

GAHC040012412023



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

Crl.Petn./165(AP)/2023

Sri Anirudha Dey,
S/o - Lt. R. B. Dey,
R/o - Laxminagar, Japorigog,
House No.8, Byelane No.4,
District - Kamrup (M), Assam.

...PETITIONER

-VERSUS-

1. The State of Arunachal Pradesh

2. Mr. Marpak Taluk,
S/o - Lt. Minmer Taluk,
Village - Upper Dikalmukh,
P.O/P.S.- Seijosa,
District – East Kameng,
Pin- 790103, Arunachal Pradesh.

....RESPONDENTS

Advocate for the petitioner : Mr. P. Hazarika, Adv.

Advocate for the respondents : Ms. T. Jini, Addl. P.P.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 02.02.2024

Date of Judgment & Order : 04.03.2024

JUDGMENT & ORDER (CAV)

Heard Mr. P. Hazarika, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, *read with* Article 227 of the Constitution of India, challenging the impugned orders dated 16.10.2020 and 26.10.2021 passed by the learned Chief Judicial Magistrate, Seppa, East Kameng in G. R. Case No. 85/2013 taking cognizance of offence under Sections 295/447 of IPC against the present petitioner without prior sanction as mandated by Section 197 of Cr. P.C; and also issued Non Bailable Warrant of Arrest (in short NBWA) against the accused/petitioner respectively.

3. The fact of the case in nutshell is that;

3.1. The present petitioner has been retired as a Deputy Conservator of Forest on 31.05.2021. He was serving as a Divisional Forest Officer, Sonitpur, East Division at Biswanath Chariali, Assam for the period of 21.02.2011 to

24.05.2014.

3.2. The respondent No.2 along with others lodged an FIR before the Officer-In-Charge, Seijosa Police Station, alleging *inter alia* that on 21.05.2013 Assam Police along with forest officials visited Dikalmukh village and destroyed the Baptist Church and Public Rostrum with the help of the JCB. The respondent No.2 claimed that the Church and Rostrum was constructed in their territory, but, the Assam Police along with the forest official illegally entered into their areas and destroyed it deliberately. On receipt of the FIR, the case was registered as Seijosa P.S. Case No.12/2013 and after completion of the investigation; the I. O. submitted the charge-sheet in Seijosa P.S. Case No.12/2013 finding materials of offence under Sections 295/447 of IPC against the petitioner, vide Charge-Sheet No.01/2020 dated 31.01.2020.

3.3. Thereafter, the learned Chief Judicial Magistrate, Seppa, East Kameng had taken cognizance of offence under Sections 295/447 of IPC on 16.10.2020 in G. R. Case No. 85/2013 and issued process against the accused/petitioner without obtaining prosecution sanction as mandated under Section 197 of Cr. P.C., in spite of the fact that the petitioner was serving as Divisional Forest Officer and the offence as alleged, have been committed during the discharge of his official duty.

3.4. It is contended by the petitioner that on 14.05.2013 he was informed by his staff that some permanent structure, i.e. the Baptist Church and public Rostrum are being constructed illegally in the notified area of Behali Reserved Forest under Borgang Range (the inter-state boundary between Assam and Arunachal Pradesh with the northern boundary of Behali Range Forest) and the concerned area is the integral part of the State of Assam. As such, the petitioner

on the instruction of the higher officials of the State Government of Assam visited the construction site and dismantled the Baptist Church and the public Rostrum.

3.5. As the matter pertains to border dispute with regard to the State of Arunachal Pradesh and State of Assam, therefore, the Additional Principal Chief Conservator of Forest had written to the Principal Secretary to the Government of Assam, Environment and Forest Department on 04.06.2021 regarding withdrawal/closure of Seijosa Police Station Case No.12/2013 against the petitioner.

