

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Cril. Petition No. 27 OF 2022

With

MC(Cril. Petn.) No. 23 of 2022

Shri Yengkhom Surchandra Singh
Aged about 71 years, son of
Late Y. Yaima Singh, resident of
Kakching Turel Wangma,
PO & PS- Kakching,
District Kakching, Manipur-795103.

... Petitioner/ Accused

Versus

Shri Mayanglambam Rameshwor Singh
Aged about 53 years, son of
M. Aber Singh, resident of
Makha Lou, Kakching Khullen,
PO & PS- Kakching,
District Kakching, Manipur-795103.

... Respondent/ Complainant

BEFORE

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner:	Mr. N. Jotendro, Sr. Adv. & Mr. Syed Ahmed Murtaza, Advocate
For the Respondents:	Mr. Ajoy Pebam, Advocate
Date of Hearing:	07.10.2023.
Date of Judgment:	05.02.2024

JUDGMENT AND ORDER [CAV]

1. The present petition has been filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure (in short, CrPC) for quashing and setting aside the impugned order dated 04.07.2022 passed in Cril. Misc. Case No. 152 of 2022 [Ref: Cril. (C) Case No. 10 of 2022] by the learned Special Court for MPs/MLAs No. 2, Manipur at Lamphel Court complex and also the entire Cril. (C) Case No. 10 of 2022 now pending before the same Court.
2. The petitioner/accused has also filed Misc. Case (Cril. Petn.) No. 23 of 2022 to suspend/stay the impugned order dated 04.07.2022 passed in Cril. Complaint Case No. 10 of 2022 with further proceeding of the said case pending final disposal of the instant case, ie, Cril. Petition No. 27 of 2022.
3. On 28.07.2022, this Court passed an interim order in Misc. Case (Cril. Petn.) No. 23 of 2022 staying the appearance of the applicant before the trial Court till the next date of hearing and the interim order has been extended from time to time.
4. *The point for determination involved in the present case is whether the Special Court MPs/MLAs has jurisdiction to try offences committed by former/sitting legislature when he/she was not an elected member.*

5. The brief facts pertaining to the filling of the criminal complaint case are as follow :

I. The respondent/complainant filed his nomination paper for the 12th Manipur Legislative Assembly Election before the Returning Officer of 37 – Kakching Assembly Constituency on 9/02/2022 and 10/02/2022.

II. During the scrutiny on 14th February 2022, the petitioner/Accused person No.1 submitted an objection to the nomination paper of the complainant to the 12th State Assembly Election before the Returning Officer of Kakching/Thoubal on the ground of non-disclosure of a pending FIR being FIR No. 14 (1) 2018 of City Police Station in the Affidavit Form- 26 dated 09/02/2022 and 10/02/2022.

III. The said objection was rejected by the Returning Officer of 37- Kakching AC vide Order No. RO/KCG/37/SAE/2022/1 dated 14.02.2022 on the ground that the said objection was not enough for rejection of the candidature of the complainant.

IV. Upon checking with the concerned police station, as the said fact was not in the knowledge of the complainant, it has been

informed that the above said FIR has been registered based on a complaint filed by the Accused person No. 2 i.e., the son of the Accused person No. 1 namely Yengkhom Mayeksana Singh, against unknown persons.

V. Such preliminary information, on the face of it, appears to be suspicious with dubious motive which prompted the complainant to further verify it, which leads to a conclusive answer that a false, fabricated, concocted complaint was filed by the Accused No. 2 and it was manipulatively misused by the petitioner/Accused No. 1 with ulterior motive and nefarious design.

VI. The report of Investigation Officer, after exhaustive inquiry/ investigation, comprises the comment dated 27.02.2022 that it has been found that "on 28.08.2018 the case was re-endorsed by an order of SP/Imphal West vide Memo No. 5/1/SP/IW/2018/608 dated 28.08.2018 and identity of the unknown culprits could not be established.

VII. The complainant submitted that the accused have defamed the complainant with publication of the defamatory statement in various form in oral and written form intending to harm, knowingly

with reason to believe that imputation fabricated and designed by them will harm the reputation of the complainant.

