

GAHC010175702022



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

Case No. : Crl.Pet./882/2022

PRASHNA BRAHMA AND ANR
S/O- LATE SUSHIL KUMAR BRAHMA, R/O- VILL.- RUPNAGAR, WARD NO.
4, P.O., P.S. AND DIST. KOKRAJHAR (BTAD), ASSAM

2: JOY PRAKASH MACHAHARY
S/O- SRI BINOD BHUSHAN MUCHAHARY
R/O- VILL.- GWJWNPURIM WARD NO. 4
P.O. CHAPAGURI
P.S. DHALIGAON
DIST. CHIRANG (BTAD)
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:RANJIT BORGOYARY
S/O- LATE GAJENDRA BORGOYARY
VILL.- PALASHBARI
P.S. SIDLI
DIST. CHIRANG (BTAD)
ASSA

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : MR A. M. Bora, Sr. Advocate.
Assisted by Mr. D. P. Borah, Adv

For the Respondents : Mr. M. Phukan, P.P.

Date of Hearing : 09.10.2023

Date of Judgement : 09.10.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. D. P. Borah, learned counsel for the petitioners. Also heard Mr. M. Phukan, learned Public Prosecutor for the State respondents.

2. The challenge:-

By this present application under Section 482 of Cr.P.C. the petitioners have challenged the following:-

- i. Charge Sheet No. 14/2017 dated 31.07.2017 in connection with Sidli PS Case No. 49/2015 on the ground that the charge sheet has been filed without there being any prosecution sanction under Section

19 of the Prevention of Corruption Act, 1988 (herein after referred as the P.C. Act, 1988).

- ii. The order dated 24.01.2017 passed by the learned Judicial Magistrate First Class, Chirang, BTAD, whereby during investigation of the Sidli PS Case No. 49/2015, on the prayer of investigating officer (in the rank of Sub Inspector), the learned Court below added Sections 7 and 13 of the P.C. Act, 1988 for prosecuting the petitioners.
- iii. The order dated, 27.06.2018, whereby the learned Chief Judicial Magistrate, Chirang, BTAD took cognizance of offences under Section 120B/406/409/420 of IPC read with Section 7 and 13 of the P.C. Act, 1988 against the petitioners and other accused persons and issued summons.
- iv. The order dated 08.08.2019, whereby the learned Magistrate directed the officer-in-charge, Sidli Police Station to re-investigate the matter and to submit FF at the earliest.
- v. Charge Sheet No. 12/2022 dated 13.04.2022 which has been filed by the investigating agency after completion of re-investigation in terms of order dated 08.08.2019.
- vi. The entire proceeding of PRC Case No. 25/2018 pending before the learned Chief Judicial Magistrate, Chirang, BTAD under Section 120(B)/406/409/420 of IPC read with Section 7 and 13 of the P.C. Act, 1988, for being without jurisdiction.

3. Arguments advanced by the learned counsel for the parties:

- I. Mr. Bora, learned Senior Counsel argues that the entire proceeding of PRC Case No. 25/2018 pending before the learned Chief Judicial Magistrate, Chirang, BTAD is liable to be quashed for the reasons that the learned Magistrate is not only having any jurisdiction to take cognizance of offence under the provision of Section 7/13 of the P.C. Act, 1988 but also not having any jurisdiction to issue direction for re-investigation. He further contends that a Police Officer in the rank of Sub Inspector is not having any power to investigate offences under the provisions of the P.C. Act, 1988 inasmuch as no sanction as required under Section 19 of the P.C. Act, 1988 was taken and accordingly, Mr. Bora, learned Senior Counsel submits that the entire proceeding is vitiated and therefore, the same is liable to be quashed.
- II. Mr. Phukan, learned Public Prosecutor for the State of Assam in his usual fairness submits that a Chief Judicial Magistrate does not have any jurisdiction to take cognizance of offences under Sections 7/13 of the P.C. Act, 1988 inasmuch as law is well settled that a Magistrate does not have power to issue a direction for re-investigation.

4. Determination of this Court:-

- I. The Prevention of Corruption Act, 1988 is an act to consolidate and amend the law relating to the prevention of corruption and the matters connected therewith, more particularly relating to the

prevention of corruption by public servant widening the definition of the public servant itself.

- II. The Section 3 of the P.C. Act, 1988 empowers the Central Government or the State Government to appoint Special Judges necessary to try offences punishable under the Act, 1988.
- III. Section 4(1) of the P.C. Act, 1988 mandates that the offences specified in the Act shall be tried by Special Judges only.
- IV. Sub Section 3 of Section 4 of the P.C. Act, 1988 also empowers a Special Judge to try at the same trial any other offences with which the accused may, be charged.
- V. Section 5 of the P.C. Act, 1988 empowers a Special Judge to take cognizance of offences without the accused being committed to it for trial. It further provides that the trial shall follow the procedure prescribed by the Cr.P.C. 1973 for trial of warrant cases by a Magistrate.
- VI. Section 17 of the P.C. Act, 1988 mandates that notwithstanding anything contained in the Cr.P.C. 1973, no police officer below the rank of a Deputy Superintendent of Police or of equivalent rank shall investigate any offence punishable under this Act, without the order of a Metropolitan Magistrate or a Magistrate of First Class as the case may be, except in the case of Delhi Special Police Establishment, an Inspector of Police and in case of Metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and any other metropolitan areas notified under the provisions of the Code, 1973 an Assistant

Commissioner of Police shall have power to investigate the offences under this Act.

