

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLON

Crl.Petn. No. 29 of 2018 with
Crl.Petn. No. 31 of 2018

Date of Decision: 24.05.2024

Crl.Petn. No. 29 of 2018

Dr. Subhasish Das Gupta,
S/o (L) Mrinal Kanti Das Gupta
R/o C/o "PANORAMA",
Upper Laban, Shillong-793004,
East Khasi Hills District, Meghalaya

::::: **Petitioner(s)**

-Vs-

The Superintendent of Central Bureau of
Investigation, (ACB), Shillong

::::: **Respondent(s)**

Crl.Petn. No. 31 of 2018

Shri. Dhruba Sharma,
Son of (L) B.P. Sharma,

Permanent resident of C/o Shri. Kamal
Sharma, A-8/224, Shantigraham, Housing
Complex, Jayanagar, P.O/P.S Khanapara
Guwahati-22, Assam

Presently residing at House No. 43,
Shantinilaya, Sir-MV layout, Kodgihalli,
Bangalore-560097

::::: **Petitioner(s)**

-Vs-

The Superintendent of Central Bureau of
Investigation, (ACB), Shillong

::::: **Respondent(s)**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.Ch. Gautam, Adv. with
Ms. G.C. Marboh, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

COMMON JUDGMENT

1. These two petitions preferred under Section 482 Cr.P.C. refers to the proceedings in CBI Case No. 4/2015 under Sections 120-B/420/468/471 IPC read with Section 13(2) of the Prevention of Corruption Act, 1988 pending before the Court of Special Judge, CBI at Shillong.

2. Since the subject matter relates to allegations of illegal and fraudulent financial transactions involving a number of accused persons, the petitioner in Crl.Petn. No. 29 of 2018 as well as the petitioner in Crl.Petn. No. 31 of 2018 also being impleaded as accused persons

therein, this Court deems it proper to deal with the two petitions and to pass a common judgment herein.

3. The background history of the case emanates from a complaint dated 05.04.2013 filed by one Shri Ratul Rabha who is said to represent an NGO “Nature People for Protection of Forest and Wildlife”, Baghmara, South Garo Hills, Meghalaya before the Commissioner, Central Vigilance Commission, Government of India, wherein it was alleged that there is presence of nepotism, manipulation and corruption in the Ministry of Environment and Forest, Govt. of India’s programme at the Regional Centre, National Afforestation and Eco-Development Board (NAEB), Shillong.

4. Records would show that a Regional Centre of the National Afforestation and Eco-Development Board (NAEB), Shillong, was set up at the North Eastern Hill University (NEHU) with jurisdiction over the entire North Eastern Region. In this regard, a Memorandum of Understanding (MoU) was signed by the relevant authorities for a period of 5 years for such Centre to function.

5. The Centre is to carry out related Projects for which, during the period w.e.f. 01.04.2012 to 31.03.2017, Prof. Brajesh Kumar Tiwari

was the Coordinator with Dr. S.S. Chaturvedi and Dr. S.K. Jha as core members of the said Regional Centre.

6. The petitioner in CrI.Petn. No. 29 of 2018 was appointed as Research Officer by the Coordinator of Naib vide appointment order dated 28.06.2012.

7. The petitioner in CrI.Petn. No. 31 of 2018 was also appointed as Research Officer of NAEB, NEHU, Shillong vide appointment order dated 17.09.2011.

8. The Central Vigilance Commission on receipt of the said complaint (supra) had directed the Chief Vigilance Officer, Ministry of Environment and Forests (MoEF) to furnish a factual report on such complaint. In this manner, from one authority to the other, finally the Vice Chancellor, NEHU who is also the Chairman of the Advisory Management Committee (AMC) of the said Centre on receipt of related request, had endorsed the matter to the Pro-Vice Chancellor and Chief Vigilance Officer, NEHU to inquire into the matter and to submit his report.

