



Serial No.09
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn.No. 106 of 2023

Date of Hearing : 03.12.2024

Date of Decision: 03.12.2024

Shri. Nagen Chandra Boro
S/o Late Mislum Ram Boro
R/o Fatashil ambari,
Brindaban path, Pin-781025
P.S- FatashilAmbari, Guwahati-
781025, Assam.

Vs. 1.State of Meghalaya represented
by the Secretary, Government of
Meghalaya, Home (Police)
Department, East Khasi Hills
District, Meghalaya.

2. The Executive Engineer,
Guwahati Central Division,
Central Public Works Department
C.P.W.D, Mamunimaidam,
Guwahati -781021, Assam.

3. The Assistant Engineer, Tura
Central Sub-Division 1, Central
Public Works Department CPWD,
Tura, Meghalaya.

4. The Area General Manager
(Civil) Food Corporation of
India (FCI), Lumjingshai Rd,
Mawlai Nongmali, Shillong,
793008, Meghalaya.

5. The Manager, Food Corporation
of India (FCI), West Garo Hills,
Tura, Meghalaya.



6. The Deputy Commissioner,
West Garo Hills, NH51, Akonggre,
Tura, 794001, Meghalaya.

7. Dr.(Mrs) Elsie Mathew N.Sangma
D/o Mrs. Regina N. Sangma,
R/o Nazing Bazar, West Garo Hills,
Tura, 794001, Meghalaya.

::::PETITIONER.

::::RESPONDENTS.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. M. Smith, Adv.

For the Respondent(s) : Mr. S. A. Sheikh, GA. (R: 1 & 6).
Dr. N. Mozika, Sr. Adv. with
Ms. L.M.D. Marak, Adv.(R: 2 & 3)
Mr. M. K. Das, Adv. (R: 7).
None for (R: 4 & 5).

(JUDGMENT & ORDER)

This is an application under Section 482 Cr.P.C. seeking quashing of FIR dated 21-07-2020 lodged by the respondent No. 7 before the Officer-in-Charge of New Tura Police Station registered as Tura PS case No. 99 (07) 2020 (G.R. No. 146 of 2020) under Section 290/206/427/432/406/34 IPC and the charge-sheet No. 43/2023 under Section 290/206/427/432/406 dated 25-09-2023 which was submitted



during the course of the pendency of this petition and brought into record by an additional affidavit dated 29-04-2024.

1. Heard Mr. M. Smith, learned Counsel appearing for the petitioner also Mr. S. A. Sheikh, learned GA appearing for the State-respondents No. 1 & 6, Dr. N. Mozika, learned Senior Counsel assisted by Ms. L.M.D. Marak, learned Counsel appearing for the respondents No. 2 & 3 and Mr. M. K. Das, learned Counsel appearing for the respondent No.7. None appeared for the respondents No.4 & 5.

2. The fact leading to the filing of the present case is that an FIR dated 21-07-2020 was lodged before the Officer-in-Charge of New Tura Police Station, Tura by the respondent No.7 alleging that a large-scale construction work was being carried out in the rear portion of the Food Corporation of India (FCI) Godown in Tura, involving mass mud filling along with inferior construction of RCC retaining boundary wall carried out by the Contractor, Engineer, Supervisor and the concerned Manager of FCI under the protection of the implementing agency just above the land of the respondent No.7 without any water outlet resulting in the direct flow of rain water along with mud, sludge and filth into her compound causing huge loss and damages to her property. On the basis of the said FIR, the Tura PS case No. 99 (07) 2020 (G.R. No. 146 of 2020) under Section 290/206/427/432/406/34 IPC was registered and the matter was investigated into. The petitioner filed this instant criminal petition before this Court on 21-09-2023 seeking quashing of the aforesaid FIR and the police case, however, a charge-sheet in the matter was submitted on 25-09-2023 by the investigating authority which was



brought into record of this Court by the petitioner vide additional affidavit dated 29-04-2024.

3. Mr. M. Smith, learned Counsel for the petitioner submitted that the petitioner was neither the Engineer nor the Contractor appointed by the respondent No.2 to execute any work on behalf of the department. He submitted that the work for construction of storage Godown of 2500 MT capacity for FCI at Tura was allotted to one M/s. Shrolenson Marbaniang, a registered Class I contractor firm, by the respondent No.2. The said firm had authorised the petitioner, who was an employee of the firm, to represent the firm relating to any kind of correspondence with the department in executing the said work. The learned Counsel submitted that during the pendency of the said work, due to incessant rainfall in the region, the retaining wall of the FCI Godown complex was gradually sliding for which the respondent No.7 had raised an alarm and the issue was taken up by the FCI authorities. An emergent meeting was held on 13-07-2019 at the FCI Depot, Tura wherein several recommendations were made for taking preventive measures in order to avoid severe calamities. The learned Counsel further submitted that an independent Technical Committee, which was constituted to look after and assess the situation, vide its detailed report dated 20-04-2020 had clearly stated that the sliding of the wall was caused due to incessant rainfall and not because of fault or wrongdoing of any person. The learned Counsel submitted that inspite of several difficulties the allotted work was completed by taking into consideration the several rectifications and safety measures recommended by the concerned authorities from time to time. The learned Counsel submitted that the construction work was completed on 12-02-2022 to the satisfaction of



the concerned authority and payment for all the bills for the work has been cleared by the department.

