

GAHC040014792023



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

Crl. Rev. Petn./27 (AP)/2023

1. **Shri Toku Takam**, aged 38 years,
S/o Late Toku Tama, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi (A.P.)
2. **Shri Toku Tadam**, aged 34 years,
S/o Shri Toku Atum, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi (A.P.)
3. **Shri Toku Rana**, aged 29 years,
S/o Late Toku Eha, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi (A.P.)
4. **Shri Toku Toku Taba**, aged 36 years,
S/o Shri Toku Tayu, Village Banchi,
P.O. & P.S. Palin, District Kra Daadi (A.P.)
5. **Shri Toku Job**, aged 27 years,
S/o Shri Toku Mangming, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi (A.P.)
6. **Shri Toku Punung**, aged 24 years,
S/o Shri Toku Tania, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi (A.P.)
7. **Shri Toku Thomas**, aged 30 years,
S/o Late Toku Hanu, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi (A.P.)

...PETITIONERS

-VERSUS-

- 1. State of Arunachal Pradesh,**
Represented by the Public Prosecutor.
- 2. Shri Tunar Mobing,**
S/o Lt. Tunar Tama, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi, Arunachal Pradesh.
- 3. Shri Tunar Hinda,**
S/o Lt. Tunar Taya, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi, Arunachal Pradesh.
- 4. Shri Tunar Lely,**
S/o Lt. Tunar Taya, Village Bangte,
P.O. & P.S. Palin, District Kra Daadi, Arunachal Pradesh.

....RESPONDENTS

Advocate for the appellant : Mr. M. Batt
Advocate for the respondent : Ms. T. Jini, Addl. P.P.
Mr. K. Tama, for R- 2, 3 & 4

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of Judgment & Order : 29.01.2024

JUDGMENT & ORDER

Heard Mr. M. Batt, learned counsel for the petitioners. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. K. Tama, learned counsel for the private respondent Nos. 2, 3 & 4.

2. This is an application under Section 401 *read with* Section 482 of the Code

of Criminal Procedure challenging the impugned order dated 06.10.2023, passed by the learned Judicial Magistrate First Class, Kurung Kumey District, Koloriang in IA No. 06/2023 in R/N G.R. Case No. 94/2019, under Sections 427/447/34 of the Indian Penal Code, arising out of Sangram P.S. Case No. 08/2017, under Section 427/447/188/34 of the Indian Penal Code.

3. While the case was at the stage of Admission Hearing, the learned counsel for the private respondents, Mr. K. Tama, had raised the issue of maintainability of this criminal revision petition in view of the bar prescribed under Section 397 Sub-Section 2 of the Code of Criminal Procedure.

4. The case of the petitioners is that the respondent No. 2 encroached the public Football Ground located at Bangte Village and for which, the Taku Land Control Committee had issued a notice to respondent No. 2 to vacate or dismantle the structure on or before 31.03.2017. Thereafter, the respondent No. 2 lodged a complaint before the Deputy Commissioner, Palin against the petitioner's clan alleging criminal intimidation and asked for prohibitory order. Thereafter, the Deputy Commissioner appointed Arbitrators/Judges on 3 (three) difference dates to conduct Mel to settle the land dispute case. As per the last order, the Deputy Commissioner appointed 4 (four) Arbitrators/Judges to conduct the Mel which was held on 28.04.2017 and during the relevant time of Mel proceeding, the land in dispute and plantation of respondents were damaged by unknown persons and the respondents did not took part in the Mel proceeding after lunch break and accordingly report was submitted to the Circle Officer. The said Mel report was alleged to have been signed by 7 (seven) numbers of Arbitrators/Judges, though the Deputy Commissioner appointed 4 (four) numbers of Arbitrators/Judges as per last order dated 27.04.2017. The