9. A preliminary inquiry was conducted by the Central Bureau of Investigation (CBI) based on alleged information received from

reliable source that some unknown officers of the Regional Centre NAEB, NEHU, Shillong in collusion with unknown others, had committed gross misconduct by unauthorizedly appointing as many as 5(five) Research Officers/Research Fellows and 5(five) supporting staffs of the said Regional Centre on regular payment of monthly remuneration in violation of conditions laid down in the MoU (supra). There are also allegations of non-implementation of works as per the sanctioned amount and the like.

10. On the basis of the said preliminary enquiry, a regular First Information Report (FIR) being No. RC SHG 2015A 0003 dated 28.10.2015 was lodged and on inquiry, the following were found to be suspected to have committed the offence under Sections 120-B/420/468/471 IPC read with Section 13(2) of the Prevention of Corruption Act, 1988: -

- i) Prof. Brajesh Kumar Tiwari, Co-Ordinator (A-1);
- ii) Dr. Shiva Shankar Chaturvedi, (A-2), Core Group Member;
- iii) Dr. Sanjeeva Kumar Jha (A-3) Core Group Member;

- iv) Dr. Dhruva Sharma (A-4), the then Research Officer Regional Centre NAEB, NEHU, Shillong (private person);
- v) Dr. Subhasish Das Gupta (A-5) the then Research Officer Regional Centre NAEB, NEHU, Shillong (private person);
- vi) Shri Niyanta Purkayastha (A-6) Administrative Officer, Regional Centre NAEB, NEHU, Shillong (private person) and unknown others.

11. On completion of investigation, a final report was placed before the Special Court under the PC Act with the case being registered as CBI Case No. 4 of 2015. In course of proceedings, on 25.09.2018, charges under 120-B/420/468/471 IPC read with Section 13(2) of the Prevention of Corruption Act, 1988 have been framed against four of the accused persons named in the said report, the petitioners also being included as such accused persons. Hence, these petitions.

12. Ms. G.C. Marboh, learned counsel for the petitioners has submitted that the stand of the petitioners is twofold, firstly, that the respondent/CBI authority while taking up the investigation into the allegations made against the petitioners amongst others, had given a go by to the provisions of the CBI Manual by not following what is stipulated in Chapter 8 Clause 21 which provides that no action should

be taken on anonymous and pseudonymous complaints, that is, when the identity of the complainant is not known.

13. From the records, it is evident that the complainant who has filed the said complaint on behalf of the said NGO could not be found and therefore, his statement was not taken down by the Investigating Officer. This fact could be ascertained from the communication being No. DSB(SGH)/NGO-1/2012-14/1419 dated 01.12.2014 (Annexure-1 of the petition) issued by the Superintendent of Police, DSB, South Garo Hills addressed to the Deputy Commissioner, South Garo Hills, Baghmara who, when called upon to verify the existence of the said NGO which goes by the name of “Nature People for Protection of Forest and Wildlife”, he has reported that there is no such NGO which goes by such name and also that Shri Ratul Rabha, the alleged complainant could not be traced out.

14. While referring to the contents of the affidavit filed by the respondent/CBI, the learned counsel has submitted that at para 14 and 15 of the same, the CBI has made an averment that the appointment of the petitioner is illegal as he was unauthorizedly appointed by the Regional Centre, NEHU on payment of monthly remuneration without the

knowledge and approval of the Ministry of Environment & Forest, Government of India in clear violation of the MOU(supra), while on the other hand, it was maintained that the petitioner is a public servant which is a contrary stand taken by the respondent/CBI, the same cannot be accepted, further submits the learned counsel.

15. The learned counsel has also submitted that in the affidavit filed by the respondent/CBI, a statement has been made that the registration of the FIR was on the basis of source oral information, however, the contents of such oral source information has not been reduced in writing as is required in terms of Chapter-8.27 of the CBI Manual.

16. It is also the submission of the learned counsel that it is a fact that the petitioners have been appointed as Research Officers respectively, under the Co-Ordinator of the NAEB on a consolidated pay, therefore, they could not be classed as public servants as defined under the provisions of the Prevention of Corruption Act. In fact, even in the Charge Sheet, the petitioners have been mentioned as 'Private Person'.

17. In support of the petitioners' case, the learned counsel has

referred to the case of Vineet Narian & Ors v. Union of India & Anr, (1998) 1 SCC 226, para 58(12) which reads as follows:

“58(12). The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.”

18. It is therefore prayed that the charges framed by the learned Trial Court on 25.09.2018, inter alia, against the petitioners herein, in fact, that the entire proceedings in the said CBI Case No. 4 of 2015 be set aside and quashed.

19. Dr. N. Mozika, learned DSGI appearing for the respondent/CBI in his response has submitted that the petitioners have approached this Court invoking the inherent power under Section 482 Cr.P.C.

20. On the contention of the petitioners that the FIR and the subsequent investigation launched, was on the basis of a pseudonymous complaint, the learned DSGI has submitted that the same is not a fact as the FIR was registered on 28.10.2015 based on the findings of the

Preliminary Enquiry No. PESHG2015A0002 registered by the CBI, ACB, Shillong Branch on 26.02.2015, wherein it was found that the accused persons, including the petitioners herein have committed offence attracting the provisions of Sections 120-B/420/468/471 IPC read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, such preliminary enquiry being initiated on the basis of reliable source information and not based on the so called pseudonymous complaint.

21. The learned DSGI has reiterated that a perusal of the charge sheet, would show that the FIR has been lodged based on information received from reliable source, wherein it was alleged that unknown officers of the Regional Centre, NAEB, NEHU, Shillong in collusion with unknown others had committed gross misconduct by appointment of 5(five) Research Officers and 5(five) supporting staffs of the said centre on a monthly remuneration of ₹ 1,75,500/- (Rupees one lakh seventy five thousand five hundred) only in clear violation of the conditions laid down in the Memorandum of Understanding (MoU).

22. On a preliminary enquiry being conducted, and on the basis of the findings on such enquiry, a Regular Case (FIR) was duly

registered. The FIR was not registered on the basis of the said pseudonymous complaint, the same said to have been made on 05.04.2013 while the Preliminary Enquiry was launched in the month of January, 2015. Therefore, it could not be that a preliminary enquiry be initiated after more than one year of the complaint. The fact is, the FIR was filed in the year 2015 based on such source information. The reference of the petitioners to the procedure at para 8.5, 8.6 and 8.21 of the CBI Manual to be followed in the case of pseudonymous complaint has no relevancy in this case, submits the learned DSGI.

23. Another limb of argument advanced by the learned DSGI is that the petitioners, as has been revealed from the records, have been appointed as Research Officers by the Co-Ordinator, Regional Centre, NAEB, NEHU, Dr. Subhasish Das Gupta on 28.06.2012 and Dr. Dhruba Sharma on 17.09.2011, albeit, on contractual basis, however, their appointment as Research Officers respectively, at the relevant point of time would qualify them to be public servants within the meaning of Section 2(c)(i) of the PC Act, 1988.

24. In course of investigation, the Investigating Officer based on evidence both oral and documentary have been able to find out that the

petitioner Dr. Subhasish Das Gupta by abuse of his official position as a Research Officer had misappropriated funds amounting to ₹ 2,58,798/- (Rupees two lakhs fifty-eight thousand seven hundred ninety-eight) only. Similarly, petitioner Dr. Dhruva Sharma had misappropriated funds amounting to ₹ 1,85,495/- (Rupees one lakh eighty five thousand four hundred ninety five) only.

25. Finally, the learned DSGI has submitted that the charges against the petitioners under the said provisions of the IPC and the PC Act have been framed by the learned Trial Court on 25.09.2018 and in the meantime, in course of proceedings, the stage of the case is for recording of the evidence of the prosecution witnesses, therefore, at this point of time, for the petitioners to come before this Court with a prayer for quashing of the FIR, the same cannot be allowed as that would in turn amount to an abuse of the process of court.

26. On the first challenge of the petitioners, that is, that the respondent/CBI has registered the FIR only on the basis of a pseudonymous complaint which runs contrary to the provision of the related CBI Manual at Chapter 8.21 wherein it is clearly stated that “*No action shall be taken on anonymous and pseudonymous complaints...*”,

the obvious reference was made to the alleged complaint made by the Program Leader, Nature People for Protection of Forest and Wildlife, dated 05.04.2013, addressed to the Commissioner, Central Vigilance Commission. It is a fact that the authorities have failed to trace out the said complainant and accordingly, the said complaint can be treated as a pseudonymous complaint and as such, could not be taken as the basis of launching of investigation.

27. However, what the petitioners failed to notice is that the CBI has maintained that the preliminary enquiry conducted and the subsequent registration of a regular case was not done so on the basis of such alleged pseudonymous complaint, but the whole operation was carried out on the basis of source information, which is allowed under the relevant provisions of the CBI Manual.

28. Again, it is noticed that even though, the said pseudonymous complaint cannot be taken into account to proceed for investigation, on perusal of the said provision of Chapter 8.21(supra), reproduced herein for ready reference, it is seen that the investigating agency can utilize the information contained in such pseudonymous complaint as intelligence output. The said provision reads as follows:

“8.21. No action shall be taken on anonymous and pseudonymous complaints. Such complaints need not even be sent to the Ministry/Department/Public Sector undertaking concerned by CBI. They should be filed after entry in the complaint register. If there is any doubt about a signed or pseudonymous complaint and enquiry may be held to the limited extent to check whether the signature is genuine and whether the signatory admits having sent the complaint and stands by it. On such a check, if it is found that the signature is genuine, further action should be taken as on the basis of a genuine/signed complaint. Otherwise, no further action need be taken. However, information contained in such complaints may be used as intelligence input for identification public servants indulging in corrupt activities as well as in finding areas of corruption in various departments.”

29. A further perusal of the charge sheet would also reveal that there are enough materials, especially documentary evidence to implicate the petitioners to the offence alleged against them, which have to be proved in course of trial and as such, it cannot be said that the FIR or the findings upon investigation are based on irrelevant materials. The petitioners have to stand trial to prove their innocence or otherwise. This, then, would lead to the only conclusion that the first limb of argument and contention raised by the petitioners cannot be contemplated by this Court at this point of time.

30. Coming to the next issue, that is, whether the petitioners are

private persons or public servants to enable the CBI to prosecute them in the instant case, the argument advanced by the learned counsel for the petitioners in this regard is that they are not public servants, but private persons which has also been clearly indicated in the charge sheet filed against them, which is apparently a reference to the identity attached to the petitioners respectively.

31. This apart, the learned counsel has also contended that the respondent/CBI has alleged that the petitioners have been unauthorizedly appointed by the Regional Centre, NAEB, NEHU without the knowledge and approval of the Ministry of Forest and Environment in clear violation of the MoU, however, in the same breath, has maintained that they are public servants discharging public duty. Such contrary stand cannot be allowed to be taken.

32. To answer this question, it would be purposeful to look into the definition and nature of the term “public duty” and “public servant” in the context of the provision of the Prevention of Corruption Act, 1988. The relevant provision would be Section 2(b) and (c) which reads as follows:-

“2(b) “public duty” means a duty in the discharge of which the State, the public or the community at large

has an interest.

(c) “public servant” means—

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.”