4. It is further submitted by the learned Counsel for the petitioner that there is no allegation of commission of any technical fault or illegal omission on the part of the petitioner in the construction work resulting in sliding of the retaining wall and as no case was made out in the FIR, a final report No.240/22 dated 13-10-2022 was submitted by the investigating authority before the Court of the Chief Judicial Magistrate, Tura seeking discharge of one Shri. Jiten Gogai, who was an accused in Tura PS Case No. 99 (07) 2020. However, the respondent No.7 had filed a protest petition against the said final report which was accepted by the Court and by order dated 21-03-2023, a direction was made to the Officer-in-Charge, Tura PS, to conduct further investigation in the case. The learned Counsel submitted that it is only because of the order dated 21-03-2023, the investigating officer has submitted the impugned charge-sheet No.43 of 2022 dated 25-09-2023 against the petitioner without making any specific allegation against the petitioner. The learned Counsel submitted that even if the allegations made in the FIR and the charge-sheet are accepted, no case is made out against the petitioner and, hence, the petitioner cannot be made to face the trial. He submitted that it would be an abuse of process of law if any trial is allowed to proceed against the petitioner on the basis of the impugned FIR and the charge-sheet and prayed for quashing of the entire proceeding in connection with the Tura PS Case No. 99 (07) 2020.

5. Mr. S. A. Sheikh, learned GA appearing for the State-respondents No. 1 & 6, in his response, has drawn attention of this Court to the charge-sheet and submitted that the petitioner has admitted to have taken



care and supervised all the works of construction of storage Godown of 2500MT capacity of FCI, Tura. However, the learned GA has fairly submitted that he has nothing more to add to what has been stated in the charge-sheet.

6. Dr. N. Mozika, learned Senior Counsel for the respondents No. 2 & 3 submitted that the contents of the FIR or the charge-sheet do not make out a case for criminal prosecution. He submitted that the allegations made by the respondent No.7, if accepted, may constitute a case for seeking remedy under law of torts, but no criminal offence is disclosed in the present case.

7. Mr. M. K. Das, learned Counsel appearing for the respondent No.7 has vehemently opposed the submission made on behalf of the petitioner and submitted that a case for criminal proceeding against the petitioner has been clearly made out in the FIR and the charge-sheet. The learned Counsel submitted that the allotment of the work for construction of FCI Godown was made by the concerned department in the year 2012 and since the year 2015 the respondent No.7 has raised her objection against the construction work on the ground of public nuisance, apprehension of danger and damages. The learned Counsel submitted that on 20-03-2015 and 12-07-2019, complaints were filed at the police station pertaining to the mode and manner of the construction. The then Deputy Commissioner took cognizance of the matter and by letter dated 31-03-2015 had asked the contractor to sign a social agreement with the complainant to take measures that rights of citizens are not affected. He submitted that in spite of the said letter, the construction work was not stopped and proceeded in a hazardous situation with danger of causing loss of human life and damage to the property of the respondent No.7.



By referring to the letter dated 12-07-2019, he submitted that the issue was taken up again by the Deputy Commissioner who had visited the place and assured to make good all damages and losses caused due to unlawful construction at the FCI Godown, however, nothing was done. The learned Counsel, relying on the averments made in the present petition has submitted that petitioner is responsible for the construction which resulted in danger and caused damage to the property of the respondent No.7. He further submitted that the allegation made in the FIR disclosed the commission of offence under Section 290/206/427/432/406 IPC against all the persons who were responsible for implementing and supervising the construction work. In support of his argument, the learned Counsel has placed reliance on a decision of the Apex Court reported in (2023) 4 SCC 338, *State Versus M. Maridoss and Another (paras 7 & 8)* and submitted that the courts should not thwart any investigation or criminal proceeding at the initial stage and no interference should be made in judicial process, save in exceptional cases, where non-interference would result in miscarriage of justice. He contended that in the present matter, the FIR disclosed commission of cognizable offence and the High Court is not required to conduct the mini trial to determine merits of the allegation. According to the learned counsel, the construction is yet to be concluded and debris are still lying in the compound of the respondent No.7. The learned counsel submitted that no case has been made out by the petitioner calling for any interference at this stage and the criminal petition is liable to be dismissed.

