

PRINCIPAL SEAT AT GUWAHATI

Sh. Lalrammawia,
Superintending Engineer,
Western Circle, PHE Department,
Govt. of Mizoram.

-Versus-

1. The State of Mizoram,
represented by the Secretary to the
Govt. of Mizoram, Home Department, Aizawl.
2. Vigilance Department,
represented by the Chief Vigilance Officer/Chief Secretary
to the Govt. of Mizoram.

For the Petitioner: Mr. B. Bhagawati. Advocates.

BEFORE
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

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Date of Judgment : **20th June, 2023**

JUDGMENT & ORDER (ORAL)

[Achintya Malla Bujor Barua, J.]

Heard Mr. B. Bhagawati, learned counsel for the petitioner. Also heard Mr. A. Kalita, learned Additional Advocate General for the State of Mizoram.

2. The petitioner Sh. Lalrammawia was subjected to an investigation in ACB P.S. Case No.4/2017 under Sections 409, 471, 477A of the Indian Penal Code (in short IPC) read with Section 13(1)(c)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 (in short P.C. Act). The investigation resulted in the final report by the investigation dated 13.03.2019. The final report of 13.03.2019 was considered by the learned Court of Special Judge, Mizoram at Aizawl, in SR(PCA) No.3/2019 wherein by an order dated 03.05.2019, the Special Court was of the view that there was sufficient ground to proceed against the petitioner and another co-accused, namely, Pu H. Lalengmawia. The petitioner Sh. Lalrammawia was the Superintending Engineer in the PHE Department in the Champhai Circle whereas the other accused person Pu H. Lalengmawia was the Deputy Commissioner of Champhai district.

3. Being aggrieved by the order dated 03.05.2019 of the Special Judge, Pu H. Lalengmawia, the Deputy Commissioner instituted CrI.Rev.P. No.4/2019 before the Aizawl Bench of the Gauhati High Court, wherein one of the ground taken was that sanction under Section 19 of the P.C. Act was not obtained and as such the order taking cognizance by reversing the final report was unacceptable in law. The petitioner Sh. Lalrammawia on similar terms instituted WP(CrI.) No.2/2019 before the Aizawl Bench of the Gauhati High Court. CrI.Rev.P. No.4/2019 was given a final consideration by the

judgment dated 17.09.2019, wherein by following the proposition laid down in ***L. Narayana Swamy v. State of Karnataka & Ors.*** reported in ***(2016)9 SCC 598***, a conclusion was arrived at paragraph 13 of the judgment that as the petitioner therein was posted as Deputy Commissioner, Champhai, when the alleged offence of misappropriation had taken place and since then as the said petitioner has been transferred and presently posted as Secretary to the Government of Mizoram in the Department of Sports and Youth Services and also Health and Family Welfare, therefore, the learned Special Judge could not have issued the process against the petitioner without there being a prosecution sanction. By arriving at such conclusion, the order dated 03.05.2019 of the learned Special Judge in respect of Pu H. Lalengmawia was set aside.

4. The Crl.Rev.P. No.4/2019 was against the order dated 03.05.2019 of the Special Judge, P.C. Act, in ACB P.S. Case No.4/2017. By the order of 03.05.2019 of the Special Judge in SR(PCA) No.3/2019 in ACB P.S. Case No.4/2017, cognizance had been taken both in respect of the petitioner in Crl.Rev.P. No.4/2019 as well as the petitioner in the present WP(Crl.) No.2/2019. When WP(Crl.) No.2/2019 before the Aizawl Bench was taken up, the learned Single Judge by the order dated 31.08.2021 had disagreed with the legal propositions in the judgment dated 17.09.2019 in Crl.Rev.P. No.4/2019 and accordingly, required the legal propositions to be decided by a Larger Bench. Upon being referred WP(Crl.) No.2/2019 was re-registered as WP(Crl.) No.22/2021 before the Principal Seat.

5. Accordingly, by raising certain questions for reference had referred the matter to be considered by a Larger Bench as to whether the view taken by the learned Single Judge in Crl.Rev.P. No.4/2019 is acceptable in law. In the circumstance, the WP(Crl.) No.22/2021 is before us for answering the reference as well as considering the WP(Crl.) No.2/2019 on its own merit.