respondents then lodged an F.I.R. against the petitioners and others at Sangram Police Station, which was registered as Sangram P.S. Case No. 08/2017, under Sections 427/447/188/4 27/34 of the Indian Penal Code. After completion of the investigation, the Charge-Sheet was also filed against the present petitioners. During the trial of the criminal case, the learned Court below *suo moto* summoned the Arbitrators and also examined one defence witness. During the examination of DW-12, he stated that he never used to put any thumb impression on any documents, whereas he used to put his signature on documents and not his thumb impression and alleged that the report, i.e. Exhibit-1, was forged by someone for miscarriage of justice. Accordingly, the petitioners filed a complaint praying for a direction to the Deputy Commissioner/ Circle Officer to produce the original Mel report which is under dispute and prayed for sending the same before the Forensic Expert for examination for its opinion in regards to the genuineness of the document in question, but the learned Court below, vide order dated 06.10.2023, in IA No. 06/2023 in R/N G.R. Case No. 94/2019, arising out of Sangram P.S. Case No. 08/2017, rejected the said prayer. The said IA No. 06/2023 was filed under Section 91 Cr.P.C. for a direction to the Circle Officer, Palin, Kra Daadi District, to produce the original document, i.e. the report of the Mel dated 28.04.2017, which was also exhibited as Exhibit-1 and alleged to have been signed by 7 (seven) numbers of Arbitrators. But the learned Court below failed to appreciate the fact of the case and dismissed the said said I.A.(Crl.) No. 06/2023 vide order dated 06.10.2023.

5. On being aggrieved and dissatisfied with the rejection order passed by the learned Court below, the present revision petition is filed praying for setting aside and quashing the order dated 06.10.2023, passed in I.A. No. 06/2023, and also prayed to summon the Deputy Commissioner/Circle Officer, Kra Daadi

District, Palin to produce the original document in question to be examined by the Forensic Expert.

6. Mr. M. Batt, learned counsel for the petitioners, submitted that though the impugned order is passed at the interim stage of the proceeding, but it cannot be termed as an interlocutory order as by rejecting the prayer for calling the original case record, the learned Court below otherwise decide the rights of the parties and in such a situation, even if the order is passed at the interim stage, it cannot be termed as an interlocutory order and there cannot be any bar to entertain an application under Section 397(2) Cr.P.C. *read with* Section 482 Cr.P.C. In this context, he relied on a decision of Hon'ble Apex Court reported in **(2013) 7 SCC 789 (Mohit @ Sonu and Anr. Vs. State of Uttar Pradesh & Anr.)** and further emphasised on paragraph Nos. 25 & 29 of the judgment, which reads as under:

*“25. In the light of the ratio laid down by this Court referred to hereinabove, we are of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant under Section 319 of Cr.P.C. cannot be held to be an interlocutory order within the meaning of sub-section (2) of Section 397 of Cr.P.C. Admittedly, in the instant case, before the trial court the complainant's application under Section 319 of Cr.P.C. was rejected for the second time holding that there was no sufficient evidence against the appellants to proceed against them by issuing summons. The said order passed by the trial court decides the rights and liabilities of the appellants in respect of their involvement in the case. As held by this Court in Amar Nath's case (*supra*), an order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order as contemplated under Section 397(2) of Cr.P.C.*

29. Courts possess inherent power in other statute also like the Code of Civil Procedure (C.P.C.) Section 151 whereof deals with such power. Section 151 of C.P.C. reads: -

“151. Saving of inherent powers of court- Nothing in this Code shall be deemed to limit

or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.”

7. The learned counsel for the petitioners further submitted that the High Court while exercising revisional or appellate power, may exercise its inherent powers. Inherent powers of the High Court can be exercised, it is trite, both in relation to substantive as well as procedural matters. Even the High Court can exercise its revisional jurisdiction not only when the application is filed by the authority, but it can also be exercised *suo moto* by the High Court. In this context, he also relied on a decision of Hon’ble Apex Court reported in **(2006) 7 SCC 296 (Popular Muthiah Vs. State represented by Inspector of Police)** and emphasised on paragraph 27 of the judgment, which reads as under:

“27. While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/ or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of the Parliament, while making the new law the emphasis of the Parliament being 'a case before the court' in contradistinction from 'a person who is arrayed as an accused before it' when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.”

8. The learned counsel for the petitioners further relied on another judgment of Hon’ble Apex Court passed in **Rajendra Kumar Sitaram Pande & Ors. Vs.**

