

GAHC010006972023



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

Case No. : Crl.Pet./30/2023

DR. MRIGEN SAIKIA
S/O LATE MANIRAM SAIKIA,
R/O BATAHGHULI, PANJABARI GUWAHATI- 37,
DIST.- KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE LEARNED P.P., ASSAM.

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 22.02.2023

Heard Mr. M. Biswas, learned counsel for the petitioner as well as Mr. Bankim Sarma, learned APP for the State.

2. This criminal petition under Section 482 CrPC is directed against the order dated 01.12.2022 passed by the learned Special Judge, Assam in Special Case No. 2/2017, which is proceeding under Section 7/13(1)(b)/13(2) of the Prevention of Corruption Act read with Section 109/120(B)/420/465/468/471/201 IPC.

3. The case projected by the petitioner is that with intent to become an approver in connection with the said case, the petitioner has made an application before the learned trial Court and in the said petition, he had also prayed to allow his statement to be recorded under section 164 CrPC. The said petition was registered as petition no. 392/2020. It is projected that on the said petition, the learned Special Judge, Assam, by order dated 27.11.2020, deemed it necessary to record the statement of the petitioner under section 164 CrPC. Accordingly the I.O. was directed to produce the petitioner before the learned Chief Judicial Magistrate, Kamrup (M), Guwahati for recording his statement under section 164 CrPC and the said statement was ordered to be sent back in a sealed cover.

4. It is further projected that a learned counsel on behalf of Special Public Prosecutor had filed a written statement/ opinion on behalf of the prosecution for the purpose of giving consent before the learned Special Judge, Assam to pass an appropriate order in respect of the prayer of the petitioner to declare him as an approver. However, the learned Special Judge, Assam by order dated 24.12.2020 rejected the prayer of the petitioner to become an approver, amongst others, on the ground that the petitioner has failed to make inculpatory statement and that his exculpatory statement against other co-

accused was not sufficient.

5. We need not burden this order with subsequent developments of challenging the order before this Court as well as before the Supreme Court of India.

6. The reason for the petitioner to approach this Court is that he had filed petition no. 2133/2022 under section 207 CrPC for a copy of his said statement recorded under section 164 CrPC in connection with Special Case No. 2/2017.

7. The learned Special Judge, Assam by order dated 01.12.2022 had rejected the same on the ground that the statement of the petitioner recorded under Section 164 CrPC was not a copy of the police report and that such statement was not even given to the prosecution and was kept in sealed cover for which the parties are not allowed to use the same.

8. In this case, notice was issued by order dated 19.01.2023 and the matter was subsequently listed on 01.02.2023, 13.02.2023 and 15.02.2023. However, prosecution has not filed any objection. However, the learned APP has verbally opposed the prayer made in this application and has also objected against providing a copy of the said statement recorded under section 164 CrPC to the petitioner.

9. Considered the averments made in this criminal petition and considered the submissions made by the learned counsel for the petitioner as well as the

learned APP.

10. In the considered opinion of the Court, the statement of the petitioner made under Section 164 CrPC before the learned Chief Judicial Magistrate/Magistrate pursuant to order dated 27.11.2020 passed by the learned Special Judge, Assam would be squarely covered by the provisions of clause (iv) of Section 207 CrPC, which requires that the accused is to be furnished a copy of the confession and statement, if any, recorded under section 164 CrPC. The said provision do not make any distinction of a statement made under section 164 CrPC, which comes as a part of the documents appended to the charge-sheet submitted by the police or in respect of any other statement recorded under section 164 CrPC by orders of the Court.

11. The Court is of the considered opinion that even if the statement of the petitioner recorded under section 164 CrPC was not forwarded by the Magistrate, but recorded pursuant to order passed by the learned trial Court, the petitioner would have an inherent right to have a copy of his own statement, which has recorded pursuant to order by the learned Special Judge, Assam. Therefore, denial of the document, which his own statement recorded under section 164 CrPC, would prejudice the petitioner in exercising his right of defence. Accordingly, the Court is of the considered opinion that the relevant part of the impugned order dated 01.12.2022 passed by the learned Special Judge, Assam in Special Case No. 2/2017, insofar as it relates to rejection of prayer for of furnishing copy of statement of the petitioner recorded under section 164 CrPC is concerned, is not sustainable and the Court has no hesitation to set aside the said part of the impugned order dated 01.12.2022,

passed by the learned Special Judge, Assam in Special Case No. 2/2017.

12. Resultantly, the petition no. 2133/2022 filed by the petitioner, namely, Mrigen Saikia, is restored to file and for a fresh disposal in accordance with law.

13. This petition stands allowed to the extent as indicated above.

14. The Registry shall not issue copy (certified or un-certified copy) of any part of the scanned copy of case diary.

15. Before parting with the records, the Court is inclined to direct the Registry to send a copy of this order to the Director of Vigilance & Anti-Corruption, Assam so as to enable the said authority to examine if it was proper and lawful for the objection to be filed by the prosecution in Special Case No. 2/2017 without the opinion or signature of the Public Prosecutor.

JUDGE

Comparing Assistant