6. On the question referred before the Larger Bench as to whether the view taken by the learned Single Judge in the order dated 17.09.2019 in Crl.Rev.P. No.4/2019 is acceptable in law, we noticed that the learned Single Judge therein had relied upon paragraph 21 of the judgment rendered by the Supreme Court in **L. Narayana Swamy** (supra) and accordingly, in paragraph 13 arrived at its conclusion that there was a necessity of there being a prosecution sanction and as admittedly in the instant matter prosecution sanction had not been obtained, therefore, the learned Single Judge was of the view that the order dated 03.05.2019 of the learned Special Judge in SR(PCA) No.3/2019 in respect of the said petitioner of the criminal revision petition namely, Pu H. Lalengmawia, would not be sustainable in law and accordingly, it was set aside. In other words, in paragraph 13 of the judgment dated 17.09.2019, the learned Single Judge was of the view that when the allegation of misappropriation can be traced back to have been committed at a place other than where the accused would be presently posted, by following the proposition laid down in **L. Narayana Swamy** (supra), a prosecution sanction would also be required and therefore, the order dated 03.05.2019 of the learned Special Judge taking cognizance of the matter is unacceptable in law.

7. Before going to the question as to whether the view taken by the learned Single Judge in the judgment dated 17.09.2019 in Crl.Rev.P. No.4/2019 is the correct proposition of law, we take note that at the very initial stage of the present hearing of the Division Bench on 26.04.2023, the learned Senior counsel Mr. A.M. Bora, who then appeared for the present writ petitioner took a stand that Pu H. Lalengmawia, who is the petitioner in Crl.Rev.P. No.4/2019 and who is the beneficiary of the judgment dated 17.09.2019 of the learned Single Judge would be a necessary party in the present proceeding.

8. As already noticed, the Crl.Rev.P. No.4/2019 was also against the order dated 03.05.2019 of the learned Special Judge in SR(PCA) No.3/2019 in ACB P.S. Case No.4/2017, where by the order dated 03.05.2019 of the Special Judge, cognizance had been taken in respect of both the petitioner in Crl.Rev.P. No.4/2019 as well as the petitioner in the present WP(Crl.) No.22/2021. In the aforesaid circumstance, when the WP(Crl.) No.22/2021 was under consideration before the Larger Bench on the referred question, the stand taken was that the petitioner of Crl.Rev.P. No.4/2019 would be a necessary party in the present WP(Crl.) No.22/2021 and the submission made was that if the Larger Bench takes a different view on the legal proposition, the petitioner of Crl.Rev.P. No.4/2019 would adversely affected. Accordingly, the plea of natural justice was raised that the principles thereof requires that the petitioner of Crl.Rev.P. No.4/2019 is to be impleaded as a respondent in WP(Crl.) No.22/2021.

9. As the plea of natural justice had been raised, we had put a question to the learned Senior counsel for the petitioner who appeared on the said date as to which of the two principles of natural justice would be violated and in response thereof it was submitted that the principle of *audi alteram partem* would be violated. The learned Senior counsel submitted that the principle of *audi alteram partem* would be applicable inasmuch as if the decision of the Larger Bench is contrary to the decision of the learned Single Judge in Crl.Rev.P. No.4/2019, the legal right of the petitioner therein could be violated. A further question was put to the learned Senior counsel for the petitioner who appeared on that date, as to which legal right of the petitioner in Crl.Rev.P. No.4/2019 would be violated so as to have him impleaded as a respondent in the present proceeding, except for reiterating that the petitioner in Crl.Rev.P. No.4/2019 would be a necessary party, no answer was forthcoming.