8. The submissions made by the rival parties are duly noted by this Court and also perused the materials on record.



9. There is no dispute to the fact that the petitioner was neither the appointed contractor nor the supervising authority of the construction of the storage Godown of 2500MT capacity for FCI, Tura. The contract for construction of the said storage Godown was awarded to one Shri Shrolenson Marbaniang who has not been made an accused in the matter. The FIR dated 21-07-2020 also did not name the petitioner and no specific allegation has been levelled against him. It appears from the materials on record that the work was allotted in the year 2012 and the same proceeded for a considerable period of time despite the objections raised by the respondent No.7. There also exist two communications dated 31-03-2015 and 19-07-2020, which are made parts of the FIR, by the Deputy Commissioner concerning the boundary wall of the FCI Godown, Tura, calling for early necessary action in the matter. Despite the aforesaid communications, there is nothing on record to show that the work of construction of the FCI Godown was ever sought to be stopped by issuing necessary order to the concerned authority including the petitioner. It is also not the case of the respondent No.7 that the petitioner had carried on with the construction work in violation of the prescribed norms and safety measures issued from time to time by the Deputy Commissioner or any other administrative authority.

10. Perusal of materials on record reveals that a final report No. 240/22 dated 13-10-2022 was filed by the Investigating Officer (IO) in connection with the Tura PS Case No. 99 (07) 2020 with a prayer for discharging one Shri. Jiten Gogai, who was an accused in the matter. The respondent No.7 had filed a protest petition against the final report submitted by the IO and the learned Chief Judicial Magistrate vide order dated 21-03-2023 did not accept the final report and directed the Officer-



in-Charge, Tura PS to conduct further investigation in the matter. It is only after the said order, the charge-sheet No.43/2023 dated 25-09-2023 was submitted by making the petitioner the sole-accused in the case. There is no information available as to what happened to Shri. Jiten Gogai, who was the original accused in the matter. The materials on record does not reveal the reason for replacing Shri. Jiten Gogai by the petitioner as the accused in the case.

11. The charge-sheet No.43/2023 dated 25-09-2023 does not speak of commission of any offence by the petitioner. The relevant part of the charge-sheet is extracted below: -

“During further course of investigation Shri. Nagen Chandra Boro, s/o Lt. Mislul Ram Boro, permanent residence of Brindaban Path, P.O/P.S: Fatasil Ambari, Kamrup District, Assam appear at the Araimile P.S on behalf of contractor Shri. Shrolenson Marbaniang on being granted interim bail from the Hon’ble Court of Special Judge, West Garo Hills Tura. He was arrested and released on bail bond on being produced of 2 (two) sureties as per the order passed by the Court of Special Judge, Tura. He was examined and revealed that, he has taken care and supervised all the works, construction of storage Godown of 2500 MT capacity for FCI, Tura Nazing Bazar including the construction of boundary retaining wall. Work order for the construction was received on December 2012 and the construction of works was started on next year 2013. In between from 2 to 3 years have been gap and construction awaited due to non- released of funds. The construction have been completed and all the pending bills have been already released on last year 2022. Further, he produces the authorization letter for work construction of storage Godown of 2500 MT capacity for FCI, Tura location, Meghalaya to present him and act on behalf of proprietor M/s Shrolenson Marbaniang relating to any kinds of correspondence with the department, receiving instruction from department, collection and receiving of letters, bills



and cheques from the department addressing to the Executive Engineer, Guwahati Central Division CPWD, Bamunimaidan, Guwahati, Assam.”

The above part of the charge-sheet does not project any wrongdoings or commission of offense on the part of the petitioner. Moreover, in the entire charge-sheet, there is no details of any damage caused to the property of the respondent No.7.

12. It is also important to notice that although the respondent No.7 has alleged damage and loss to her property caused by the construction work of the Godown of FCI right from the year 2015 and an FIR to that effect was lodged on 21-07-2020, it is clear from the materials on record that the construction work for the Godown proceeded without any hindrance from any authority including the investigating authority and was completed on 12-02-2022. The progress of the construction work and its completion even after the filing of the impugned FIR by the respondent No.7 without any interference from any quarter would undoubtedly indicate that no criminal offence was committed by the petitioner.

13. The case law cited by the learned Counsel for the respondent No.7 was in relation to an FIR which was lodged on 09-12-2022, the quashing petition was filed on the very next date on 10-12-2021 and the order of quashing of the proceeding was passed within four days i.e. on 14-12-2021. It is in the above situation; the Hon'ble Apex Court has held that quashing of the proceeding without giving any reasonable time to the investigating agency to investigate the allegation in the FIR was not proper. The situation in the present case is totally different as the investigation has been completed. The decision, as such, is not applicable in the facts and situation of the present case.



14. In view of the discussions made above, the present criminal petition succeeds. The impugned FIR dated 21-07-2020 and the charge-sheet No. 43/2023 in Tura PS Case No. 99 (07) 2020 (G.R. No. 146 of 2020) under Section 290/206/427/432/406/34 IPC are set aside and quashed.

JUDGE

Meghalaya
03.12.2024
"Biswarup-PS"