

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL PETN No. 68 of 2024

Md. Akter Khan

.... *Petitioner*

- *Versus* -

State of Manipur & Anr.

....*Respondents*

**B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

18.10.2024

Heard Mr. LN. Ngamba, learned counsel appearing for the petitioner and Mr. Y. Ashang, learned senior counsel appearing the respondents.

As agreed upon by the learned counsels appearing for both parties, this matter is taken up for disposal today itself.

The present petition has been filed by the petitioner with the following prayer:

- (i) To admit the present petition;
- (ii) To issue notice to the respondents;
- (iii) To call for the case record of S.T. Case No. 9 of 2016 (FIR No. 93(9)2007 City P.S. u/s 302 IPC from the Court of Session Judge, Imphal West, Manipur;
- (iv) To set aside the order dated 25.07.2024 passed by the Court of Session Judge, Imphal West in Cril. Misc. Case No. 8 of 2020 (Ref.: S.T. Case No. 9 of 2016

arising out of FIR No. 93(9)2007 City P.S. u/s 302 IPC
i.e. Annexure – A/3;

- (v) To pass necessary order thereby directing the O.C. City P.S. for further and proper investigation of the above referred FIR No. 93(9)2007 City P.S. u/s 302 IPC; and to pass any other order or issue any other direction;
- (vi) Further proceeding of S.T. Case No. 9 of 2016 (arising out of FIR No. 93(9)2007 City P.S. u/s 302 IPC of the Court of Session Judge, Imphal West, Manipur be stayed pending disposal of this petition.

The petitioner filed the same application on the same grounds before the Ld. Trial Court and the Ld. Trial Court after hearing the parties rejected the prayer made by the accused/petitioner and the operative portion of the said order is extracted herein below:

"8. The only ground furnished by petitioner for praying further investigation of the case is that the petitioner acted in self defence and the investigation is not fair. It is not the case that any new development during the pendency of the case has taken place to warrant further investigation.

In other words, the petitioner has a different version of what really happened and how the victim sustained the injury. Since the investigation has not arrived at the same version as the petitioner's the investigation is unfair according to him. It is not explained in this application what precisely the petitioner expect the I.O. to do if further investigation is directed, assuming such a direction is permissible in law. The question was put to Ld. Counsel of petitioner during hearing as to how exactly the I.O. is supposed to proceed if further investigation is order. Ld. Counsel has not submitted any specific suggestion in this regard. Neither has he been able to point out any flaw in the procedure of the investigation or lapses such as non-examination of key witnesses etc."

It is an admitted position of fact that -

- (i) The crime was committed and FIR was registered in the year 2007 under FIR No. 93(9) 2007 City PS u/s 302 IPC.
- (ii) Thereafter, the I.O. after thorough investigation submitted charge sheet in the year 2015 before the Ld. JMFC, Imphal West – I and registered it as Cril.(P) Case No. 11 of 2015.
- (iii) Thereafter, the Ld. JMFC, Imphal West – I committed the said case to the Ld. Session Judge, Imphal West for trial and the same was registered as S.T. Case No. 9 of 2016.
- (iv) The Ld. Session Judge, Imphal West after framing a charge against the accused/petitioner started trial of the case and till now the Ld. Sessions Judge, Imphal West examined 9 (nine) witnesses.
- (v) The accused/petitioner filed Misc. Case No. 8 of 2020 before the Court of Sessions Judge, Imphal West for conducting further and proper investigation. The said application was disposed of by the Ld. Sessions Judge, Imphal West on 25.07.2024 stating as devoid of merit.

Hence, the present application for setting aside of the impugned order under the following grounds :

- (i) The impugned order dated 25.07.2024 passed by the Court of Sessions Judge, Imphal West in Cril. Misc. Case No. 8 of 2020 (Ref.: S.T. Case No. 9 of 2016) is bad in the eye of law inasmuch as it was passed illegally, erroneously, arbitrarily and irregularly.

- (ii) The impugned order of the Court below was passed in exercise of its jurisdiction illegally thereby adopting an illegal procedure which is unknown to law.
- (iii) The Court below has failed to consider the cardinal principle of law while passing the said order by applying judicial mind to the case for the further and proper investigation of the said FIR case by forwarding the same to the investigating authority.
- (iv) The said order of Court below passed in the case, caused probable miscarriage of justice and hence the same is liable to set aside.
- (v) The impugned order is not a speaking order inasmuch as the Court below has arrived his finding illegally on the points of law, facts and circumstances of case. Hence, the said order is liable to be set aside.
- (vi) The Court below had failed to take into consideration while submitting the final report of investigation by the State police that there is defect/mistake in the investigation is to be set aside.
- (vii) The impugned order passed by the Court below is in violation of right of the accused guaranteed by the law. Hence the said order is to be set aside.
- (viii) The impugned order of Court below is not sustainable in the eye of law and as such there are good grounds for allowing the present petition.

Perused the present petition with the documents annexed and the impugned order.

In the present petition, the petitioner mentioned that the concerned authority had failed to conduct the FIR case thoroughly as such, it is required to investigate in such a manner as:

- (i) Whether is there any intention/mens rea of the accused, Akter Khan for murder of the victim, Md. Akhter Huissain?
- (ii) Whether is there any plan of the accused person, Akhter Khan for causing the incident of crime?
- (iii) Whether is the accused person and the victim was known each other prior to the incident of crime?
- (iv) Is caused of injury of the victim was accidental and/or on account of personal defence of the accused person due to assaulted on him?

On perusal of charge copies which is annexed as Annexure – A/1, this Court could not find fault committed by the I.O. of the case. In the charge sheet, it was clearly mentioned that there was an argument between the accused and deceased about the breaking of bus timing and of picking passengers; as a result of which, the deceased received injury on the head and it is also seen that it was elaborately mentioned about the arguments between the deceased and accused and the injury sustained by the accused as stabbed by the accused by using iron tool. All the connected papers and materials were well placed/explained and put on record in the charge sheet.

On further perusal of the impugned order of the Ld. Sessions Judge, this Court could not figure out committing jurisdiction illegally and adopting illegal procedure and failing of the Ld. Sessions Judge to consider the cardinal principal of law while passing the impugned order.

Apart from the above observation, this Court is of the view that the grounds taken therein by the accused/petitioner is not reasonable enough to allow his relief sought for. As the grounds raised herein can be cured by active participation in the trial; for example – cross examination of the witnesses and recalling the witnesses for further cross examination by the accused/petitioner before the Ld. Trial Court.

The reliances made by the accused/petitioner in support of his case are not applicable and does touch upon the question, if further investigation can be directed on request of the accused/petitioner.

In the foregoing, the grounds taken herein in the application as well as the submission made by the learned counsel for the petitioner lack merit to allow his application.

In the facts and circumstances of the case, the present petition is dismissed and disposed of.

JUDGE

Bipin