- VII. In the case in hand, a complaint was filed by one Ranjit Borgoyari (since deceased) before the Officer-in-Charge, Sidli Police Station, based on which Sidli Police Station Case No. 49/2015 was registered under Sections 120(B)/406/409/420 of IPC. The investigation was done by an officer in the rank of Sub Inspector and the said investigating officer, during the investigation filed an application before the learned Judicial Magistrate First Class, Chirang BTAD to add Sections 7 and 13 of the P.C. Act, 1988, which was allowed by the learned Magistrate, under its order dated 24.01.2017 impugned in the present proceeding and subsequently charge sheet No. 14/2017 dated 31.07.2017 was filed under Section 120(B)/406/409/420 of IPC and that too without there being any prosecution sanction under Section 19 of the P.C. Act, 1988.
- VIII. Thereafter, the learned Chief Judicial Magistrate, Chirang BTAD by the order dated 27.06.2018, took cognizance of the offences as discussed hereinabove including the Sections 7 and 13 of the P.C. Act, 1988 and further directed the Officer-in-Charge of the Sidli Police Station to re-investigate the matter by its order dated 08.08.2019 and accordingly, the impugned charge sheet No. 12/2022 dated 13.04.2022 was submitted after re-investigation.
- IX. Though after filing of the charge sheet dated 13.04.2022, after re-investigation, the learned Chief Judicial Magistrate, Chirang, BTAD by its order dated 25.04.2022 forwarded the case record along with the

case diary to the Court of Special Judge, Assam, Guwahati, however, such course of action will not give a legal sency to the jurisdiction wrongfully exercised by the learned Magistrate as discussed hereinabove inasmuch as Section 5 of the P.C. Act, 1988 empowers a Special Judge to take cognizance of offences without accused being committed to it for trial. Further the Special Judge is to follow procedure as prescribed under the Code for trial of warrant cases by a Magistrate.

- X. As discussed hereinabove, Section 4 of the P.C. Act, 1988, mandates that the offences under the P.C. Act, is to be tried by a Special Judge appointed under the provision of Section 3 of the P.C. Act, 1988 inasmuch as such Court is empowered to try other offences under IPC along with the offences under the P.C. Act, 1988.
- XI. It is a fundamental principle of law that any cognizance taken/order passed by a Court without jurisdiction is a nullity and such cognizance shall invalidate the entire proceeding. It is also well settled that if any statute confers jurisdiction upon a Court or authority to decide any dispute, such jurisdiction is to be exercised by the said authority and within its limit as conferred by the said statute. The fundamental principle is also that by erroneously assuming existence of jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess. That being the position, the learned Chief Judicial Magistrate is not having any jurisdiction to take cognizance under Sections 7 and 13 of the P.C. Act, inasmuch as such jurisdiction is conferred under Section 5 of the

P.C. Act, 1988 upon a Special Judge appointed under Section 3 (1) of the PC Act, 1988. Thus, the proceeding under challenged including the order of cognizance dated 27.06.2018 by the learned Chief Judicial Magistrate, Chirang, BTAD (Anexure-6) is quashed being without jurisdiction and being nullity.

- XII. Now coming to the power to direct the re-investigation by a Magistrate, it is no more res integra that a Magistrate is having no power to direct re-investigation or fresh investigation in the case initiated on the basis of a police report. That being the position, the order dated 08.08.2019, passed by the learned Chief Judicial Magistrate, Chirang, BTAD, cannot also be sustained in law and accordingly, the same is liable to be quashed.
- XIII. In view of the aforesaid discussions, reasons and decisions, the present criminal petition stands allowed by setting aside the entire proceeding of PRC Case No. 25/2018 (Sidli PS Case No. 49/2015) under Sections 120(B)/406/409/420 of the IPC read with Section 7/13 of the P.C. Act, 1988, now pending in the Court of learned Court of Special Judge, Assam, Guwahati including the charge sheet No. 14/2017 dated 31.07.2017 and charge sheet No. 12/2022 dated 13.04.2022.
- XIV. As the proceeding has been set aside being without jurisdiction, this Court is of the view that the determination on the point of non adherence of the provision under Section 19 of the P.C. Act, 1988 shall be academic only and accordingly, same is not considered and determined in the given facts of the present case.

- XV. The complaint lodged dated 03.08.2015 registered as Sidli Police Station Case No. 49/2015 may proceed afresh as per law.

JUDGE

Comparing Assistant