10. As we understand, the judgment dated 17.09.2019 in CrI.Rev.P. No.4/2019 had attained its finality till any such appeal would be preferred by the State authorities against the same and the petitioner therein is a beneficiary of the judgment rendered therein. Even if the proposition of law in the present proceeding by the Larger Bench is decided otherwise, the said judgment which had attained its finality would not be impacted in any manner and as the judgment would not be impacted, no such legal right that may have accrued to the petitioner in CrI.Rev.P. No.4/2019 would be affected in any manner. If the legal right of the petitioner in CrI.Rev.P. No.4/2019 is not affected by any contrary decision by the Larger Bench, we see no reason as to how the principles of natural justice would be violated in respect of the petitioner in CrI.Rev.P. No.4/2019.

11. We also take note that the question of violation of legal right of the petitioner in CrI.Rev.P. No.4/2019 had not been raised by the said petitioner himself but in fact it has been raised by the petitioner in the present proceeding. From such point of view also, the submission that the petitioner in CrI.Rev.P. No.4/2019 is required to be impleaded as a respondent in the present proceeding also cannot be accepted. The submission of the learned Senior counsel for the petitioner as made on the said date is further examined from the point of view of the implication of the petitioner in CrI.Rev.P. No.4/2019 being impleaded as a respondent in the present petition, which will mean that a person who is a beneficiary of a judgment in his favour which had attained its finality would now be made a respondent in a proceeding initiated by another person, which again would be impermissible in law, inasmuch as the implication thereof would be that if the decision in WP(CrI.) No.22/2021 is different from that of the decision in CrI.Rev.P. No.4/2019, once the petitioner of the said revision is impleaded as a respondent in the present proceeding, the judgment that would be

rendered may also be binding upon him. In such circumstance, the petitioner in Crl.Rev.P. No.4/2019 would now be on one hand a beneficiary of a judgment which had attained its finality which is in his favour and on the other hand, would be impacted by another judgment in another proceeding on the same issue as because he would be a respondent therein, which again would be an inconsistent situation unacceptable in law.

12. Further, if the petitioner in Crl.Rev.P. No.4/2019 is impleaded as a respondent in WP(Crl.) No.22/2021 and the decision in WP(Crl.) No.22/2021 happens to be contrary to the judgment in Crl.Rev.P. No.4/2019, it would have the effect of the judgment dated 17.09.2019 in Crl.Rev.P. No.4/2019 being reviewed which again would be an impermissible situation under the Code of Criminal Procedure (in short Crl.P.C.) where the power of review is not available.

13. For the aforesaid reasons, the plea of the petitioner in the present proceeding to implead the petitioner of Crl.Rev.P. No.4/2019 stands rejected.

14. On the question referred before the Larger Bench, from the view taken by the learned Single Judge in the judgment dated 17.09.2019 in Crl.Rev.P. No.4/2019 and the differing view taken by the learned Single Judge in the order dated 31.08.2021 in WP(Crl.) No.2/2019 (Aizawl), it is noticed that in the judgment dated 17.09.2019 in paragraph 12 thereof, reliance was placed on the proposition laid down by the Supreme Court in paragraph 21 of its pronouncement in **L. Narayana Swamy** (supra). Paragraph 21 of the pronouncement in **L. Narayana Swamy** (supra) is extracted as follows:-

"21. It clearly follows from the reading of the judgments in the cases of *Abhay Singh Chautala* [(2011)7 SCC 141] and *Prakash Singh Badal* [(2007)1 SCC 1] that if the public servant had abused entirely different office

or offices than the one which he was holding on the date when cognizance was taken, there was no necessity of sanction under Section 19 of the P.C. Act. It is also made clear that where the public servant had abused the office which he held in the check up period, but had ceased to hold '*that office*' or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. However, one discerning factor which is to be noted is that in both these cases the accused persons were public servants in the capacity of Member of Legislative Assembly by virtue of political office. They were not public servants as government employees. However, detailed discussion contained in these judgments would indicate that the principle laid down therein would encompass and cover the cases of all public servants, including government employees who may otherwise be having constitutional protection under the provisions of Article 309 and 311 of the Constitution."