3.6. The petitioner had submitted a representation on 21.05.2021 before the Principal Chief Conservator of Forest, Assam requesting closure of Seijosa Police Station Case No. 12/2013 in terms of Minutes of the Chief Secretary level meeting held on 12.10.2020. But to the utter surprise of the petitioner, the learned Chief Judicial Magistrate, Seppa, East Kameng on 26.10.2021 had issued NBWA against the petitioner. Thereafter, the petitioner again submitted another representation on 03.08.2023 before the Principal Chief Conservator of Forest, Assam requesting for closure of aforesaid Police Case.

4. On being highly aggrieved and dissatisfied with the orders dated 16.10.2020 and 26.10.2021 passed by the learned Chief Judicial Magistrate, Seppa, East Kameng in G. R. Case No. 85/2013, the petitioner preferred this application challenging the legality and validity of the aforesaid impugned orders and all subsequent orders in the facts and circumstances of the case and accordingly, prays for quashing the criminal proceeding by invoking the power under Section 482 of Cr. P. C.

5. Mr. Hazarika, the learned counsel for the petitioner has submitted that the legislative mandate engrafted in sub-section (1) of Section 197 debarring a Court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained are alleged to have been committed by a public servant in discharge of his official duty. But, here in the instant case, it is seen that without obtaining any prosecution sanction as mandated under Section 197 of Cr. P. C., the Trial Court had taken the cognizance and issued process as well as NBWA against the petitioner without considering the entire facts of the case.

6. In support of his submission, he also relies on the decision passed by the Hon'ble Apex Court in ***Criminal Appeal No.1359/2017 [Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy & Anr.]*** wherein, it has been expressed the view that " the legislative mandate engrafted in sub-section 197 debarring the Court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty".

7. He also submitted that as per the Office Memorandum dated 20.05.2011, the Principal Chief Conservator of Forests & Head of Forest Force, Assam, Rehabari, Guwahati authorized to all the Divisional Forests Officers to undertake an immediate full-scale eviction exercise to free all Reserved Forests under their jurisdiction from encroachment as well as instructed to take assistance from civil and police authorities, if necessary. The conservators of Forests concerned were requested to closely monitor the eviction operations. The Chief Conservators of Forests (T) LAZ & UAZ were requested to supervise the eviction exercise on a

regular basis. Thus, after getting the verbal instruction from the Chief Conservator of Forests, the petitioner carried out the eviction process and dismantled the Baptist Church and public Rostrum which were located inside the territory of Assam Reserved Forests land. Thus, the present petitioner dismantled the Baptist Church and public Rostrum only under the instruction obtained from his higher authorizes. Hence, he was discharging his public duty and therefore, prosecution sanction under Section 197 of Cr. P. C. is very much essential before prosecuting the public servant.

8. The learned counsel for the petitioner further submitted that, the Additional Principal Chief Conservator of Forest had written to the Principal Secretary to the Government of Assam, Environment and Forest Department on 04.06.2021 regarding withdrawal/closure of Seijosa Police Station Case No.12/2013 against the petitioner. The petitioner also submitted a representation consecutively on 21.05.2021 and 03.08.3023 before the Principal Chief Conservator of Forest, Assam requesting for closure/withdrawal of Seijosa Police Station Case No. 12/2013 in terms of Minutes of the Chief Secretary level meeting held on 12.10.2020. He also submits that the petitioner was performing his duty after obtaining instruction from the higher authorities. Thus, the learned counsel for the petitioner prays for quashing of the criminal proceeding by invoking the power under Section 482 of Cr. P. C.

9. Per contra, Ms. Jini, learned Additional Public Prosecutor has submitted that the learned Trial Court has committed no illegality or mistake while taking the cognizance as well as issuing process in the Seijosa P. S. Case No. 12/2013 against the present petitioner. She also submits that the petitioner had demolished the Baptist Church and public Rostrum without any written order.

