

GAHC040010552024

2024:GAU-AP:1097



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

Case No. : Crl.Petn./123/2024

Maga Hakom

Son of Shri Tamik Hakom, permanent resident of Village Dere Nalo, PO and PS
Dumporijo, Upper Subansiri District, Arunachal Pradesh

VERSUS

The State of AP and 3 Ors

represented by the Chief Vigilance Officer cum Chief Secretary, Govt of Arunachal
Pradesh, Itanagar, through the PP

2:The Commissioner / Secretary

Age: 0

Occupation :

Vigilance Department

Govt of Arunachal Pradesh

Itanagar

3:The Superintendent of Police

Age: 0

Occupation :

SIC(Vig) Itanagar

4:The Officer in Charge

Age: 0

Occupation :

Daporijo Police Station

Upper Subansiri District

Arunachal Pradesh

Advocate for the Petitioner : T T Tara, Kirmani Lollen, Terji Kamchi, Taba Tokur, Khoda
Apa, Gamken Bam

Advocate for the Respondent : P P of AP, SC Vigilance, Ojing Pada

Linked Case : Crl.Petn./124/2024

Take Hali

Age: 44

Occupation :

Address: Son of Late Tai Hali
permanent resident of Village Hali
PO and PS Dumporijo
Upper Subansiri District
Arunachal Pradesh.

VERSUS

The State of AP and 3 Ors

Age: 0

Occupation :

Address: represented by the Chief Vigilance Officer cum Chief Secretary
Govt of Arunachal Pradesh
Itanagar through the PP of AP

2: The Commissioner/ Secretary

Age: 0

Occupation :

Address: Vigilance Department
Govt of Arunachal Pradesh
Itanagar

3: The Superintendent of Police

Age: 0

Occupation :

Address: SIC (Vig)
Itanagar

4: The Officer in Charge

Age: 0

Occupation :

Address: Daporijo Police Station
Upper Subansiri District
Arunachal Pradesh

Advocate for : T T Tara

Advocate for : P P of AP appearing for The State of AP and 3 Ors: Advocate ,

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

10.12.2024

Heard Mr. T. T. Tara, learned counsel for the petitioners. Also heard Mr. O. Pada, learned Special Public Prosecutor, SIC (Vigilance) for the State respondents.

2. The petitioners, by instituting the above noted criminal petitions have presented a challenge *inter alia*, to an order dated 04.09.2014, passed by the learned Judicial Magistrate First Class (JMFC), Daporijo, taking cognizance under Sections 409/120B/420 of the IPC read with Section 13 (1)(b) & (d) of the Prevention of Corruption Act, 1998, in G. R. Case No. 101/2011. The petitioners have also challenged the order dated 24.06.2015, passed by the learned Additional District and Sessions Judge, Basar, Eastern Zone; West Siang District, Arunachal Pradesh framing charge against the petitioners herein, under Sections 409/120B/420 IPC read with Section 13 (1)(b) & (d) of the Prevention of Corruption Act, 1998.

3. The facts requisite for adjudication of the issues, arising in the present proceedings are noticed herein under:-

A written complaint was received from one *Obuk Panor*, DDSE, Daporijo, to the effect that one *Maga Hakom* (petitioner in CrI.Petn./123(AP)/2024) who was working as Junior Teacher cum Cashier, SSA and Shri *Albert Mra*, Junior Teacher cum District Coordinator, SSA, mismanaged/appropriated government money and Teacher's salary of approximately two crores during the year 2010-2011. On the basis of the complaint so received, Daporijo P.S. Case No. 77/2011, under Sections 409/120B/420 IPC came to be registered. The police, during the investigation, collected materials against the petitioner in Criminal Petition No. 123(AP)/2024 and also materials came on record with regard to the involvement of Shri *Take Hali*

(petitioner in CrI.Petn./124(AP)/2024), who was working as Dealing Assistant in the office of the DDSE, Daporjjo, at the relevant point of time. On conclusion of the investigation, the Investigating Officer laid Charge-sheet No. 132/14 dated 29.08.2014 against the petitioners in the above noted criminal petitions. As per the said Charge-sheet, it was found that the petitioners in the above noted criminal petitions had misappropriated government money by misutilizing cheques issued by the DDSE, Daporijo.

