

GAHC010013602013



2024:GAU-AS:10762

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

Case No. : Crl.Pet./909/2013

PRADIP CHETIA
S/O LT. TOWARAM CHETIA R/O MILAN NAGAR, J. LANE, P.O. C.R.
BUILDING, P.S. DIBRUGARH, DIST. DIBRUGARH, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR

2:SRI KHASNUR ALI
SHERISTADAR
SPECIAL JUDGE
COURT
ASSAM
GAUHATI

Advocate for the Petitioner : MR.P J SAIKIA , MR.K BARUAH

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

05.11.2024

1. Heard Mr. P. J. Saikia, learned Senior Counsel assisted by Mr. K. Baruah, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional

Public Prosecutor for the State.

2. The present application is filed under Section 482 of Cr.P.C. assailing an order dated 21.01.2013 passed by the learned Special Judge, Assam whereby the learned Chief Judicial Magistrate, Kamrup, Guwahati was directed to register a complaint case against the present petitioner under Sections 217/218/219 of IPC.
3. The brief facts leading to the present petition can be summarized as follows:-
 - I. One Sri Ghanashyam Saikia, Deputy Superintendent of Police, Vigilance & Anti Corruption, Assam, lodged an FIR before the Officer-in-Charge cum Superintendent of Police, Vigilance and Anti Corruption, Assam inter alia alleging that during enquiry of R.E. No. 55(7)/2002, it was found that one Sri A. R. Mazumdar, the then Assistant Project Officer (T) D.R.D.A., Silchar, Cachar had acquired both movable and immovable property during the tenure of his service w.e.f. October, 1996 to April, 2001 by adopting corrupt practices and by abusing his power and position as public servant.
 - II. It was further recorded in the FIR that during enquiry it was found that the said officer had earned an income of Rs. 15,39,695/- from all of his known sources whereas he had spent Rs. 19,89,689/- in maintaining his family and acquiring properties including savings and investment during the said period.
 - III. Accordingly, A.C.B. Police Station Case No. 13/2004 under Section 13(1) (e)/13(2) of the Prevention of Corruption Act, 1988 was registered.
 - IV. Thereafter, after completion of the investigation, the investigating officer namely, Sri Jitendra Nath Chakraborty, filed a closure report dated 18.09.2010.
 - V. Thereafter, the learned Special Judge, Assam by an order dated

04.08.2011 rejected such closure report and directed the Superintendent of Police, Vigilance and Anti Corruption, Assam to re-investigate the case and to submit the report within three months. The present petitioner was entrusted with the re-investigation and after completion of re-investigation, he once again filed the final closure report.

VI. Thereafter, the learned Special Judge, Assam, on the basis of the material collected came into a conclusion that the accused in the case acquired disproportionate asset and therefore, concluded that the present petitioner as I.O., despite having sufficient material against the accused, instead of filing application for prosecution sanction to the competent authority, has filed the final report and therefore, he has committed offences under Section 217/218/219 of the IPC.

VII. The learned special Judge, Assam just quoted the provision of Section 217/218/219 of IPC and came to the following conclusion:-

“If the final report No. 5/2012 submitted by I/O Pradip Chetia is examined in the light of those penal provisions it seems that I.O Pradip Chetia disobeying direction of law as to the way in which he is to conduct himself as such public servant has intentionally framed record in a manner which he knows to be incorrect and has maliciously submitted the report in this judicial proceeding. While dealing with the investigation reports submitted by I/O, it has been found in several cases that the I/Os for the reason best known indulge in perfunctory investigation. It has also been found that the supervising senior officer of the subordinate Investigating Officers dealing in corruption cases have also failed to discharge their duty entrusted to them by the State machinery. The Ld. Trying Magistrate may examine whether this failure to discharge their duty amounts to abetment or not u/s 107 IPC”.

4. In the considered opinion of this Court neither from the aforesaid quoted

provision nor from the materials discussed by the learned Special Judge, even if taken its face value and accepted to be correct, shall make out any offences under Section 217/218/219 of IPC. There is nothing to suggest that the petitioner has conducted himself in a manner intending to save the accused, except the aforesaid quoted order of the learned Special Judge, that too without any material suggesting such conduct.

5. There is also nothing on record to suggest any prima facie ingredients under Section 218 IPC or that the petitioner being public servant has corruptly and maliciously made any report during any judicial proceeding. It was of the opinion of the investigating officer on the material available on record that no case is made out. It is different thing that the learned trial Court may find some material to take cognizance or to have a satisfaction that prima facie case is made out against the accused for proceeding with the trial and it is a different thing that such final report is result of commission of any offences under Section 217/218/219 of IPC.
6. It is also submitted at the bar that subsequent to the impugned order dated 21.03.2013, another investigation was conducted and charge-sheet was filed, however, the main accused in the case had already been acquitted. Be that as it may, same is not subject matter of the present litigation and for the reasons recorded hereinabove, this Court is of the view that this is a fit case where this Court should exercise its power under Section 482 of Cr.P.C., for quashing the impugned order dated 21.01.2013 passed by the learned Special Judge, Assam.
7. Accordingly, the impugned order dated 21.01.2013 passed by the learned Special Judge, Assam is set aside and quashed so far relating to the lodging of complaint of the petitioner and the finding against the present petitioner. Accordingly, the complaint case being CR No. 159^c/2013 pending for trial before the learned Additional Chief Judicial Magistrate, Kamrup (M) at Guwahati stands

closed.

8. LCR be returned back.

JUDGE

Comparing Assistant