Though, it is a fact that, there was a representation written by the Additional Principal Chief Conservator of Forest to the Principal Secretary to the Government of Assam, Environment & Forest Department regarding withdrawal/closure of Seijosa Police Station Case No.12/2013 against the accused/petitioner as well as the accused/petitioner filed two representation before the authority concerned for withdrawal/closure of the said criminal case, but, till date, no order has been obtain by the authority concerned in regard to the closure of the said police case, though, the representation were filed before the authority concerned in the year 2021.

10. She also submitted that the petitioner was informed about the illegal encroacher of reserved land on 14.05.2013 and eviction was carried out on 21.05.2023, but, even after lapse of 7 days the accused/petitioner had not received any written instruction from the higher authorities to dismantle the permanent structure or to start the eviction drive over the said disputed land. Thus, the accused/petitioner had not obtained any written order/instruction from any authorities before demolition/eviction of the Baptist Church and public Rostrum.

11. Further, as per the Office Memorandum dated 20.05.2011, all the Divisional Forests Officers to undertake an immediate full-scale eviction exercise to free all Reserved Forests under their jurisdiction from encroachment as well as instructed to take assistant from civil and police authorities, if necessary. The conservators of Forests concerned were requested to closely monitor the eviction operations and the Chief Conservators of Forests (T) LAZ & UAZ were requested to supervise the eviction exercise on a regular basis. But, here in the instant case, it is seen that without obtaining any instruction from the higher

authorities, the present petitioner had dismantled the Baptist Church and public Rostrum and therefore, it cannot be considered that the accused/petitioner had committed the alleged offence only while discharging his duty. Accordingly, she submitted that the learned Trial Court has committed no error or mistake while taking cognizance against the present petitioner and in such cases the prosecution sanction is not required when the accused/petitioner is not in a position to prove any document regarding the instruction obtained from the higher authorities to dismantle the Baptist church and public Rostrum.

12. In addition to her submission, she relies on the decision passed by the Hon'ble Apex Court reported in **[2023] 0 AIR (SC) 3811 (A. Sreenivasa Reddy vs. Rakesh Sharma & Anr.)**, wherein, she emphasize mainly on paragraph Nos. 58 & 59, which read as under:-

”58. Thus, although in the present case, the appellant has been discharged from the offences punishable under the PC Act, 1988 yet for the IPC offences, he can be proceeded further in accordance with law.

59. From the aforesaid, it can be said that there can be no thumb rule that in a prosecution before the court of Special Judge, the previous sanction under Section 19 of the PC Act, 1988 would invariably be the only pre-requisite. If the offences on the charge of which, the public servant is expected to be put on trial include the offences other than those punishable under the PC Act, 1988 that is to say under the general law (i.e. IPC), the court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as the case progresses) as to whether there is a necessity of sanction under Section 197 of the Cr.P.C. There is a material difference between the statutory requirements of Section 19 of the PC Act, 1988 on one hand, and Section 197 of the Cr.P.C, on the other. In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law against the public servant, the necessity (or otherwise) of sanction under Section 197 of the Cr.P.C depends on the factual aspects. The test in the latter case is of the “nexus” between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 of the Cr.P.C on such reasoning. The “safe and sure test”, is to ascertain if the omission or neglect to commit the act complained of would have made the

public servant answerable for the charge of dereliction of his official duty. He may have acted “in excess of his duty”, but if there is a “reasonable connection” between the impugned act and the performance of the official duty, the protective umbrella of Section 197 of the Cr.P.C cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.”

13. After hearing the learned counsels of both sides, it is seen that the issue to be decided in this case is that; as to whether the prosecution sanction is mandatory, in this case and whether order of cognizance is illegal without prosecution sanction. The petitioner, who was DFO at the relevant time of the incident, had started the eviction drive over a disputed Forest Reserved Land only after obtaining instruction from his higher authorities. However, he could not produce any written document before proceeding the eviction process. Though, it also cannot be denied that, during the relevant time of incident, he was discharging his official duty as well as the Office Memorandum revealed that the DFO were instructed to undertake an immediate full-scale eviction exercise to free all Reserved Forests under their jurisdiction from encroachment; the Conservators of Forests concerned were requested to closely monitor the eviction operations and the Chief Conservators of Forest (T) LAZ & UAZ were requested to supervise the eviction exercise on regular basis.