VIII. The accused persons have defamed the name of the complainant in various occasions while carrying out election campaign amongst the general public.

IX. The respondent/complainant also lodged a complaint with the SP Kakching on 01.03.2022 but so far nothing has been initiated.

X. The respondent/complainant filed a Cril. (Complaint) Case No. 10 of 2022 before the learned Special Court for MLA/MP No. 2, Manipur against the accused persons for continuously defaming the Complainant before the public in rem and in personam.

6. After taking cognizance and conducting inquiry under Section 202 CrPC, the learned Special Court MPs/MLAs No. 2 Imphal, Manipur issued summons to an accused person on 12th May, 2022.

7. On 26 May, 2022 the petitioner/accused filed a Cril Misc. Application/Case No. 152 of 2022 before the learned Special Court MPs/MLAs No. 2, Manipur under Section 203 of CrPC praying for rejecting the Cril. (Complaint) Case No. 10 of 2022 on the ground of maintainability.

The ground of maintainability challenged by the Petitioner/accused are

i. The present case cannot be tried in the designated court of Special Court of MP/MLA as none of the parties were MP/MLA at the time of incident.

ii. It is also stated that the complainant did not file list of witnesses, hence the complaint case is also defective.

iii. It is further stated the allegations occurred during election campaign, hence the same should be referred to Chief Election Officer, Manipur and the case is not maintainable before this Special Court.

iv. Mere narrating a story like a story teller does not create cause of action to file the present case, hence the case should be dismissed.

v. It is also stated the complainant failed to state the exact place of occurrence, hence no cause of action is made out. Further, the defendant No. 2 was not present before the Returning Officer, the same can be verified by calling for the video footage.

vi. The present case defeats the purpose of designation of Special Courts for MP/MLA.

8. The learned Special Court MPs/MLAs No. 2, Manipur passed the impugned order dated 04.07. 2022 in Cril. Misc. Case No. 152 of 2022 [Ref: Cril. Misc. (C) No. 10 of 2022] rejecting the misc. application holding that-

"7. Although the complaint case was filed against the said accused persons, after examining the complainant and enquiry u/s 202 CrPC, this Court found sufficient ground for proceedings for offence u/s 500 IPC only against the accused Yengkhom Surchandra and not against his son Yengkhom Mayeksana, hence process was issued only against Shri Yengkhom Surchandra.

The grounds for dismissal are taken up one by one for consideration.

8. Regarding the first ground, i.e jurisdiction of the court, i.e. Special Court MLA/MP, not only the complainant is/was the current MLA at the time of filing the complaint case but the accused Yengkhom Surchandra was the sitting MLA at the time of the incident. Moreover, **the jurisdiction of this court extends not only to the sitting MLA/MP but also to former MLA/MP.**

9. Second ground is regarding non filing of list of witness. As rightly stated by the accused / petitioner, on perusal of the record, it is seen that although a list of documents was filed, a list of witness is not found on the record and it is admitted by the complainant that the same was not filed due to bono fide mistake. Section 204 cr.pc provides process shall not be issued unless the complaint case is accompanied by the list of witnesses but due to oversight, summons was issued to the accused in this case. The issue at this stage is whether on that ground that i.e., non filing of list of witnesses, the case is liable to be dismissed and whether this court has the power to dismiss the case at this stage.

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12. Considering the nature of the case and also the case is at the very initial stage and also apart from rising the ground of non-maintainability due to non-filing of list of witnesses, the accused has not given any ground as to how prejudice can be stated to have been caused due to non filing of the witness list, I find that the defect of non filing of witness list cannot be a ground to dismiss/ reject the case. Moreover, even if the case could be dismissed for such ground, this court will not have such power as process was already issued against the accused, such power would only lie with Appellate/Revisional Court.