The petitioner in Criminal Petition No. 123(AP)/2024, was alleged to have handled 96(ninety six) cheques amounting to Rs. 1,92,57,670.00/- and it was alleged that he did not hand-over the amount withdrawn to the beneficiaries thereof.

The petitioner in Criminal Petition No. 124(AP)/2024 was alleged to have misutilised 7(seven) cheques and in withdrawing amount totaling to Rs. 19,28,602.00 and the same was further alleged to have not been received by the beneficiaries of the same.

On receipt of the said Charge-sheet, the Court of learned JMFC, Daporijo vide order dated 04.09.2014, passed in G.R. Case No. 101/2011, proceeded to take cognizance of the offence under Sections 409/120B/420 IPC and also proceeded to take cognizance of the offence under Section 13 (1)(b) & (d) of the Prevention of Corruption Act, 1998 and accordingly, summons came to be issued to the petitioners herein. Thereafter, vide order dated 25.09.2014, the cognizance also having been taken under Section 13 (1)(c) and 13 (1)(d) of the Prevention of Corruption Act, 1988, the same being exclusively triable by a Court of Sessions, the JMFC, Daporijo, proceeded to commit the case to the Court of learned Addl. District and Sessions Judge, Basar. Thereafter, on receipt of the case records, the Addl. District and Sessions Judge, Basar vide order dated 24.06.2015, proceeded to hear the parties on consideration of the charge. On such consideration being so

made and upon hearing the learned counsel for the parties, by holding that their exist sufficient evidence to show that the accused persons have committed the offence involved, proceeded to charge the petitioners in the above noted criminal petitions, under Sections 409/120B/420 of the IPC read with Section 13 (1)(b) & (d) of the Prevention of Corruption, Act 1988. It is further revealed that the case was thereafter, transferred to the Court of Special Judge, (PCA) Yupia and is presently pending trial, therein. Being aggrieved, the petitioners have instituted the above noted criminal petitions.

4. Mr. T. T. Tara, learned counsel for the petitioners has submitted that cognizance in the case being taken by the learned Trial Court, under Section 13 (1) (b) & (d) of the Prevention of Corruption, Act 1988, such cognizance could not have been so taken without first obtaining a prosecution sanction under the provisions of Section 19 of the Prevention of Corruption, Act, 1988. Mr. Tara, learned counsel has submitted that the investigating agency had not submitted a Charge-sheet in the matter, against the petitioners in the above noted criminal petitions, under the provisions of Prevention of Corruption Act, 1988, however, the learned Trial Court, on considering the materials so available in the matter had also taking cognizance of the offence involved against the petitioners, under the provisions of Prevention of Corruption Act, 1988, which is contended to be impermissible in absence of a previous prosecution sanction obtained under the provisions of Section 19 of the Prevention of Corruption Act, 1988. Mr. Tara, learned counsel further submitted that it is an admitted position that the petitioners, at the time of commission of offence, were public servants and they continued to remain in service as on date, as public servants and accordingly, he submits that the cognizance so taken in the matter although under challenge in the present proceeding after 10 years, would mandate an interference from this Court.

5. Mr. O. Pada, learned Special Public Prosecutor, SIC (Vigilance) appearing for the respondents submits that the petitioners in the above noted criminal petitions, continued to be public servants on the date when cognizance was taken by the learned Trial Court in regard to the offence committed by them. However, Mr. Pada, learned counsel submits that given the nature of allegation so involved and examination of witnesses having already commenced in the trial and after such a delay of nearly 10 years, this Court would be pleased not to interfere with the orders impugned in the present proceedings.

6. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

7. It is revealed from the records of the matter, that the complaint so received against the petitioners herein, from the DDSE, Daporijo, Daporijo P.S. Case No. 77/2011 came to be so registered under Sections 409/120B/420 IPC. During the course of investigation, the police had brought on record materials, which indicated the involvement of the petitioners in the above noted criminal petitions in misappropriation of government money by misutilizing the cheques, issued by the DDSE, Daporijo, in favour of the Village Educational Council and/or the School authorities who were the actual beneficiaries of the said cheques. It is further brought on record that the offence as alleged against the petitioners, were not so committed while acting or purporting to act in discharge of their official duty. It was further alleged that the petitioners in the above noted criminal petitions were subordinate staffs working in the establishment of the DDSE, Daporijo and were not involved in issuance of the cheques, however, the cheques, on coming to their possession, the amounts therein came to be misappropriated by them and the same was not handed over to the beneficiaries of the said cheques. It is also seen that the offence committed by the petitioners were beyond their routine official duties and were so done for enriching themselves.

8. A perusal of the order dated 04.09.2014, passed by the learned JMFC, Daporijo, reveals that on the Charge-sheet being laid in the matter, the same having prima facie established that the petitioners in the above noted criminal petitions, to have misappropriated and cheated government money, which constitutes offences punishable under Sections 409/120B/420 IPC, cognizance was proceeded to be taken under the provisions of Indian Penal Code against the petitioners in the above noted criminal petitions. The learned Trial Court also by noticing that the petitioners herein were public servants working under the Department of School Education (Elementary), Government of Arunachal Pradesh, also proceeded to take cognizance under Section 13(1)(c) and Section 13(1)(d) of the Prevention of Corruption Act, 1988. The cognizance in respect of the petitioners having been taken, also under the provisions of the Prevention of Corruption Act, 1988, the learned JMFC, Daporijo, vide order dated 25.09.2014, on appreciating that the case would now be triable only by a Court of Session, proceeded to commit the case to the Court of the Addl. District and Sessions Judge, Basar.

9. On receipt of the Charge-sheet so filed against the petitioners vide Charge-sheet No. 132/14 dated 29.08.2014; Basar Sessions Case No. 868/14 came to be registered against the petitioners herein, under Sections 409/120B/420 of the IPC read with Section 13(1)(c) & (d) of the Prevention and Corruption Act, 1988. Thereafter, the learned Addl. District and Sessions Judge, Basar, proceeded to fix the matter for consideration of charge and vide order dated 24.06.2015, upon hearing the parties to the proceeding, proceeded to frame charge against the petitioners, in the above noted criminal petitions, under Sections 409/120B/420 of the IPC read with Section 13(1)(c) & (d) of the Prevention and Corruption Act, 1988. It is seen that the said case was thereafter, transferred to the Court of the Special Judge, (PCA) Yupia and the same came to be registered as PCA Case No. 01/2017 and is pending trial in the said Court.

10. At the outset, this Court proceeds to examine the contention of the learned counsel for the petitioners that in absence of a previous sanction being granted, in terms of the provisions of Section 19 of the Prevention of Corruption Act, 1988, for prosecution of the petitioners, the learned trial Court had erred in taking cognizance of the offence against the petitioners, under the provisions of the said Act of 1988.

11. The provisions of Section 19 of the Prevention of Corruption Act, 1988, being relevant is extracted herein below:-

“19. Previous sanction necessary for prosecution.— (1) No court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]—

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, (prescribe) such guidelines as it considers necessary.

Explanation.— For the purposes of sub-section (1), the expression “public servant” includes such person—

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged

to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

12. A perusal of the provisions of Section 19 of the Prevention of Corruption Act, 1988, would reveal that no Court shall take cognizance of an offence punishable under Sections 7, 11, 13 & 15, alleged to have been committed by a public servant

without a previous prosecution sanction from the authority competent to issue such sanction.

13. In the case on hand, it is an admitted position that no such sanction was received for prosecuting the petitioners, who admittedly are covered by the term 'public servant' as finding mention in the provisions of Section 19 of the Prevention of Corruption Act, 1988. Accordingly, the cognizance so taken and the charges framed against the petitioners herein, under the provisions of Section 13 (1)(b)(d) of the Prevention of Corruption Act, 1988, is clearly not permissible and has to be held to be in excess of the jurisdiction vested in the learned Trial Court.

14. Having drawn the above conclusions, the issue in the present proceedings that would now require to be examined is, as to whether it would be permissible for the learned Trial Court to proceed against the petitioners in the above noted criminal petitions for the offences punishable under the IPC, despite the fact that the previous prosecution sanction under 197 of the Code of Criminal Procedure, to prosecute the petitioners in the above noted criminal petitions, is not available on record.

15. Section 197 of the Code of Criminal Procedure, 1973, reads as under:-

“197. Prosecution of Judges and public servants.— (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.]

[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, 3[section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression “Central Government” occurring therein, the expression “State Government” were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

16. Section 197 of the Code of Criminal Procedure, 1973, provides that when any person who is, or was a public servant, not removable from his office save by or with the sanction of the Central Government or the State Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, no Court shall take cognizance of such offence, except with the previous sanction of the appropriate Government. The under lying pre-requisite for obtaining a sanction under the provisions of Section 197 Cr.P.C., is that the offence so alleged in the matter against the accused was so done by them while acting or purporting to act in discharge of their official duties.

17. Given the nature of offence alleged against the petitioners and the sections under which they were so charged, i.e. Sections 409/120B/420 IPC, the petitioners herein, admittedly, having not committed the offence while acting or purporting to act in discharge of their official duties, this Court is of the considered view that previous prosecution sanction, under Section 197 of the Code of Criminal Procedure, was not mandated in the matter for proceeding with the trial in respect

of the petitioners for the offence involved under the provisions of the Indian Penal Code. It is to be noted that a previous prosecution sanction, in respect of a public servant is mandated only when he is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty.

18. In view of the above discussions, it being clear that in a case relatable to Section 197 of the Cr.P.C., the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of official duties however, the same is not the position, insofar as, it concerns the provisions of Section 19 of the Prevention of Corruption Act, 1988. Accordingly, this Court is of the considered view that the cognizance would not be permissible to be taken against the petitioners in the above noted criminal petitions, under the provisions of Prevention of Corruption Act, 1988, in absence of a previous sanction being so obtained in the matter. However, it having been concluded herein above, that there was no requirement for a sanction being so obtained, under Section 197 Cr.P.C., given the nature of allegations so leveled against the petitioners in the above noted criminal petitions, the proceedings before the Trial Court would now be permissible to be proceeded against the petitioners with regard only to offences alleged against them under the provisions of the Indian Penal Code.

19. In view of the above conclusions, the order dated 04.09.2014, passed by the learned Court of JMFC, Daporijo, in G. R. Case No. 101/2011, taking cognizance against the petitioners in the above noted criminal petitions of offence under Sections 409/120B/420 of the IPC read with Section 13 (1)(b) & (d) of the Prevention of Corruption Act, 1998, is hereby set aside. Consequently, the order dated 24.06.2015, passed by the learned Additional District and Sessions Judge, Basar, Eastern Zone; West Siang District, Arunachal Pradesh in Basar Sessions Case No. 868/14, framing charge against the petitioners in the above noted

criminal petitions, under Sections 409/120B/420 IPC read with Section 13 (1)(b) & (d) of the Prevention of Corruption Act, 1998, also stand set aside.

20. The orders dated 04.09.2014 and 24.06.2015 having been interfered with, the proceedings so held in pursuance thereof, would also call to be set aside, which is accordingly, done. The learned Special Judge (PCA), Yupia, in view of the conclusion reached by this Court that in absence of a previous sanction, the petitioners now cannot be proceeded against for an offence under the provisions of the Act of 1988, would have no jurisdiction to consider the case against the petitioners. Accordingly, it is directed that the learned Special Judge(PCA) would forthwith transmit the case records of PCA Case No. 01/2017, to a competent Court of Criminal jurisdiction for continuing with the proceedings in the matter. The trial Court, to which the case records would be so transmitted by the learned Special Judge (PCA), Yupia, would proceed in the matter from the stage of taking cognizance of the offence alleged against the petitioners under the provisions of the Indian Penal Code, and thereafter, proceed with the matter and conclude the same expeditiously, considering the long delay already occasioning in the matter.

21. With the above observations and directions, the criminal petition stands disposed of.

JUDGE

Comparing Assistant