14. But, here in the instant case, the petitioner failed to produce any written order/instruction before exercising the eviction process, though, it has been stated that the information was received 14.05.2013 and on the basis of which the eviction drive was completed on 21.05.2013. From the record, it is seen that, after initiation of the criminal proceeding against the present petitioner, a representation was made vide order dated 04.06.2021 before the Principal Secretary to the Government of Assam, Environment and Forest Department, Dispur, Guwahati-06 by Additional Principal Chief Conservator of Forests (Admn.

& Vig.) regarding withdrawal/closure of Seijosa P. S. Case No.12/2013 wherein it has been stated that "It is pertinent to mention that a Chief Secretary level meeting was held on 12.10.2020 in Itanagar and a decision was taken for withdrawal and closure of pending criminal cases registered against officials of one State by the other State in connection with previous border dispute incidents after being looked into by a committee consisting of IGPs (Law and Order) of both the States for settling within two months".

15. It is contended by the petitioner that illegal construction over Dikalmukh area of Behali Reserved Forest under Borgang Range was dismantled in accordance with the relevant provisions of Assam Forest Regulation Act, 1891 in presence of the accused petitioner, who was posted as Divisional Forest Officer in Sonitpur Division at the relevant time of the incident, and thereafter, the Additional Principal Chief Conservator of Forests (Admn. & Vig), Assam also requested for withdrawal/closure of the said criminal proceeding which was initiated without obtaining the mandatory sanction for prosecution under Section 197 of Cr. P. C. from the Government of Assam.

16. It is fact that, at the relevant time of the incident, the accused/petitioner could not produce any written document or instruction from the authority concerned, however, from the representation made by the Additional Principal Chief Conservator of Forests (Admn. & Vig), Assam, it is seen that the matter was discussed with the higher authorities and accordingly, as per the instruction only, the eviction was carried out by the accused petitioner, wherein, the Baptist church and the public Rostrum which were illegally constructed by the encroachers in Behali Reserved Forest under Borgang Range which falls under the territory of Assam have been dismantled. Further, it also cannot be denied

that at the relevant time of the incident, the accused/petitioner was discharging his officer duty as a Divisional Forest Officer and also as per the Office Memorandum, he was authorized for eviction process. But, only due to non production of the written authority/instruction, it cannot be said that he has committed alleged offence not in discharging his official duty.

17. The prosecution sanction is mandatory under Section 197 of Cr. P. C. before initiation of criminal proceeding if any act is alleged to have been committed by a public servant in discharging his official duty. However, in the instant case, it is seen that the act of eviction process was initiated and completed by the accused/petitioner while discharging his official duty and the same is supported by the Office Memorandum dated 20.05.2011. Accordingly, it is seen that the learned Trial Court had taken cognizance against the accused/petitioner without obtaining mandatory sanction for prosecution under Section 197 of Cr. P.C. which is bad in law.

18. Under the above facts and circumstances of this case, I am of the considered opinion that this is a fit case where the extra-ordinary power under Section 482 Cr.P.C. can be invoked to quash the criminal proceeding. Thus, I find it a fit case to invoke the power under Section 482 of Cr. P. C and accordingly, the proceedings and the impugned orders dated 16.10.2020 and 26.10.2021 passed by the learned Chief Judicial Magistrate, Seppa, East Kameng in G. R. Case No. 85 2013 taking cognizance of offence under Sections 295/447 of IPC and subsequent orders if any, stands set aside and quashed.

19. In terms of above, this criminal petition stands disposed of.

20. In the meantime, the authority concerned may approach before the

competent authority seeking prosecution sanction against the accused/petitioner in accordance with law.

21. Send down the LCR to the learned Trial Court.

JUDGE

Comparing Assistant