13. The third ground is that since the said matter is an election dispute i.e. occurred during the election campaign, the complaint should be made before the concerned Election Forum . The present case is for the commission of offence u/s 500 of IPC, it is not directly related to the election dispute but commission of offence u/s 500 of IPC during election campaign. The model code produced by the petitioner does not show any such provision which oust the jurisdiction of this court to try the offence as alleged. Hence, I do not find this ground is maintainable.

14. The fourth ground raised by the petitioner is vague. The allegations against the accused is that he spread false allegations that the complainant is involved in one FIR case. The case is at initial stage, the allegations made by the complainant is no doubt subject to proof during the course of trial, defense if any, of the accused can be considered in due course of trial at appropriate stage. I find this ground is not maintainable.

15. The fifth ground raised is that specific place of occurrence is not mentioned. On perusal of the petitions it is seen that the complainant has mentioned Kakching as place of occurrence, the allegation against the accused is that he made the defamatory statements on multiple occasions during the election campaign at Kakching. In the circumstances, I find this ground to be flimsy and baseless.

16. The final ground and one which has been strongly asserted by the Ld. Counsel for the petitioner/ accused is that the present case is liable to be dismissed as the case was filed against the two accused persons i.e., Yengkhom Surchandra Singh and his son Yengkhom Mayeksana and since the accused no.2 is deleted from the case by the court, the case cannot be continued against the accused Yengkhom Surchandra in its present form, the complainant should be ask to file fresh case after removing the ccused no.2. It is further stated that even though the accused no.2 is removed from the case, the complainant continues to make allegation against the accused no.2 in its written objection filed in the present Misc case.

17. Regarding the contention that the complainant continues to make allegation against the accused no.2, it may be pointed out that on perusal of the petition it is seen that the present petition is filed by Yengkhom Surchandra and Yengkhom Surchandra jointly although no process was issued against Yengkhom Mayeksana and accordingly he is not a party to the present case. Further, the present proceedings is a criminal proceedings, there is no question of amending the complaint petition and filling fresh petition like in civil case. The present case was filed against two accused persons, however after inquiry, this court found it fit to issue summons only against one accused. The other accused is no longer an accused in the present case, however there is no requirement for the complainant to file a separate fresh case by removing the allegations against the accused no. 2."

9. Being aggrieved, the petitioner/accused No.1 filed this Cril. Petition No. 27 of 2022 before this Court for quashing and setting aside the impugned order dated 04.07.2022 passed in Cril. Misc. Case No. 152 of 2022 by the Special Court MPs/MLAs No. 2, Manipur and the whole proceedings of Cril. (C) Case No. 10 of 2022 as not maintainable.

10. Heard the submission of Mr. N. Jotendro, learned senior counsel assisted by Mr. Syed Murtaza, learned counsel for the petitioner/accused, Mr. Ajoy

Pebam, learned counsel for the respondent/complainant, perused the document on record and relevant law in this regard.

11. This Court has postulated 3 (three) circumstances under which the offences may be committed by Legislatures (both member of Parliament and State Assembly):

- (I) Offence was committed by the individual when he was neither a former nor sitting Legislature;
- (II) Offence committed by a former Legislature;
- (III) Offence committed by a sitting Legislature.

12. Mr. N. Jotendro, learned senior counsel for the petitioner submits that the Special Courts established for conducting trial of offences committed by the former and sitting MPs/MLAs shall have jurisdiction over the offences committed whilst they were sitting MPs/MLAs. Any other category of offences committed prior to becoming an elected member or committed as a former legislature would not fall within the jurisdiction of the Special Courts. Learned senior counsel refers to the judgment of the Andhra Pradesh High Court in the case of **Kolusu Partha Sarathy vs State of Andhra Pradesh: 2021 Legal Eagle (AP) 105: MANU/AP/0528/2021** holding that "*... the Special Court will try the offences committed by both sitting and former MPs and MLAs provided as*

on date of commission of offence, the accused was either a MP or a MLA”.

Accordingly, Andhra Pradesh High Court directed the case to be transferred from the Special Court to its original jurisdictional Court. It is pointed out that the petitioner herein was not a sitting MLA on the date of the alleged commission of offence and hence, the Special Court MPs/MLAs No.2, Manipur will not have jurisdiction to try the complaint filed by the respondent/complainant and the same ought to be tried by the jurisdictional Magistrate. It is prayed that the impugned order be set aside and the entire proceedings of Cril. (C) Case No. 10 of 2022 be quashed.

13. Per Contra, Mr. Ajoy Pebam, learned counsel for the respondent/complainant asserts that for all categories of offences as indicated in Para 11 above, the Special Courts will have jurisdiction to try such cases. It is highlighted that there can be no distinction on the basis of the status of the accused being sitting or former legislatures with regard to the offences committed by them. Learned counsel draws the attention of this Court to the orders passed by Hon’ble Supreme Court for monitoring the criminal cases pending against former and sitting MPs/MLAs in **WP(C) No. 699 of 2016: Ashwini Kumar Upadhyay v. Union of India** and various directions issued from time to time and specially the Orders dated 10.09.2020 and 16.09.2020. Hon’ble Supreme Court passed certain directions to the Chief Justices of all the

High Court of India for framing Action Plan and monitoring such cases involving former and sitting legislatures.

14. It is pointed out that accordingly the Hon'ble Chief Justice, High Court of Manipur prepared as Action Plan dated 24.09.2020 along with comments to the suggestions made by the learned Amicus and submitted the same to the Hon'ble Supreme Court. As per the directions given by the Hon'ble Supreme Court, this Court took up a Suo Motu PIL No. 38 of 2020 to monitor the progress of investigation and trial of criminal cases pending against the former and sitting MPs/MLAs.

15. In compliance of order dated 01.10.2020 of the High Court of Manipur passed in **PIL No. 38/2020 (In re : Monitoring of criminal cases against MPs & MLAs –vs- The State of Manipur and ors)**, the Government of Manipur constituted two Special Courts to conduct the trial of cases against former and sitting MPs/MLAs. The detail of the notification are –

GOVERNMENT OF MANIPUR

SECRETARIAT : LAW & LEGISLATIVE AFFAIRS DEPARTMENT

NOTIFICATION

Imphal, October 13, 2020

No. 5/56/2020-Case/L-(HC): In compliance of Order dated 01.10.2020 of the Hon'ble High Court of Manipur passed in PIL No. 38/2020 (In re : Monitoring of criminal cases against MPs & MLAs –vs- The State of Manipur and ors), the Governor of Manipur is pleased to constitute the two Special Court at column II in the SCHEDULE below **to conduct trial of cases against former and sitting Legislatures (MPs/MLAs)** with presiding Officer / Judge at column III, with the territorial jurisdiction at column IV

and at the place of sitting at column V and to be functional w.e.f. the date at column VI in the SCHEDULE Below:

SCHEDULE

Sl. No	Name of Court	Presiding officer / Judge	Territorial jurisdiction	Place of sitting	Date of functional w.e.f
<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
1.	Spl. Court (MPs/MLAs) No.1, Manipur (Sessions Court level)	Addl. District & Session Judge (FTC), Manipur West	Whole of Manipur	Imphal	13.10.2020
<u>2.</u>	Spl. Court (MPs/MLAs) No. 2 Manipur (Magistrate level)	Chief Judicial Magistrate , Imphal EAST	Whole of Manipur	Imphal	13.10.2020

2. The above Special Court are to hold trial cases as original and on transfer of cases involving former and sitting MPs/MLAs.

(Nungshitombi Athokpam)

Secretary (Law)

Government of Manipur”

16. Referring to the above-mentioned Government Notification dated 13.10.2020, it is submitted by Mr. Ajoy Pebam, learned counsel that the Special Courts were constituted to conduct the trial of all types of cases against former and sitting MPs/MLAs. Therefore, the Special Court MPs/MLAs No.2, Manipur has jurisdiction to conduct the said Cril (Complaint) Case No. 10 of 2022 filed by the respondent herein. It is prayed that the criminal petition be dismissed being devoid of any merit.