15. The proposition as laid down in paragraph 21 is that if the public servant had abused entirely different office or offices than the one which he was holding on the date when the cognizance was taken, there was no necessity of sanction under Section 19 of the P.C. Act. In other words, if the public servant had abused an earlier office for the alleged offence and on the date when the cognizance was taken, he was holding another office, there would be no necessity of sanction under Section 19 of the P.C. Act. But having held so, in paragraph 13 of the judgment of the learned Single Judge in CrI.Rev.P. No.4/2019, it has been held as extracted:

"13. Coming to the present case, it may be seen that the allegation of misappropriation is traced back to the time when the petitioner was posted as Deputy Commissioner, Champhai wherein, he was also the Chairman of the District Disaster Management Committee. Since then, the petitioner has been

transferred and presently posted as Secretary to the Govt. of Mizoram, Sports & Youth Services Department and also Health & Family Welfare Department. Therefore, I find that the learned Special Judge could not have issued process against the petitioner without there being a prosecution sanction, he had already been transferred from his earlier post."

16. In paragraph 13 the learned Single Judge in CrI.Rev.P. No.4/2019 had arrived at its satisfaction that the allegation of misappropriation is traced back to the time when the petitioner therein was posted as Deputy Commissioner, Champhai, wherein he was also the Chairman of the District Disaster Management Committee. But as on 03.05.2019 when cognizance was taken by the learned Special Judge in SR(PCA) No.3/2019 in ACB P.S. Case No.4/2017, as he was holding the post of Secretary to the Govt. of Mizoram in the Sports and Youth Services Department and also Health & Family Welfare Department meaning thereby that the public servant petitioner therein had abused an entirely different office or offices than the office he was holding on the date when the cognizance was taken, process could not have been issued with there being a prosecution sanction. If we follow the proposition laid down in paragraph 21 in **L. Narayana Swamy** (supra) as the public servant petitioner in CrI.Rev.P. No.4/2019 was holding a different post on the date when cognizance was taken by the learned Special Judge, therefore there was no requirement of a prosecution sanction under Section 19 of the P.C. Act and therefore, cognizance could have been taken even without an order of sanction. But the learned Single Judge in paragraph 13 arrived at its conclusion that although the public servant petitioner therein was holding an office other than the office where the alleged abuse had taken place, a prosecution sanction was a necessity and therefore, in the absence of any prosecution sanction, the learned Special Judge could not have issued process against the said public servant petitioner.

17. Considering the proposition laid down in paragraph 21 in **L. Narayana Swamy** (supra) which in fact was followed by the learned Single Judge in the order dated 17.09.2019 in CrI.Rev.P. No.4/2019 and considering the fact that the public servant writ petitioner therein was not holding the office at the time of taking cognizance which he was earlier holding when the alleged abuse had taken place, no sanction would be necessary for taking cognizance. As such the conclusion of the learned Single Judge in the order dated 17.09.2019 in CrI.Rev.P. No.4/2019 to interfere with the order of taking cognizance as because in the absence of prosecution sanction, have to be held to be erroneous. In view of such conclusion, we are in agreement with the view taken by the learned Single Judge in the order dated 31.08.2021 in WP(CrI.) No.2/2019 (Aizawl) in differing with the view of the learned Single Judge in the order dated 17.09.2019 in CrI.Rev.P. No.4/2019, the reference is accordingly answered.

18. But having answered the reference, instead of again sending the matter back to the learned Single Judge on the validity and acceptability of the order dated 03.05.2019 of the learned Special Judge in SR(PCA) No.3/2019 in ACB P.S. Case No.4/2017 in respect of the petitioner Sh. Lalrammawia, we propose to look into the legality and acceptability of the said order otherwise than on the issue of there being no prosecution sanction. In the order dated 03.05.2019 taking cognizance by the learned Special Judge, it had been provided as extracted:-

"Upon perusal, this Court is of the view that there is sufficient ground to proceed further and took notice of the accusations against Pu H. Lalengmawia, the then Deputy Commissioner, Champhai District, and Chairman, Disaster Management Committee for Kanan Veng Landslide, and Pu Lalrammawia, the Superintending Engineer, PHE Department, Champhai Circle, and Member Secretary, Disaster Management Committee for Kanan

Veng Landslide.”