Uttam & Anr., reported in **(1999) 3 SCC 134**, wherein also, the Hon'ble Apex Court has expressed the view that the "*discretion in the exercise of revisional jurisdiction should, therefore, be exercised within the four corners of [Section 397](#), whenever there has been miscarriage of justice in whatever manner. Under sub-section (2) of [Section 397](#), there is a prohibition to exercise revisional jurisdiction against any interlocutory order so that inquiry or trial may proceed without any delay. But the expression "interlocutory order" has not been defined in the Code. In [Amar Nath & Ors. vs. State of Haryana](#) 1978(1) SCR 222, this Court has held that the expression "interlocutory order" in [Section 397\(2\)](#) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". In [Madhu Limaye vs. State of Maharashtra](#) 1978(1) SCR 749, a three Judge Bench of this Court has held an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding, cannot be held to be an interlocutory order. In [V.C. Shukla vs. State](#) 1980(2) SCR 380, this Court has held that the term "interlocutory order" used in the [Code of Criminal Procedure](#) has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of [Section 397](#) would apply. On the other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction under [Section 397](#) could be exercised against the same. The High*

Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under sub-section (2) of [Section 397](#) of the Code.”

9. It is accordingly submitted by the learned counsel for the petitioners that the order, which has been passed by the learned Court below rejecting the prayer for calling the original case record, also cannot be considered as an interlocutory order wherein the rights of the parties are involved and hence, the present petition filed under Section 397 (2) *read with* Section 482 Cr.P.C. is maintainable in present form.

10. In this context, Mr. K. Tama, learned counsel for the private respondent Nos. 2, 3 & 4, has submitted that the learned Court below has rightly rejected the application filed under Section 91 Cr.P.C. for calling the original Mel report from the Circle Officer/Deputy Commissioner. It is a fact that a case has been registered against the present petitioners which is still pending before the Court of learned Judicial Magistrate First Class for disposal and during the trial, the D.W.-12, who deposed for the petitioners, has alleged that someone has forged his signature and he never put any thumb impression as shown in the Mel report. But, from the order itself, it reveals that he already lodged a complaint before the Palin Police Station alleging the forgery of the document/Exhibit-1. Further it is seen that the said Exhibit-1 was also exhibited through the D.W.-12. More so, he also took the recourse by lodging a complaint with the allegation of forgery in the document which is exhibited as Exhibit-1. It is rightly held by the learned Court below that there is no relevancy in allowing the prayer made in IA No. 06/2023 for proper adjudication of the matter, which is pending as R/N. G.R. Case No. 94/2019, and thus, the learned Court below found no relevancy

on the production of the document complying the provision of Section 91 Cr.P.C. to direct the Deputy Commissioner/Circle Officer to produce the Exhibit-1, which is exhibited by the petitioners during the trial. He further submitted that the criminal case which is pending before the learned Court below is registered under Sections 427/447/188/34 of the Indian Penal Code and hence, even if there is any forgery on the document, as alleged by the petitioner, no proper relief can be given to the petitioner in the said case. Further it is seen that the D.W.-12 has already filed an complaint case before the Palin Police Station and has already taken the recourse which is available to him and hence, the learned Court below has rightly find that no relevancy is there in calling the document under the provision of Section 91 Cr.P.C. and the order of rejection is an interlocutory order and therefore, the revision under Section 397 (2) *read with* Section 482 Cr.P.C. is not at all maintainable and accordingly the same is liable to be dismissed. In this context, Mr. Tama, learned counsel for the private respondent, has also relied on a decision of Hon'ble Apex Court reported in **(2009) 5 SCC 153 (Sethuraman Vs. Rajamanickam)** and mainly emphasised on paragraph No. 5 of the judgment, which reads as under:

“5. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under [Section 311](#) Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under [Section 397\(2\)](#) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under [Section 91](#) Cr.P.C. for production of documents and other on the application

under [Section 311](#) Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under [Section 397\(2\)](#), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

11. The learned Additional Public Prosecutor, Ms. T. Jini, has submitted that the learned Court below has committed no error or mistake while rejecting the prayer for calling the original Mel report complying the provision under Section 91 Cr.P.C. She also submitted that from the order itself, it reveals that the D.W.-12, who exhibited the Mel report as Exhibit-1, has alleged that his thumb impression was forged and he never put any thumb impression on Mel report and with the allegation of forgery, he already filed a complaint before the Palin Police Station seeking relief. More so, the said R/N G. R. Case No. 94/2019, arising out of Sangram P.S. Case No. 08/2017, is registered and the Charge-Sheeted under Sections 427/447/34 of the Indian Penal Code and hence, the learned Court below has rightly held that the calling of the original Mel report from the Deputy Commissioner/ Circle Officer is not relevant in connection with the said case. More so, if there is any allegation of forgery, the petitioners can sought for substantial remedy by taking resort of any civil forum as well as criminal case and thus, it is seen that the learned Court below committed no illegality or error while rejecting the prayer made in the said IA No. 06/2023. She further submitted that the present petition is filed under Section 397(2) *read with* Section 482 Cr.P.C. against the order passed by the learned Court below in IA No. 06/2023 and as per Section 482 Cr.P.C., the High Court has the inherent power to pass necessary order to prevent abuse of process of any Court or otherwise to secure the ends of justice. The learned Additional Public

Prosecutor further submitted that the Hon'ble Supreme Court in a case reported in **(1977) 4 SCC 551 (Madhu Limaye Vs. State of Maharashtra)** has also expressed the view that "if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly." But, here in the instant case, as discussed above, it is seen that no injustice is caused to the present petitioners nor it can be termed as an abuse of the process of law. The learned Court below discussed every detail while passing the order and came to a conclusion that the calling of the Mel report is not at all relevant in connection with the case which is pending before the learned Court below and that too it is already seen that the D.W.-12 has already filed a complaint before the Palin Police Station seeking relief with the allegation that his thumb impression was forged in Exhibit-1, i.e. the Mel report, and thus, the petition is not maintainable under Section 397(2) *read with* Section 482 Cr.P.C. and accordingly, the same is liable to be dismissed.

12. After hearing the submissions made by the learned counsels for both sides, I have also perused the case record and the impugned order dated 06.10.2023, passed by the learned Judicial Magistrate First Class, Kurung Kumey District, Koloriang in IA No. 06/2023 in R/N G.R. Case No. 94/2019, under Sections 427/447/34 of the Indian Penal Code, arising out of Sangram P.S. Case No.

08/2017, under Sections 427/447/188/34 of the Indian Penal Code, whereby, the said IA(Crl.) No. 06/2023, filed under Section 91 Cr.P.C. praying for a direction to the Deputy Commissioner/Circle Officer to produce the original copy of Exhibit-1 (exhibited by D.W.-12), was rejected.

13. From the case record as well as the from the submissions made by the learned counsel for the parties, it is seen that during the trial of the case, the IA No. 06/2023 was filed by the D.W.-12 with the allegation that the thumb impression which was shown in the Exhibit-1, i.e. the Mel report, is forged one and he never put any thumb impression on any Mel report as he used to put his signature in every document. Accordingly, the said IA No. 06/2023 was filed under Section 91 Cr.P.C. for production of the original document which is in the custody of the Deputy Commissioner/Circle Officer. But from the order, it also reveals that the D.W.-12 lodged a complaint before the Palin Police Station with the allegation of forgery of document and thus, it is seen that he has sought for relief by filing a complaint before the concerned Police Station. More so, it is seen that the case where the trial is going on had no relevancy of the said exhibit and accordingly, the learned Court below rightly observed that the production of the said document has no relevancy with the case which is pending before the Court of learned Judicial Magistrate First Class, Kurung Kumey District, Koloriang. It is also observed by the learned Court below that the said document has no relevancy in proper adjudication of the matter and that apart, it is also observed that the D.W.-12 has already taken the recourse by lodging a complaint before the Palin Police Station, which is informed by the defence counsel himself.

14. The application praying for production of the document was filed during the

trial of the case which was rejected by the learned Court below by a reasoned order and the order passed in the said IA(CrI.) No. 06/2023 is purely interlocutory in nature and that apart, it is seen that no prejudice is caused to the D.W.-12 for rejection of the prayer as he already filed appropriate application/complaint before the concerned Police Station seeking relief with the allegation that the Exhibit-1 is a forged document, wherein his thumb impression was forged. Further it is seen that the learned Court below, considering all pros and cons of the matter, has passed a reasoned order and thus, it cannot be stated that it was an abuse of the process of the Court or any injustice was caused to the D.W.-12 and that apart, it is already discussed that he filed application before the concerned Police Station seeking appropriate relief.

15. In view of the discussions made above, I find that the impugned order passed by the learned Court below is purely an interlocutory order and the petitioners failed to bring any materials to consider that the order passed by the learned Court below will be an abuse of the process of the law and it will cause any injustice to the petitioners to consider the application even under Section 482 Cr.P.C. Accordingly, in my considered view, the present petition is not maintainable in its present form and hence, the same stands dismissed.

16. In terms of above, this criminal revision petition stands disposed of.

JUDGE