

GAHC010041622022



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

Case No. : Crl.Pet./180/2022

1. POBITRA PHUKAN AND 2 ORS.
S/O LATE GOLAP CH. PHUKAN
R/O KAKOPATHAR BAZAR
P.S. KAKOPATHAR, P.O. KAKOPATHAR
DIST. TINSUKIA, ASSAM, PIN-786152

2: PRAKASH CHETIA
S/O LATE POHIL CHETIA
R/O Pengeri Kathalguri
P.O. KATHALGURI
P.S. BORDUMSA
DIST. TINSUKIA
ASSAM
PIN-782124

3: MADHU MONI SATOLA
S/O LATE TANKESHWAR SATOLA
R/O KACHIKOTA
P.O. AND P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-78416

VERSUS

1. THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:HIRANYA PATAR
(INFORMANT)
SI OF POLICE
BIHPURIA P.S.
DIST. LAKHIMPUR
ASSAM

PIN-78416

Advocate for the Petitioner : MR. N ZAMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT

Date : 19-05-2023

Heard Mr. A. Ganguly, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. This petition under Section 482 of the Code of Criminal Procedure, is preferred by three petitioners, namely, Pobitra Phukan, Prakash Chetia and Madhu Moni Satola challenging the orders dated 11.03.2019 and 20.12.2021, passed by the learned Addl. Sessions Judge (FTC), Lakhimpur at North Lakhimpur, in Sessions Case No.191(NL)/2018, in connection with the Bihpuria P.S. Case No.237/2011, under Sections 120(B)/121/121(A)/122/ 384 IPC, read with Section 10/13 of the UA (P) Act.

3. The factual background leading to filing of the present petition is briefly stated as under:-

“On 23.08.2011, one Hiranya Patar, SI of Police, Bihpuria Police Station lodged one ejahar with the Officer-in-Charge of the Bihpuria Police Station, alleging *inter alia* amongst others that on that day, at about 2:00 P.M., from a reliable source he came to know that two ULFA

activists, namely, Rajib Das and Madhu Satola have been demanding money in the name of ULFA organization from different persons in different places of Lakhimpur District. Thereafter the ULFA activist by the name of Rajib Das handed over an approximate sum of Rs.5 lacs to Madhu Satola and directed him to handover the said money to one Jan, an ULFA activist of Tinsukia District, who will be coming over to Narayanpur along with his associates. Accordingly, on 22.08.2011, while Madhu Satola was riding on his motorcycle for handing over the amount of Rs.5 lacs to Jan at about 6:30 P.M., who had come in two vehicles along with his associates, the said ULFA activist was arrested and the other accused, namely, Jan and his associates fled away. The two ULFA activists had collected money from different persons for procuring arms and ammunitions for waging war against the Govt. of India.”

4. Upon the aforesaid FIR, the Officer-in-Charge of the Bihpuria Police Station registered the Bihpuria P.S. Case No.237/2011, under Sections 120(B)/121/121(A)/122/387 of the IPC, read with Section 10/13 of the UA (P) Act and got the same investigated. The investigation culminated in submission of charge sheet No.177/16, dated 31.07.2016, against accused Madhu Satola, Prakash Chetia, Pobitra Phukan and Ranjan Das, under Sections 120(B)/121/121(A)/122/387 of the IPC. Thereafter, the learned court below has taken cognizance of the said offences and also framed charge under the said sections of law, and on being read over, the petitioners pleaded not guilty and claimed to be tried. Thereafter, the learned Court below had posted the case for evidence.

5. Thereafter, while the case was pending at the stage of evidence, the learned counsel for the petitioners brought to the notice of the learned Court

below that the charges were framed against the petitioners without the prosecution sanction. Thereafter, hearing the learned Advocates of both the parties, and having found the prosecution sanction absence, fixed the case for necessary order on 08.03.2022.

6. Being highly aggrieved by the impugned orders, the petitioners approached this court on the ground that ignoring the bar under section 196 Cr.P.C. the learned court below has not only taken cognizance of the offences under sections 120(B)/121/ 121(A)/122 IPC without prosecution sanction, but also framed charge against the petitioners and as such serious prejudice is caused to the petitioners, and therefore, it is contended to allow this petition.

7. Mr. A. Ganguly, learned counsel for the petitioners submits that the order dated 11.03.2019, by which the learned Court below had taken cognizance and also framed charges against the petitioners without prosecution sanction, suffers from manifest illegality. Referring to Section 196 of the Cr.P.C., Mr. Ganguly submits that prosecution sanction is *sine qua non* for taking cognizance of the offence under Sections 120(B)/121/121(A)/122 of the IPC, since the said offences are against the State and without prosecution sanction, the learned Court below could not have taken cognizance and framed charge against the present petitioners. Mr. Ganguly, learned counsel for the petitioners, therefore, contended to set aside the impugned orders dated 11.03.2019 and 20.12.2021.

8. Per contra, Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent, fairly submits that though the Superintendent of Police, North Lakhimpur, vide letter dated 10.09.2013 has approached the Deputy Inspector General of Police, NR, Assam, Tezpur, to move the competent authority for according prosecution sanction to prosecute

the accused persons under section 10/13 of the U.A.(P) Act, as a case under Sections 120(B)/121/121(A)/122/387 IPC, read with Section 10/13 of the U.A. (P) Act, is found well established, yet, no prosecution sanction was granted. Then obtaining verbal instruction from the DSP (HQ), Lakhimpur at North Lakhimpur, Mr. Sharma further submits that till date, no prosecution sanction has been granted to prosecute the present petitioners.

9. Having heard the submission of learned Advocates of both sides, I have carefully gone through petition and the documents placed on record. Also, perused the relevant provision of law.

10. Section 196 of the Cr.P.C. reads as under:-

“196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.-

(1) No Court shall take cognizance of-

(a) any offence punishable under Chapter VI or under section 153A [Section 295 A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860) or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860),

except with the previous sanction of the Central Government or of the State Government.

(1A)² No Court shall take cognizance of-

(a) any offence punishable under section 153B or sub- section (2) or sub- section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence,

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal code (45 of 1860), other than a criminal conspiracy to commit ¹ an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction ² under sub- section (1) or sub- section (1A) and the District Magistrate may, before according sanction under sub- section (1A) and the State Government or the District Magistrate may, before giving consent under sub- section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub- section (3) of section 155”.

11. A bare perusal of the said provision indicates that without previous sanction of the Central Government or the State Government, no Court shall take cognizance of any offence punishable under Chapter VI or under section 153A [Section 295(A) or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860) or a criminal conspiracy to commit such offence, or any such abetment, as is described in section 108(A) of the Indian Penal Code.

12. Here in this case, it appears from the record of the learned court below that charge sheet has been submitted under Sections 120(B)/121/121(A)/122/387 of the IPC. And though Section 10/13 of the UA (P) Act has not been mentioned in the charge sheet, the Investigating Officer,

in no uncertain terms, stated that during investigation, he also found evidence against the accused persons for commission of the offences under the U.A.(P) Act. And as mandated by Section 196 of the Cr.P.C., prosecution sanction is a must for taking cognizance of the offences under Sections 120(B)/121/121(A)/122 of the IPC, as the same are against the State. Further, sanction is also required for prosecution of the accused persons under Section 10/13 of the UA (P) Act. Admittedly, no prosecution sanction has been granted till date either to prosecute the petitioners for commission of the offences under Sections 120(B)/121/121(A)/122 IPC, or for commission of the offences under Section 10/13 of the UA (P) Act. From the letter dated 10.09.2013, which is available in the record of the learned court below it appears that the Superintendent of Police, North Lakhimpur, has approached the Deputy Inspector General of Police, NR, Assam, Tezpur, to move the competent authority for according prosecution sanction to prosecute the accused persons under section 10/13 of the U.A.(P) Act only. No prayer appears to be made to the competent authority for according sanction under section 196 of the Cr.P.C. to prosecute the petitioners under sections 120(B)/121/121(A)/122 IPC.

13. It also appears from the record that the learned Court below has taken cognizance of the offence under Sections 120(B)/121/121(A)/122 IPC, without prosecution sanction, ignoring the mandate of section 196 Cr.P.C. Moreover, the impugned order is silent as regards the offences under the U.A.(P) Act. It is fact that the learned court below had taken cognizance against the petitioners under section 387 IPC, where sanction is not necessary. But inclusion of section 387 IPC in the charge sheet are in conjunction with such offence under section 120(B)/121/121(A)/122 IPC are inseperable. This being

the position, both the impugned orders, dated 11.03.2019 and 20.12.2021, have failed to withstand the test of legal scrutiny. And as such the same requires interference of this Court.

14. In the result, I find sufficient merit in this petition and accordingly the same stands allowed. The impugned orders, so far it relates to taking cognizance of the offences under Sections 120(B)/121/121(A)/122/387 IPC, stand set aside and quashed.

15. In terms of above this petition stands disposed of. The parties have to bear their own cost.

JUDGE

Comparing Assistant