19. A reading of the afore-extracted view taken by the learned Special Judge makes it discernible that the view is not supported by any reasoning or any material as to why the learned Special Judge deemed it appropriate that there is sufficient ground to proceed further and take notice of the accusations made against Pu H. Lalengmawia, the then Deputy Commissioner of Champhai district and Sh. Lalrammawia, the then Superintending Engineer of Champhai Circle. When we examine the conclusion of the learned Special Judge in the context of the provisions of the final report that had been submitted by the investigating authority, it is noticed that the investigating authority had given adequate reason as to why the investigation was of the view that a prima facie case could not be established against any of the two accused persons. The reasoning of the investigating authority in its final report dated 13.03.2019 is extracted as follows:-

“From the abstract given above, it is seen that ₹ 40,00,000.00 was sanctioned for clearance and control of landslide of Champhai while the grand total of known and recorded expenditure was found to be ₹ 29,90,403.50. Thus, ₹ 40,00,000.00 - ₹ 29,90,403.50 = ₹ 10,09,596.50. This amount is thus found unaccounted for and the explanations of it cannot be found from record.

But, later during the course of investigation, it was found that the one time assessment report of the landslide at Champhai, Kanan Veng carried out after rainy season when all series of works undertaken during the relevant period of time were completed cannot be taken as a concrete or conclusive evidence. Land slips took place simultaneously in series and reclamation works too went on throughout the rainy season. The resources and fund spent for clearance of landslide and construction work for control of landslide

throughout the year were not taken into consideration in the assessment report of PWD, Mizoram. The technical inspection and assessment was done only once and full assessment of the whole work after completion of the works was never done. Therefore, the assessment of PWD cannot be considered as fact finding assessment. The unexplained or uncounted amount of money that surfaced up after subtracting the recorded or known expenditure from the sanctioned amount can be taken as human error and lapses. This error have been avoided easily had the one who maintain record of expenditure be better pay more attention to his assignment. On the other hand Pu Lalrammawia who affirmed in his statement that every transaction of cash and others were carried out only under the direction and authority of the chairman of land slide committee. Therefore, responsibility cannot be fixed on any one as explained. The amount of money that becomes a question which amount to ` 10,09,596.50 is believed to be missed out for record during either the receipt of money by the member secretary from the chairman of land slide committee or during the process of disbursement of money or both on account of expenditures on the works undertaken. However, this expose the inept and unprofessionalism on the part of the person or persons who handle the record on cash transaction.

From the light of the fact and circumstances discussed above, a prima facie case cannot be established against any person during the case of investigation due to insufficient evidence against anyone who were investigated.

I, therefore, return the case in Final Report due to insufficient evidence against anyone under investigation.

The purport of investigation is verbally communicated to the complainant."

20. A reading of the afore-extracted portion of the report of the

investigating authority makes it discernible that during the investigation it was found that the one time assessment report of the landslide at Champhai carried out after rainy season when all series of works were undertaken during the relevant period of time were completed cannot be taken as a concrete or conclusive evidence. The investigating authority in its report provided that land slips took place simultaneously in series and reclamation works too went on throughout the rainy season and the resources and funds spent for clearance of the landslide and construction work for control of landslide throughout the year were not taken into consideration in the assessment report of the PWD, Mizoram. It further provided that the technical inspection and assessment was done only once and full assessment of the whole work after completion of the works were never done.

21. It is also discovered from the report of the investigating authority that the unexplained or unaccounted amount of money that surfaced up after subtracting the recorded or known expenditure from the sanctioned amount can be taken as human error and lapses and the error could have been avoided had the record of the expenditure been maintained in a more appropriate manner. The investigating report leads to a conclusion that was arrived that as because the land slips took place simultaneously in a series and reclamation of works also went throughout the rainy season which sought to give a meaning that the work which was once done again got undone because of the subsequent land slips that took place which did not find place in the records, which made it not possible for the investigation to account for such expenditures and therefore, no prima facie case against the accused persons could be found out during the investigation, which again is stated to be due to insufficient evidence against anyone of the persons who were investigated and more so when these works were done by multiple

persons and not just confined to the two accused persons.