17. In the case of **Kolusu Partha Sarathy (supra)**, the Andhra Pradesh High Court has resorted to a very restrictive definition of the words "elected Members of Parliament and Members of the Legislative Assembly" in G.O. Ms.No.26 dated 26.02.2018 issued for constituting Special Courts. It was held that the Special Court would have jurisdiction to try offences by former/sitting legislatures provided that on the date of the offences, they were sitting legislatures. It was further held that Special Courts would not have any jurisdiction for any offences committed by former and sitting MPs/MLAs, when they were not sitting members. In short, the crucial test is that the former and sitting MPs/MLAs should be sitting legislatures at the time of commission of the offence.

18. In a recent case of **Manjinder Singh Sirsa v. State of NCT of Delhi: 2024 SCC Online Del 70** (Order dated 08.01.2024) with similar facts, Delhi High Court held that "22. ... the Special Courts were constituted to try offences alleged against sitting or former MPs/MLAs, and the Hon'ble Apex Court nowhere observed that the Special Courts shall try only those offences where accused was a sitting MP/MLA, at the time of commission of offence". It is further held that the Special Courts shall have jurisdiction over the offences committed by former MPs/MLAs and pending against them. The case of **Kolusu Partha**

Sarathy (supra) was relied before Delhi High Court, but the same was not followed for the reasons given in the judgment.

19. On perusal of the Notification dated 13.10.2020 issued by the Government of Manipur constituting two Special Courts (MPs/MLAs) in Manipur to conduct trials of cases, it is crystal clear that such courts will have jurisdiction over offences "against former and sitting Legislatures (MPs/MLAs)". The Notification does not mention anything to the effect that such courts will have jurisdiction over the cases against former and sitting Legislatures provided they were sitting MPs/MLAs at the time of the commission of the offences. Para 2 of the Notification dated 13.10.2020 stipulates that the Special Courts will have jurisdiction as original and transferred courts.

20. It may be noted that the Special Courts established to try cases of former and sitting legislatures as directed by Hon'ble Supreme Court are offender-specific and the object behind establishment of such Special Courts through out the country is for expediting the cases against the former and sitting legislatures. With due respect, the view of Andhra Pradesh High Court in the case of **Kolusu Partha Sarathy (supra)** seems to be very restrictive and the decision of Delhi High Court in the case of **Manjinder Singh Sirsa (supra)** is in tune with the directions of the Hon'ble Apex Court in the case of **Ashwini Kumar Upadhyay (supra)**.

21. Considering the propositions of law as discussed above, this Court is of the view that the Special Courts (MPs/MLAs), Manipur will have jurisdiction to try cases against former and sitting Legislatures (MPs/MLAs), notwithstanding the fact that such offences were committed prior to becoming a legislature; or as a sitting legislature; or after demitting office as a legislature. Accordingly, the points raised in Para 11 are answered in affirmative, meaning thereby that the Special Courts have jurisdiction to try all cases against the former and sitting legislatures irrespective of their status at the time of commission of such offences.

22. Let us apply the principles arrived at Para 21 to the facts of the present case. Admittedly, the petitioner/accused was a former MLA at the time of the commission of the alleged offence. In terms of the decision of Delhi High Court in the case of **Manjinder Singh Sirsa (supra)** and the principles of law in this regard as arrived by this Court in Para 21, it is evident that the Special Court (MPs/MLAs) No.2, Manipur is competent to try the case being Cril. (C) Case No. 10 of 2022 filed by the respondent/complainant against the petitioner/accused for the offence committed after he ceased to be an MLA.

23. Accordingly, the Cril. Petn. No. 27 of 2022 and MC(Cril.Petn.) No. 23 of 2022 are dismissed being devoid of any merit. Interim order dated 28.07.2022 is vacated. Pending applications, if any, are disposed of. No cost.

24. The Special Court (MPs/MLAs) No.2, Manipur is directed to proceed with the trial of the case, ie, Cril. (C) Case No. 10 of 2022 as per law. Send a copy of this order to the trial Court for information.

JUDGE

FR/NFR

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