioner has been prosecuted twice for the same offence, or, not, and the learned trial Court shall not be influenced, in any manner, by the observations made hereinabove, and shall try and dispose of the case, in accordance with law.

With the above directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant