

GAHC010059002023



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

Case No. : Crl.Rev.P./115/2023

TAKAM SORANG
S/O LT SORANG TAKIO R/O VILL. DAMSITE NAHARLAGUN P.O.
NAHARLAGUN P.S. NAHARLAGUN DIST. PAPUMPARE, ARUNACHAL
PRADESH,

VERSUS

CENTRAL BUREAU OF INVESTIGATION AND ANR
REP. BY THE ITS STANDING COUNSEL

2:ER. MARKIO TADO
S/O LT. MARKIO TAGI
R/O PAPU NALLAH WAY TO JULLY VILLAGE P.O. NAHARLAGUN DIST.
PAPUMPARE
ARUNACHAL PRADES

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : SC, CBI

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

Date of hearing & Judgment : 20.03.2023

JUDGMENT & ORDER (ORAL)

Heard Mr. P. K. Deka, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Standing Counsel, CBI, appearing on behalf of the respondent.

2. This is an application under Section 401 and Section 397 of the Code of Criminal Procedure, 1973, *read with* Article 227 of the Constitution of India, against the impugned order dated 06.02.2023, passed by the learned Special Judicial Magistrate 1st Class, Kamrup (M), Guwahati, in C.R. Case No. 1766/2015, whereby, the Petition No. 3753, filed by the Petitioner under Section 239 Cr.P.C. for discharging the petitioner, was rejected.

3. The brief facts of the case is that on 21.04.2012, an F.I.R. was lodged by one Er. Markio Tado, the then M.L.A., 20-Tali (ST) A/C, Arunachal Pradesh, against the present petitioner, alleging *inter alia* that the petitioner, being the proprietor of M/S Rangne Enterprise, had taken a loan to the tune of Rs. 4.50 Crores from IDBI Bank Ltd., MSME Department, G.S. Road Guwahati, by producing some false and fabricated documents and accordingly, the case was registered as R.C. 6(A)/2013-GWH, under Sections 420/468/471 of the Indian Penal Code. Accordingly, after investigation, the Charge-Sheet was submitted by the CBI on 30.06.2015, under Sections 420/468/471 of the Indian Penal Code,

before the learned Special Judge, C.B.I., Assam, Guwahati, and vide order dated 02.07.2015, the case was transferred to the Court of learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, and accordingly, the learned Magistrate issued summon to the petitioner. On receiving the summon, the petitioner appeared before the said Court praying for allowing him to go on bail and accordingly, he was allowed to go on bail and the trial commenced. Thereafter, the petitioner appeared before the learned Court below and a copy of the case record was furnished to him and the matter was fixed for hearing on charge. The petitioner, accordingly, filed a petition under Section 239 Cr.P.C. for his discharge, wherein, the CBI also submitted the objection. Thereafter, the learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, vide its order dated 28.02.2019, illegally rejected the said prayer for discharge without discussing all the materials on the record. Challenging the said order, the petitioner filed a criminal revision petition before this Court, which was registered as Crl. Rev. Petn. No. 242/2019, and accordingly, this Court, vide order dated 24.06.2019, was pleased to set aside and quash the order dated 28.02.2019, passed by the learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, and remanded the matter before the said Court with an observation to reconsider the issue of framing charge afresh by reflecting all the materials available in the records.

4. Thereafter, the petitioner filed a petition No. 3753, under Section 239 Cr.P.C., before the learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, for his discharge. The CBI also filed their written objection and vide order dated 06.02.2023, the learned Special Judicial Magistrate 1st Class,

Kamrup(M), Guwahati, rejected the said prayer of the petitioner for discharge in spite of special direction from this Court to dispose of the matter assigning proper reason in referring the facts as well as law. But, the learned Court below committed mistake, as done earlier, by not discussing all about the petition or about the statement of the witnesses, including the informant, recorded under Section 161 Cr.P.C. during investigation.

5. It is further stated that the actual fact behind the filing of the F.I.R. is that the petitioner was an MLA for 2 (two) terms for the period from 1999-2004 and 2004-2009. In the said election, both the petitioner as well as the informant contested for 20-Tali (ST) A/C, Arunachal Pradesh, and the informant won the election and by rigging polls. Thereafter, the petitioner filed an election petition before this Court by challenging the election of the informant and accordingly, the election petition was allowed by this Court and challenging the said order, the informant preferred a revision before the Hon'ble Supreme Court and vide order dated 10.05.2013, the Hon'ble Supreme Court set aside the order of this Court and the informant was allowed to continue as an MLA. During the pendency of the said election petition, the informant lodged the instant F.I.R. with some false and concocted allegation.

6. The petitioner, being the proprietor of M/S Rangne Enterprise, had taken a loan to the tune of Rs. 4.50 Crores from IDBI Bank Ltd., G.S. Road Guwahati, by producing all documents which were verified by the bank as per terms and conditions under the Loan-Cum-Hypothecated Agreement. The loan was, accordingly, sanctioned by observing all formalities. However, the petitioner became a defaulter and subsequently, the bank authority finally obtained a

decree as final settlement and the said order is also exhibited by the petitioner and thus, the accused/petitioner has not breach any of the Central Banking Enforceable Laws. The instant F.I.R. was lodged only out of political rivalry and investigation was also politically motivated. The IDBI Bank has no grievance against the present petitioner and without investigating the matter properly, the CBI has filed the Charge-Sheet against the present petitioner.

7. The learned Court below absolutely failed to comply the order of this Court, wherein, specific direction was given to the learned Trial Court to pass reasoned order after discussing all issues. But, the learned Court below failed to discuss about the aspect of the investigation made by the CBI which was solely conducted at the instance of high profile political leader. The informant earlier also lodged an F.I.R., dated 15.07.2009, on similar set of allegation through henchman Shri Hari Tara. However, the said F.I.R. was closed by the concerned Trial Court in absence of any evidence and therefore, the present F.I.R. has been lodged, which is also not maintainable. Moreover, bare perusal of the F.I.R., it shows that the informant was concerned about the loss of the bank due to default of the petitioner and thereby affecting the banking system. But, it is in the process of settlement and therefore, such aspect has been completely overlooked by the learned Court below while passing the impugned order dated 06.02.2023 and hence, the same is liable to be set aside and quashed.

8. The learned counsel for the petitioner, Mr. P. K. Deka, has submitted that the informant, being an MLA, has no *locus standi* to file the F.I.R. and the same has been filed only out of political rivalry between the parties. Further, the concerned IDBI Bank, from whom the loan was obtained by the petitioner, has

not come before this Court alleging any illegality on the part of the petitioner while obtaining the bank loan. It is further submitted that in spite of the specific direction from this Court vide order dated 24.06.2019, the learned Court below failed to discuss all the issues and without any proper discussion, rejected the prayer for discharge of the petitioner with an observation that the informant has the *locus standi* to lodge an F.I.R. and also hold that the present petitioner obtained the loan by submitting some forged documents and accordingly, it has been held that *prima facie* there is sufficient materials to frame charge against the present petitioner.

9. In support of his submissions, the learned counsel for the petitioner has relied on a decisions of the Hon'ble Supreme Court in **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, wherein, the Hon'ble Apex Court has given 7 (seven) numbers of guidelines where the power under Section 482 can be exercised, and further stressed on the point No. 7, wherein, it is stated that "*where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*" Further, in paragraph No. 104 of the said judgment, it has been held that "*it may be true, as repeatedly pointed out by Mr Parasaran, that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sullyng his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complainant. In such a piquant situation, the question is what*

would be the remedy that would redress the grievance of the verily affected party? The answer would be that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of the Indian Penal Code — namely under Section 182 or 211 or 500 besides becoming liable to be sued for damages.”

10. The learned counsel for the petitioner further submitted that the learned Court below discussed on the issue of *locus standi* of the informant while passing the judgment and relied on the decision of the Hon’ble Supreme Court in **A. R. Antulay Vs. Ramdas Srinivas Nayak & Anr.**, reported in **(1984) 2 SCC 500**. But, the learned Court below failed to consider the fact that in the said judgment, it is observed that in a serious offence like murder etc., complaint can be entertained and can proceed in accordance with law. Further, it is submitted that the learned Court below failed to discuss the issues in its true perspective and without assigning any reasonable ground and without discussing all the issues, as per the direction of this Court, had passed the order, which is not at all a reasoned order and hence, the same is liable to be set aside.

11. In this context, the learned Standing Counsel, CBI, Mr. M. Haloi, has submitted that the learned Court below rightly passed the order rejecting the prayer for discharge made under Section 239 Cr.P.C. and the learned Court below made a detail discussion about all the issues while passing the order dated 06.02.2023. In regards to the *locus standi* of a private person for filing a complaint is also well discussed by the learned Court below by relying on the decision of Hon’ble Supreme Court in the case of **A. R. Antulay (supra)**. The

present F.I.R. was lodged by a private party with the allegation that the offence is against the society and therefore, the prosecution for any serious offences is undertaken in the name of the representative of people, which would exclude any element of private vendetta or vengeance.

12. The Hon'ble Supreme Court in the case of **A. R. Antulay (supra)** has observed that *"this general principle of nearly universal application is founded on a policy that an offence, i.e. an act or omission made punishable by law for the time being in force is not merely an offence committed in relation to the person who suffers harm but it also an offence against the society. Therefore, prosecution for serious offences is undertaken in the name of the State representing people which would exclude any element of private vendetta or vengeance."*

13. Further, it is submitted by the learned Standing Counsel, CBI, that the Government of Arunachal Pradesh had accorded the general consent to the CBI to register a case against the present petitioner and to investigate the offence and accordingly, with the consent of the Government of Arunachal Pradesh, the same was investigated by the CBI and on finding materials, the Charge-Sheet was submitted. Further, the learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, while passing the order, made a detail discussion as to what was gathered by the CBI during investigation, which was reflected in the Charge-Sheet. There may be settlement between the IDBI Bank Officials and the informant or the IDBI Bank might got a decree for settlement for the case, which was instituted by them for default of payment of loan, but the subject matter of the instant F.I.R. is that petitioner obtained the loan from IDBI Bank

by submitting some forged and fabricated documents which was stated to be issued by the Public Work Department, Arunachal Pradesh. While discussing this issue, the learned Special Judicial Magistrate 1st Class made a detail discussion and held that there is a *prima facie* case for framing charge against the present petitioner. From the reading of the PWs, it is seen that they have denied that no such order or document was issued by them and accordingly, the learned Court below rightly held that forged and fabricated documents were produced by the petitioner while obtaining the loan from IDBI Bank. Accordingly, it is submitted by the learned Standing Counsel, CBI, that there is no illegality committed by the learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, while rejecting the prayer for discharging the petitioner under Section 239 Cr.P.C. and hence, there is no necessity of any interference by this Court.

14. After hearing the submissions of learned counsels for both sides, I have carefully perused the order passed by the learned Court below and all other connected documents filed along with the present petition. It is seen that after remand of the case before the learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, the present petitioner filed a fresh petition for discharging him under Section 239 Cr.P.C. and the opposite party/CBI also filed their written objection and after considering the submissions of both sides, the learned Court below rejected the prayer for discharge made by the present petitioner.

15. This Court, vide order dated 24.06.2019, in Crl. Rev. P. 242/2019, has passed an order to discuss all the issues raised by the defence as well as the

prosecution while passing the order for rejection of the petition for discharging the petitioner and the matter was accordingly remanded back. On perusal of the order passed by the learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, it is seen that the learned Court below made a detail discussion in regards to the issues raised by the petitioner, i.e. on *locus standi*, and also discussed on the issue as to why there is *prima facie* case to frame charge against the present petitioner. After considering the dictum of Hon'ble Apex Court in the case of **A. R. Antulay (supra)**, the learned Court below rightly opined that the informant, being a private party, has the *locus standi* to lodge the F.I.R., as the allegation brought in the F.I.R. is not against the private person, but the same is against the society. At the same time, it is seen that the learned Court below perused the statement of PWs, recorded under Section 161 Cr.P.C., while discussing the issues of *prima facie* case, and it is seen that after perusal of the statement recorded under Section 161 Cr.P.C., the learned Court below found that a *prima facie* case is brought against the present petitioner that he obtained the loan by submitting some forged and fabricated documents of the contract work, which was not issued by the PWD authority. It is a fact that the loan was obtained by the petitioner after verification of some documents by the IDBI Bank, but it is seen that the said loan was obtained only submitting some forged and fabricated documents, as per the allegation of the PWD officials. Thus, I find that the learned Court below committed no error or mistake while holding that there is a *prima facie* materials to frame charge against the present petitioner and rightly dismissed the petition for discharge filed by the present petitioner.

16. In the case of **Bhajan Lal (supra)**, as relied by the learned counsel for

the petitioner, the Hon'ble Supreme Court has held that if a case is instituted with *mala fide* intention or if the proceeding is maliciously instituted with an ulterior motive, in that case also, the power under Section 482 can be exercised and there will be simply the abuse of the process of law.

17. But, herein the instant case, it is seen that there are *prima facie* materials to proceed with the case and the learned Court below committed no error or mistake while holding that there is a *prima facie* case for framing charge against the present petitioner.

18. The Hon'ble Supreme Court in the Case of **Bhajan Lal (supra)** had formulated some guidelines, which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code.*

- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

19. Here in the instant case, it is seen that the statement made in the F.I.R. discloses a cognizable offence and the allegation brought against the petitioner cannot be held *prima facie* that it was instituted only with a *mala fide* intention and on personal grudge.

20. So, considering all aspects of the case, I am of the opinion that the order passed by the learned Special Judicial Magistrate 1st Class, Kamrup(M), Guwahati, do suffer from legality, propriety or correctness to make any

interference of this Court. Consequently, the order dated 06.02.2023, passed by the learned Special Judicial Magistrate 1st Class, Kamrup (M), Guwahati, in C.R. Case No. 1766/2015, stands upheld.

21. In terms of above, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant