

GAHC040000902019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Criminal Petition No./90(AP)/2019

Shri Kipa Chachok and others.

...Petitioners

-Versus-

State of Arunachal Pradesh and others

... Respondents

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the Petitioners : Mr. K. Tama

Advocates for the Respondents: Mr. T. Shiva

Date of Hearing : 10.10.2023

Date of Judgment : 23.01.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. K. Tama, learned counsel for the petitioners. Also heard Mr. J. Tsering, learned Public Prosecutor for the State of Arunachal Pradesh and Mr. T. Shiva, learned counsel for the respondents No. 2 and 3.
2. The petitioners are Political Interpreters (PIs for short), Head Gaon Burahs (HGBs for short) and Gaon Burahs (GBs for short). They have filed an application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) seeking setting aside and quashing the order dated 03.12.2018 passed by the learned Chief Judicial Magistrate, Ziro in CR Case No. 32/2018 and Nyapin Police Station Case No. 04/2019, registered under Sections 181/204/209/465/34 of the Indian Penal Code (IPC for short).
3. The genesis of the case was that the respondents No. 2 and 3 have filed a complaint against the petitioners before the learned Chief Judicial Magistrate, Ziro (CJM, Ziro for short) which was registered as CR Case No. 32/2018 with allegations that the petitioners have committed offence under Sections 176/181/193/196/204/209/420/465/34 of the IPC (Annexure-1 of the petition). The depositions of the witnesses were recorded under Section 200 CrPC and by invoking the provisions of Section 202 of CrPC, the learned CJM directed the police of Kurung Kumey to register a case through the Officer-In-Charge of the Police Station, Nyapin under Sections 181/204/209/465/34 of the IPC, which was registered as Nyapin Police Station Case No. 04/2019 under the aforementioned sections of law (Annexure-7 of the petition).

4. It is averred that offence under which the learned CJM, Ziro took cognizance are relating to contempt of lawful authority of public servant and against public justice and also relating to documents given in evidence. Thus, cognizance ought to be taken in compliance of Sections 195/340 of the CrPC. It is submitted that the learned CJM, Ziro had exceeded his jurisdiction and ignoring the bar under Section 193 of CrPC cognizance was taken against the petitioners. Thus, the impugned order dated 03.12.2018 is not sustainable in the eye of law and the Nyapin Police Station Case No. 04/2019 and the complaint petition being CR No. 32/2018 are liable to be set aside and quashed.

5. It is further alleged that the petitioners are being harassed by the Nyapin police day-in and day-out after the aforementioned case was registered. The petitioners have relied on the decision of Hon'ble the Supreme Court in *State of U.P. Vs. Suresh Chandra Srivastava & Ors. reported in (1984) 3 SCC 92* and the decision of Hon'ble the Supreme Court in *Sh. Narendra Kumar Srivastava Vs. the State of Bihar reported in (2019) 3 SCC 318*. The petitioners have prayed to set aside and quash the proceedings of the CR No. 32/2018 and Nyapin Police Station Case No. 04/2019.

6. *Per contra* the learned counsel for the respondents has submitted that this case is not barred by Section 195 CrPC as offence was not committed in the Court. Offence was committed outside the Court. In reply, the learned counsel for the petitioners has submitted that the learned CJM cannot take cognizance of offence under Section 181 and 209 of the IPC without sanction being accorded. The learned counsel for the respondents has submitted that finally Nyapin Police Station case was registered under Section 181/209 of the IPC read with other sections of law and this has not restricted the bar under Section 195 of the CrPC.

7. I have given my thoughtful consideration to the submissions at the bar. I have scrutinized the LCR. The LCR reveals that the statement of the witnesses were recorded and vide order 03.12.2018 the Officer-In-Charge of Nyapin Police Station was directed to register a case and police investigation was directed. This complaint case culminated into the Nyapin Police Station Case No. 04/2019 under Sections 181/204/209/465/34 of the IPC. The complaint petition unfolds that a complaint was filed before the ADC Nyapin against Tadar Sanday, Tadar Tagak, Tadar gari, Tadar taro and Tadar Tania for settlement of a land dispute called Darch, Hagam, Rayer and Langdo lands at Nyapin by arbitration on 24.01.2017.

8. The petitioners were appointed as judges to settle land dispute of Abu Maj family of Leyang village and Abu Tamey family of Panung village by the ADC, Nyapin vide order No. NPN/JUD-05/2017 dated 24.01.2017. Mel proceedings were fixed on 28.02.2017 and 23.03.2017 respectively, but no settlement was arrived at till then. When the Mel proceedings were pending before the ADC, Nyapin, the order dated 23.03.2017 was challenged before this Court in WP(C) No. 181/2017 and the order was set aside and the Mel proceedings of ADC, Nyapin was quashed vide order dated 13.02.2018 in WP(C) No. 181/2017. During the pendency of the Mel proceeding challenged before this Court, the petitioners allegedly prepared a forged and undated declaration report of land dispute and the forged and undated declaration was prepared by coercing Sri Tame Tamar HGB to affix his signature on the forged documents. Sri Tadar Niakum GB had filed a letter dated 23.06.2017 to the ADC and the police, informing that he was not aware of the declaration and his signature was obtained fraudulently. It was alleged that the Langdo land is settled land in favour of the Abu Maj family of Leyang village, but the land was wrongly

inserted in the Mel proceedings before the ADC, Nyapin. Earlier vide order dated 20.02.2008 and 27.02.2008, an order was already given in favour of the respondents relating to the disputed land.

9. It is further averred that on the instigation of the petitioners, forged documents were prepared depriving the complainants of their valuable rights over their rightful possession over the disputed land. The reply to show cause notice dated 15.05.2017 was on the strength of forged documents. Based on the false and forged documents, illegally, reply of show cause notices dated 19.05.2017 and 22.05.2017 were submitted by the petitioners. Two different FIRs dated 25.06.2017 were filed before the Officer-In-Charge of Nyapin Police Station and W.P.(Crl.) No. 04/2017 and W.P. (Crl.) No. 06/2017 were preferred challenging the FIRs. It was further contended that the petitioners had committed offences under Sections 176/181/193/196/204/209/420/465/34 of the IPC. Vide order dated 19.09.2018, PW1 was examined and thereafter, several witnesses were examined and vide the impugned order dated 03.12.2018 the learned CJM directed the Officer-In-Charge to register the Nyapin Police Station Case under Section 181/204/209/465/34 of IPC.

10. The learned counsel for the petitioners has relied on the decision of Hon'ble the Supreme Court in Suresh Chandra Srivastava's case (supra) wherein it has been held that:

“6. In these circumstances, therefore, it is not necessary for us to go into the broader question as to whether if offences under Sections 467, 471 and 120-B, IPC are committed, the complaint could proceed or not. The law is now well settled that where an accused commits some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case

the other offences also would fall within the ambit of Section 195 of the Code.

7. In the instant case, as already pointed out by us, on the facts narrated by the Registrar in his complaint no offence under Sections 467, 471 and 120-B, IPC is at all revealed and as such it is no necessary to go into the question as to what offences were connected with Sections 467, 471 and 120-B and which are severable from them. The High Court was fully justified in quashing the proceedings against the accused as far as offences under Sections 467, 471 and 120-B, IPC were concerned, not because they were covered by Section 195 of the Code but because allegations contained in the complaint did not constitute these offences. The High Court was further fully justified in directing that other offences mentioned above did not require a complaint under Section 195 and would have to be tried.

8. In the view that we take it is not necessary for us to decide the broader question of law posed by the High Court, i.e., whether or not offences under Sections 467, 471 and 120-B, IPC, along with other offences, were covered by Section 195 of the Code.

9. We, therefore, affirm the judgment of the High Court and dismiss the appeals and the special leave petitions and direct that cases under Sections 262, 263, 380/34 and 420/34, Indian Penal Code be tried without any complaint under Section 195 of the Code.”

11. At this juncture it is apt to mention that the order was passed and Nyapin Police Station Case No. 04/2019 was registered under Sections 181/204/209/465/34 of the IPC. I have also scrutinized the LCR and the statements of the witnesses Sri Tadar Sanday (respondent No. 2 herein), Tadar Tari, Tadar Nanu and Tadar Takia. Some documents were referred to be fake in an omnibus manner. It is not discernible whether the documents were used as evidence in the Court attracting the bar under Section 195 of the CrPC. It has been held by Hon’ble the Supreme Court in *Suresh Chandra Srivastava’s case (supra)* that the High Court was fully justified in quashing the proceedings

against the accused as far as offences under Section 467/471/120(B) of the IPC were concerned, not because they were covered under Section 195 of the Code but because allegations contained in the complaint did not consist these offences. It was further observed that the High Court was fully justified in directing that other offences mentioned under Section 262/263/420 IPC, has to be tried.

12. The decision relied upon by the learned counsel for the petitioners is not applicable to this case. This case is at the initial stage of pendency. The documents referred to by the petitioners are not specifically mentioned. It is not discernible through the statements of the witnesses as well as through the complaint petition if all the documents were used as evidence in Court. What is discernible from the complaint petition is that the complainants (respondents No. 2 and 3 herein) challenged the Mel proceedings particularly, the order dated 23.03.2017 along with the order dated 28.02.2017. This Mel proceeding was not used in the Court of law but is alleged to have been a forged document. Even assuming that no case lies under Section 181/209 of the IPC without sanction under Section 195 CrPC, at least, there is no bar under Section 195 CrPC to proceed under Section 204 of the IPC.

13. The learned counsel for the petitioners has also relied on the decision of Hon'ble the Supreme Court in *Narendra Kumar Srivastava Vs. State of Bihar and others reported in (2019) 3 SCC 318* wherein it has been held that:

“17. Section 340 CrPC makes it clear that a prosecution under this section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in

custodial legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.

18. This Court in *Chajoo Ram v. Radhey Shyam*⁶, held that the prosecution under Section 195 CrPC could be initiated only by sanction of the court and only if the same appears to be deliberate and conscious. It is emphatically held as under: (SCC p. 779, para 7)

“7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge.”

19. In *Santok Singh v. Izhar Hussain*⁷, this Court has held that every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution.

20. This Court in *M.S. Ahlawat*⁵ has clearly held that private complaints are absolutely barred in relation to an offence said to have been committed under Section 193 IPC and that the procedure prescribed under Section 195 CrpC are

mandatory. It was held that: (CC pp.281-82, paras 5-6)

“5. Chapter XI IPC deals with ‘false evidence and offences against public justice’ and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (CrPC) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but (sic) to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

6. Section 340 CrPC prescribes the procedure as to how a complaint may be preferred under Section 195 CrPC. While under Section 195 CrPC it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 CrPC prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 CrPC are mandatory and no court can take cognizance of offences referred to therein (sic). It is in respect of such offences the court has jurisdiction to proceed under Section 340 CrPC and a complaint outside the provisions of Section 340 CrPC cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.”

14. In the instant case, it is not discernible through the complaint petition and the statements of the witnesses, if all the forged or fake documents were used as evidence in Court. The Mel proceedings, more particularly, the order dated 23.03.2017 has been challenged by the respondents No. 2 and 3. The allegedly forged and fake documents referred to by the respondents may not be documents which were in *custodia legis*.

15. This case is still under investigation. The case was forwarded by the Magistrate to the police for investigation. Unlike the ratio of the decision of Hon'ble the Supreme Court in Narendra Kumar Srivastava's case (supra), it is not applicable to this case. This case is not a case of *perjury* but is a case of manipulation of documents not used in any Court as evidence. The allegation is against the arbitrators who have allegedly manipulated the Mel proceedings. After contemplating the facts of the case, the learned CJM directed investigation as this case is related to documentary evidence and evidence has to be garnered by proper investigation and investigation by police was thus ordered. It is too early and the case is at its nascent stage to dismiss the allegations against the petitioners. The petitioners may place their submissions at a later stage of the proceeding relating to order of sanction. At this juncture, it cannot be held that this case is barred under Section 195 of the CrPC, if the other offences under which the petitioners are booked, is severed of, from offences under Sections 181/209 of the IPC. At this juncture, I am hesitant to quash the proceedings and set aside the Nyapin Police Station Case No. 04/2019 arising out of CR Case No. 32/2018.

15. Petition is dismissed.

16. Send back the LCR.

17. In terms of the above observations Criminal Petition stands disposed of.

JUDGE

Comparing Assistant