33. In the case of *Sheikh Abdul Majeed & Anr v. Union Territory of J&K Through Senior Superintendent of Police*, 2023 SCC Online

J&K 698, the Hon'ble High Court of J&K has elaborately dealt with the issue and concept of 'public servant' and 'public duty' as is seen in the Prevention of Corruption Act, 1988, which this Court, in the context relatable to this case is in complete agreement with the proposition advanced therein. Specific reference is hereby made to para 39, 40, 41, 54, 56 & 58 which are reproduced herein below as: -

“39. Prevention of Corruption Act, 1988 is intended to make the anti-corruption law more effective by widening its coverage and scope of the definition of 'public servant'. Accordingly, a person who holds the office by virtue of which he/she is authorized or required to perform any public duty, is a public servant for the purposes of 1988 Act. The definition of 'public duty' is capable of encompassing any duty attached to any office. Thus, performance of such public duty by a person who is holding the office which requires or authorizes him to perform such duty is sine quo non for the application of definition of 'public servant' for the purposes of P C Act 1988. Under Section 2(c) viii of PC Act, 1988, a person who holds the office by virtue of which he is authorized or required to perform any public duty is a 'public servant'. While understanding the true purport and effect of Section 2(C)viii of PC Act, the meaning of the expression 'office' appearing therein as well as 'public duty', as is defined by Section 2(b) is also to be understood. The definition of 'public duty' in Section 2(b) of the PC Act, indeed, is wide, which indicates the discharge of duties in which the State, the public or the community at large has an interest, has been brought within the ambit of the expression 'public duty'.

40. There is no doubt that in the objects and reasons stated for enactment of the Prevention of Corruption Act, 1988, it has been made more than clear that the Act, inter alia, envisages widening of the scope of the definition of 'public servant', nevertheless, the mere performance of public duties by the holder of any office cannot bring the incumbent within the meaning of the expression 'public servant' as contained in Section 2(c) of the PC Act. Therefore, it would be more reasonable to understand the expression 'public servant' by reference to the office and the duties performed in connection therewith to be of public character.

41. Before proceeding further in the matter, it would be just and proper to examine the object for which the Prevention of Corruption Act, 1988 was enacted by the Parliament. The Statement of Objects and Reasons of the Bill is reproduced below: -

"1. The bill is intended to make the existing anti- corruption laws more effective by widening their coverage and by strengthening the provisions.

2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Penal Code, 1860 to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The bill, *inter alia*, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under sections 161 to 165A of the Penal Code, 1860 enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision or interlocutory orders have also been included.

4. Since the provisions of section 161A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the Penal Code, 1860. Consequently, it is proposed to delete those sections with the necessary saving provision.

5. The notes on clauses explain in detail the provisions of the Bill."

54. *It must be taken into consideration that thrust of Section 2(c) is not on the position held by the individual; rather, the public duty performed by him/her as the legislative intention was not to provide an exhaustive list of authorities which are covered, but a general definition of "public servant". In other words, this section also applies to individuals who are not conventionally considered as public servants. Accordingly, this Court is required to adopt a purposive approach which would give the effect to the intention of legislature.*

56. *In this regard I am supported by the judgment of Apex Court in 'State of M.P v. Ram Singh' reported as (2000) 5 SCC 88, and the operative portion of the*

said judgment is reproduced under:-

"In construing the definition of "public servant" in clause (c) of Section 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of the legislature. In that view the Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with a much wider definition of "public servant", was brought in force to purify public administration. When the legislature has used such a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of the definition clause by construction which would be against the spirit of the statute. The definition of "public servant", therefore, deserves a wide construction."

58. *The Supreme Court in State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2020) 20 SCC 360 has observed: -*

"34. *On a perusal of Section 2(c) of the PC Act, we may observe that **the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her.** In this regard, the legislative intention was **not to provide an exhaustive list of authorities which are covered, rather a general definition of "public servant" is provided** thereunder. This provides an important internal evidence as to the definition of the term "university".*

44. *As discussed earlier, the object of the PC Act was not only to prevent the social evil of bribery and corruption, **but also to***

make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties. Keeping the same in mind, as rightly submitted by the learned Senior Counsel for the appellant State, it cannot be stated that a "deemed university" and the officials therein, perform any less or any different a public duty, than those performed by a university simpliciter, and the officials therein."

[Emphasis Supplied]

34. If one is to understand as to whether the person in question is a public servant or not in terms of the provisions of the PC Act, 1988, the function and duty of such person as to be established to see as to whether he is performing a public duty or not.

35. The petitioners have not denied the fact that at the relevant period, they have been appointed as research officers to perform duties in furtherance of the objectives of the 'National Afforestation and Eco-Development Board' (NAEB) under the aegis of the North Eastern Hill University (NEHU), which in turn is under the direct control and supervision of the Ministry of Environment and Forest, Government of India. The duties performed by the petitioners would definitely be in the interest of the State or public or community development. This, by itself

can only mean that the nature of the duties and functions of the petitioners respectively are in public interest, or rather is one which involves public duty.

36. Situated thus, it can be safely said that the petitioners herein are public servants in terms of the provision of Section 2 (c) of the PC Act. This has also been observed by the Hon'ble Supreme Court in the case of *State of Gujarat v. Mansukhbhai Kanjibhai Shah*, (2020) 20 SCC 360, at para 49 & 50.

“49. In order to appreciate the amplitude of the word “public servant”, the relevance of the term “public duty” cannot be disregarded. “Public duty” is defined under Section 2(b) of the PC Act, which is reproduced below:

2(b) ‘public duty’ means a duty in the discharge of which the State, the public or the community at large has an interest.

50. Evidently, the language of Section 2(b) of the PC Act indicates that any duty discharged wherein State, the public or community at large has any interest is called a public duty. The first explanation to Section 2 further clarifies that any person who falls in any of the categories stated under Section 2 is a public servant whether or not appointed by the government. The second explanation further expands the ambit to include every person who de facto discharges the functions of a public servant, and that he should not be prevented from being brought under the ambit of public servant due to any legal infirmities or technicalities.”

37. On the contention of the petitioners that the provision of Chapter 8.27 of the CBI Manual was given a go by, by the Investigating Officer in that the contents of the source information have not been reduced in writing and thus, procedural impropriety has been occasioned, the case of Vineet Narian (*supra*) being applicable. This Court on an overall analysis of the facts and circumstances of the case of the CBI made out against the petitioners, would opine that there are enough available materials including documentary evidence to conclude that a *prima facie* case has been made out against them, thus, the source information has credence in this regard, irrespective of whether the same ought to be reduced in writing or not.

38. These petitions have been filed taking recourse to the provision of Section 482 Cr.P.C. This provision expresses the inherent power of the High Court to exercise jurisdiction in cases and situations so as to prevent the abuse of the legal process and to secure the ends of justice

39. In a catena of judgments by the Hon'ble Supreme Court dealing with this provision, certain parameters and guidelines have been laid down to enable the High Court to properly exercise this power. One

such case is the case of State of Haryana & Ors v. Bhajan Lal & Ors reported in 1992 Supp (1) SCC 335, wherein at para 102, the following is found

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustrations wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulac and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the*

evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

40. The High Court while exercising its inherent power to quash an FIR or criminal proceeding may do so, if the guidelines at para 102

(supra) can be applied to a particular case. However, in the case of the petitioners herein, the guidelines at 1, 3 and 7 cannot be applied, inasmuch as, the facts and circumstances as discussed hereinabove would reveal that the FIR and the allegations made in the complaint do contain prima facie evidence to establish the complicity of the petitioners to the offence alleged.

41. Therefore, this Court has no hesitation to conclude that the petitioners have not been able to make out a case in their favour and for this Court to exercise its inherent power under Section 482 Cr.P.C.

42. Accordingly, these petitions are found to be devoid of merits and the same are hereby dismissed.

43. Petitions disposed of. No costs.

44. Registry is directed to return back the Lower Court case record.

Judge

Meghalaya
24.05.2024
"D. Nary, PS"