22. We are not expressing any view on the acceptability of the view of the investigating authority but what we have noticed is that whether it be acceptable or it be unacceptable, a definite reasoning was given by the investigating authority as to why no prima facie case could be established against the accused persons. But the learned Special Judge without stating any reason as to why the reasoning of the investigating authority is to be not accepted had merely taken a view that there is sufficient ground to proceed against the accused persons and accordingly, took cognizance of the matter. The law relating to taking of cognizance had been laid by the Hon'ble Supreme Court in ***Neelu Chopra & Anr. v. Bharti*** reported in ***(2009)10 SCC 184***, wherein in paragraph 9, it has been provided as extracted:-

"9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence."

23. Again in its proposition laid down in ***Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. & Ors.*** reported in ***2021 SCC OnLine SC 806***, in paragraphs 26 and 27 it has been provided as extracted:-

"26. As observed by this Court in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 and even thereafter in catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. In paragraph 28 in *Pepsi Foods Limited* (supra), it is observed and held as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

27. As held by this Court in the case of *India Infoline Limited* (supra), in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused,

more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.”

24. A reading of the aforesaid two propositions as laid down by the Supreme Court makes it discernible that for the purpose of taking cognizance, mere mention of the sections and the language of those sections is not to be the end of the matter and what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing the offence. In the instant case, the report of the investigating authority do not disclose any such material which if taken note of could have clearly stated the role that may have been played by the accused writ petitioner. In paragraph 26 of its pronouncement in ***Ravindranatha Bajpe*** (supra), by referring to an earlier pronouncement in ***Pepsi Foods Ltd.*** (supra), the Supreme Court was of the view that the criminal law cannot be set into motion as a matter of course and the order of the Magistrate summoning the accused must reflect that he had applied his mind to the facts of the case and the law applicable thereto and further that he has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and that certain materials would be sufficient for the complainant to succeed in bringing the charge home against the accused. In the instant case, as the order impugned dated 03.05.2019 of the learned Special Judge do not reflect on any such material that may be available in the report of the investigating authority and where it is merely provided that in the view of the Court there is sufficient ground to proceed further and take notice of the accusations against the accused persons, it cannot be said that the learned Judge taking cognizance of the matter had applied the mind to the facts of the case and the law applicable thereto and that the nature of the allegation

made in the complaint and the evidence both oral and documentary available were taken into consideration.

25. In paragraph 27 of its pronouncement in ***Ravindranatha Bajpe*** (supra), it had been held by the Supreme Court that the role played by each of the accused in the respective capacity is *sine qua non* for initiating criminal proceeding against them. In the instant case it is the specific provision in the report of the investigating authority that because of the multiple people who may have been involved in carrying forward the work in question, it is indeterminable for the investigating authority to place specific accusations against the accused writ petitioner. From such point of view by following the proposition laid down in paragraphs 26 and 27 of the judgment in ***Ravindranatha Bajpe*** (supra) also we are of the view that a mere provision by the learned Special Judge that the Court is of the view that there is sufficient ground to proceed and take notice of the accusations against the writ petitioner accused would be insufficient under the law to take cognizance in the matter.

26. In paragraph 26 of its pronouncement in ***Ravindranatha Bajpe*** (supra) wherein paragraph 28 of ***Pepsi Foods Ltd.*** (supra) had been quoted, there is also a requirement of the Court taking cognizance to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and that it would be sufficient for the complainant to succeed in bringing home the charge to the accused. When we examine the said requirement in paragraph 26 in ***Ravindranatha Bajpe*** (supra) with the materials available in the instant case, the investigation states itself in its report that there is insufficient evidence against anyone under investigation, which again makes it apparent that the requirements of the proposition in paragraph 26 of ***Ravindranatha Bajpe*** (supra) is absent in the present case.

27. From such point of view the order dated 03.05.2019 of the learned Special Judge in SR(PCA) No.3/2019 in ACB P.S. Case No.4/2017 would be unsustainable and accordingly the same is set aside.

28. However, as the order has been set aside on the technical ground, we leave it to the parties to take any further steps in the matter, if advisable, and if available under the law. The reference is answered accordingly and the WP(Crl.) No. 22/2021 stands accordingly disposed of.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant