



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

CRL.PET 316 OF 2023

Mr. Alok Kumar
S/O- Sh. Yogeshwar Prasad,
R/O- C4E, Shubham Buildwell,
R.G. Baruah Road, Near Neepco
Bhawan, Guwahati-781006,
Dist. Kamrup(M), Assam
and presently working as G.M.
Environment at NHAH Headquarter,
Dwarka, New Delhi-75.

.....Petitioner

-Versus-

Central Bureau of Investigation
O/o- Head of the Branch,
Anti-Corruption Branch (Opposite Balaji
Temple) Betkuchi, NH-37, Garchuk-781035.

.....Respondent

For Petitioner	:	Mr. S. Mann, Advocate
For Respondent	:	Mr. M. Haloi, Special Public Prosecutor, Central Bureau of Investigation (CBI)
Date of Judgment	:	07.08.2024

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

- 1.** Heard Mr. S. Mann, learned counsel for the petitioner. Also heard Mr. M. Haloi, Special Public Prosecutor, Central Bureau of Investigation (CBI).
- 2.** This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Mr. Alok Kumar, praying for quashing of the charge sheet which has been filed in connection with FIR No. RC2162022A0007 and all consequential proceedings therefrom, presently pending before the Court of learned Special Judge, CBI, Assam, Additional Court No. 2, Chandmari at Guwahati.
- 3.** The facts relevant for consideration of instant Criminal Petition, in brief, are as follows:
 - i.** That, on 12.06.2022, an FIR, bearing No. RC2162022A0007 was registered on the basis of a reliable source information under Section 120B of the Indian Penal Code, read with Sections 7, 8, 9, 10 and 12 of the Prevention of Corruption Act, 1988, at the Central Bureau of Investigation, AC-1, New Delhi, against six numbers of named accused persons, namely, (1) Shri Dipak Das, (2) Shri Manoj Kumar, (3) Shri Sushil Agarwal, (4) Shri Pankaj Singh, (5) Shri

Dilip Rajput, (6) M/s G.R. Infra Projects Limited, and (7) Some unknown public servants and private persons.

- ii.** It has been alleged in the FIR that some of the officials of National Highway Authority of India (NHAI) posted in the North-eastern states are indulging in corrupt and illegal activities in the matter of awarding contract, processing and clearance of bill in lieu of huge bribe in connivance with private contractors.
- iii.** After receipt of the aforesaid FIR, a team of CBI officials led by Mr. A.K. Maurya, Inspector CBI, AC-1, New Delhi, was constituted. The said team, along with the independent witnesses and the source, reached Khanapara near Health City Hospital, Guwahati at about 7.20 pm.
- iv.** After a few minutes, in line with the tip received from the source to the effect that Shri Manoj Kumar will come to collect the bribe amount in his car bearing Registration No. JH10AM733, a vehicle came there and after some time a white colour Bolero car bearing Registration No. MN07E0113 also stopped there and one person came down from the said Bolero car, who was identified as Shri Pankaj Charan of M/s GR Infra Project Limited by the source. The said person came near Shri Manoj Kumar and handed over a yellow

envelope to him. At that time the CBI officials intercepted and apprehended them.

- v.** During interrogation, the accused Manoj Kumar confessed of obtaining Rs. 4 lakhs from the accused Pankaj Charan. He also disclosed that out of the Rs. 4 lakhs received he will get only Rs. 50,000/- and remaining amount i.e. Rs. 3,50,000/- was obtained for one Shri Deepak Das.
- vi.** During investigation, it was revealed that on 10.09.2015 a tender was awarded to M/s GR Infra Project Limited by National Highway Authorities of India (NHAI) for the project "rehabilitation and upgradation of existing roads to two lanes with paved shoulders configuration in Jowai-Meghalaya-Assam Border sections from NH-44 from km 69.200 to km 173.200 in the state of Meghalaya", on Engineering Procurement and Construction (EPC) mode under NHDP Phase-3 for the contract price of Rs.468,27,00,000/- (Rs. 468.27 crores).
- vii.** As per stipulated terms and conditions of the aforesaid work, M/s GR Infra Project Limited submitted two bank guarantees worth Rs. 11,46,81,000/- and Rs. 2,58,00,000/- with NHAI as performance security.
- viii.** The petitioner Shri Alok Kumar, who was posted and was working as Regional Officer, National Highway Authority of India, Regional Office Guwahati was

arrested in connection with this case on 14.06.2022 on the allegations that he abused his official position as public servant and entered into criminal conspiracy with other accused persons for ensuring favourable reports from the Authority's Engineer of EGIS India Consulting Engineers Private Limited and timely release of bank guarantees by suppressing the questionable report of the consultant.

ix. It was also alleged that the above-named petitioner assured the accused persons namely, Sushil Kumar Agarwal and Pankaj Singh for timely and smoothly release of bank guarantees of M/s GR Infra Project Limited and obtained undue advantage by securing a job for his distant relative in the Company namely, M/s GR Infra Project Limited.

x. On completion of the investigation, charge sheet No.3 dated 10.8.2022 was laid against 11 numbers of accused persons. The petitioner Sri Alok Kumar has been shown as accused number seven (A-7) in the chargesheet. He has been charge-sheeted under Section 120B of the Indian Penal Code, read with Sections 7, 8, 9, 10 and 12 of the Prevention of Corruption Act, 1988.

4. Learned counsel for the petitioner has submitted that the petitioner Alok Kumar, who was working as GM (T/RO), NHAI, Guwahati was arrested by the CBI on 14.06.2022.

However, no allegation was made against him in the FIR which resulted in the trap proceeding/recovery memo dated 12.06.2022, wherein one Mr. Manoj Kumar and Dipak Das of NHAI were arrested by the CBI for allegedly accepting bribe from one Pankaj Charan of M/s GR Infra Project Ltd.

- 5.** Learned counsel for the petitioner has submitted that there is no materials against the petitioner regarding demand of any money or his role in transaction of any money in connection with the aforesaid trap proceeding.
- 6.** Learned counsel for the petitioner has submitted that with regard to the awarding of contract to M/s GR Infra Project Ltd., a contract was executed on 29.09.2015 between National Highway Authority of India as well as the said contractor. As per Clause 7.4 of the said contract under heading "Release of Performance Security" of the aforesaid contract, the authority is obliged to return the performance security to the contractor within 60 days of the expiry of maintenance period or the defect liability period.
- 7.** It is submitted by learned counsel for the petitioner that the maintenance period and the defect liability period for the project had expired on 31.03.2022 and accordingly, in terms of the Clause 7.4 of the agreement, the authority was obliged to return the performance security to the contractor within 60 days from 01.04.2022 and the release of performance bank guarantee by the petitioner was in consonance with the terms of contract between the NHAI

and the contractor and it was in discharge of official duties assigned to the petitioner.

- 8.** It is submitted by learned counsel for the petitioner that the petitioner being the Regional Officer, of NHAI was duty bound to ensure requisite compliance on the part of the NHAI in terms of contract executed between the NHAI and the contractor. It is also submitted that the non-compliance of the commercial agreement would have resulted in huge number of avoidable and expensive litigation.
- 9.** Learned counsel for the petitioner has also submitted that the allegation in the charge sheet against the petitioner that he assured the contractor about timely release of performance guarantee on the condition that some distant relative of him would get job with the said company is baseless as there is nothing on record which shows that the relative of the petitioner got job in the contractor's company as a *quid pro quo* of the timely release of the performance guarantee by the petitioner.
- 10.** It is submitted that the alleged person is neither blood relative nor has any direct family relationship and the petitioner has no role to play regarding his employment in the contractor's company.
- 11.** Learned counsel for the petitioner has also submitted that, in the instant case, the Central Bureau of Investigation, had clearly violated the provisions of Section 17 A of the Prevention of Corruption Act, 1988 in respect of the present

petitioner as under Section 17A of the Prevention of Corruption Act, 1988, no police officer shall conduct any inquiry or investigation into any offence alleged to have been committed by the public servant under the said Act, where the alleged offence is relatable to any recommendations made or decision taken by the public servant in discharge of the official functions or duties without the previous approval of the authorities mentioned in Clause (a), (b) or (c) of the said provision.

- 12.** It is submitted by learned counsel for the petitioner that, in the instant case, as the release of bank guarantee in question by the petitioner was in performance of his official duties, prior approval under Section 17A of the Prevention of Corruption Act, 1988, ought to have been taken for initiating any inquiry/investigation against the present petitioner and by not doing so, the entire proceeding *qua* the present petitioner would be vitiated.
- 13.** Learned counsel for the petitioner has submitted that there is no material on record, which shows that the petitioner ever demanded any money for releasing the performance guarantee to the contractor or that he asked anyone to give employment to his distant relative in lieu of the release of the performance guarantee.
- 14.** Learned counsel for the petitioner submits that even if it is assumed that there was a delay in release of the second instalment of performance guarantee to the contractor, mere

instance of malfeasance or wrong administration or wrong discharge of functions or dereliction of duty will not cause a prosecution under Prevention of Corruption Act, 1988, unless there is some element of corruption involved in doing so.

- 15.** Learned counsel for the petitioner has submitted that as prior approval of the authorities mentioned in Section 17A of the Prevention of Corruption Act, 1988 was necessary for initiating investigation against the above named petitioner and for arresting him in this case, the initiation of investigation against him and the filing of charge sheet against him without there being any prior approval from the competent authority under Section 17A, the charge sheet laid against the present petitioner is illegal and amounts to gross abuse of law and therefore, same is liable to be quashed.
- 16.** Learned counsel for the petitioner has submitted that the uncontroverted allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence by the above named petitioner and make out a case against him in this case and therefore, this is a fit case where the inherent powers of the Court under Section 482 of the Code of Criminal Procedure, 1973 should be exercised and the charge sheet and the proceeding pending against the above named petitioner without there being any materials on record against him, should be quashed.

- 17.** In support of the submissions made by learned counsel for the petitioner has cited following rulings:
- i.** Ramesh Chennithala Vs. State of Kerala reported in 2018 SCC Online KER 14261;
 - ii.** Taba Tedir Vs. Central Bureau of Investigation reported in 2019 SCC online GAU 3451;
 - iii.** Bhayabhai Gigabhai Sutreja Vs. State of Gujarat reported in 2020 SCC online GUJ 2266;
 - iv.** Kailash Chandra Agarwal and Another Vs. state of Rajasthan reported in 2020 SCC online RAJ 2869;
 - v.** Himanshu Yadav Vs. State of Rajasthan and Others reported in 2022 SCC online RAJ 1303;
 - vi.** State of Haryana and Others Vs. Bhajanlal and Others reported in 1992 Supp (1) SCC 335.
- 18.** On the other hand, Mr. M. Haloi, learned Special Public Prosecutor, CBI has vehemently opposed the prayer of the petitioner for quashing the proceeding of the Special CBI Case No. 05/2022 *qua* the above-named petitioner which was initiated on the basis of FIR No. RC2162022A0007.
- 19.** Mr. M. Haloi, learned Special Public Prosecutor, CBI has produced the case diary of concerned case before this Court and has submitted that this case is related to demand and acceptance of illegal gratification by the accused public servants from private accused persons of M/s GR Infra Project Ltd. for payment of release of performance bank guarantee and also passing their bill expeditiously. He has

also submitted that the demand and acceptance of illegal gratification by the accused public servants is not connected with the discharge of official duty, therefore, the provisions of Section 17A of the Prevention of Corruption Act, 1988 is not applicable in the instant case.

- 20.** It is submitted by learned Special Public Prosecutor that the above named petitioner is a conspirator working in the nexus with other public servants and private persons. Hence, he does not come within the purview of Section 17A of the Prevention of Corruption Act, 1988.
- 21.** He has also submitted that though, the petitioner has not been named in the FIR, however, an FIR may not be an encyclopedia of all the events in a criminal case and not naming the petitioner in it would not absolve him from the criminal liability if otherwise materials are available against him. He has also submitted that sufficient materials were collected during investigation against the above-named petitioner, which implicates him in the case which was registered on the basis of the FIR.
- 22.** He has also submitted that as the charge sheet has been laid after completion of the investigation, question of quashing the FIR on the ground that FIR does not disclose involvement of the petitioner in the alleged offence does not arise as after filing of the FIR, in the investigation which was initiated in person, sufficient material were collected against the above named petitioner. He has submitted that

accepting bribe or making an attempt to obtain bribe cannot be considered as an part of the official duties of the petitioner.

- 23.** Learned Special Public Prosecutor has also submitted that the statement of one Rajesh Kumar Sharma, who is the proprietor of M/s MR Construction, shows that the petitioner asked him to pay at least Rs. 50,000/- as reward for arrangement of DM-50 plant, DG-125 KVA along with container on reasonable rates from M/s GR Infra Project Ltd.
- 24.** It is also submitted by learned Special Public Prosecutor that the telephonic conversation recording of the petitioner with Ashok Kumar Singh, who is the Authority Engineer of M/s EGIS India Consulting Engineers Private Limited shows that the petitioner asked him not to write "*but not recommended*" type of words to NHAI which may create problem in future.
- 25.** It is submitted by learned Special Public Prosecutor that the above-named petitioner extended undue favour towards M/s GR Infra Project Ltd. by releasing the bank guarantee to them.
- 26.** It is also submitted by learned Special Public Prosecutor that the intercepted telephonic conversation between the petitioner and the officials of M/s GR Infra Project Ltd. shows that the release of bank guarantee and other bills were in lieu of the petitioner securing a job for his cousin Kumar Ankit in M/s GR Infra Project Ltd.

- 27.** Learned special public prosecutor has submitted that taking of illegal gratification for releasing of bank guarantee cannot be considered as an act which is directly connected with making any decision or recommendation by the petitioner in discharge of his official duty, so as to bring him within the purview of Section 17A of the Prevention of Corruption Act, 1988. Hence, he has prayed that the Criminal Petition filed by the petitioner may be dismissed.
- 28.** Learned special public prosecutor has also submitted that the case of the petitioner does not fall within any of the seven conditions enumerated by the Apex Court in the case of the "***State of Haryana and Others Vs. Bhajan Lal (Supra)***" so as to invoke the powers of Section 482 of the Code of Criminal Procedure 1973 in this case.
- 29.** In support of the submissions made by him, learned special public prosecutor, CBI has cited following rulings:
- i.** Nizam Begum and Another Vs. State and another, [Judgment dated 21.02.2011, passed in WP (CRL) No.1137/2007 by the Delhi High Court.];
 - ii.** Kailas Sopan Jade Vs. State of Maharashtra, reported in AIR Online, 2023, BOM 140;
 - iii.** Baltej Singh Vs. State of Rajasthan, [Judgment dated 23.01.2017 passed in S.B. Criminal Misc. (Pet.) No. 3916/2006 by the Rajasthan High Court.];
 - iv.** Swatantar Singh Vs. State of Haryana, reported in (1997) 4 SCC 14;

- v.** Devinder Singh and Others Vs. State of Punjab through CBI, reported in (2016) 12 SCC 87;
 - vi.** State of Haryana and Others Vs. Bhajanlal and Others, reported in (1982) SUPP, (1) SCC 335;
 - vii.** Kaptan and Singh Vs. State of Uttar Pradesh and others, reported in (2021) 9 SCC 35;
 - viii.** Shankara Bhat Vs. State of Kerala, (Judgment dated 27.08.2021) passed in CRL. MC No. 7542/2018 by the Kerala High Court.
- 30.** I have considered the rival submissions made by learned counsel for both the sides and have gone through the materials available on record, including the case diary of RC2162022A007. I have also gone through the rulings cited by learned counsel for both the sides.
- 31.** On perusal of the FIR dated 12.06.2022, on the basis of which RC2162022A0007 was registered, it appears that though, six numbers of accused persons were named in the FIR, however, the petitioner Alok Kumar has not been named in the FIR, and though, some general allegations were levelled against the officials of National Highway Authority of India (NHAI) posted in North-Eastern states, of having been indulging in corrupt and illegal activities, no specific allegation was made in the said FIR against the petitioner Alok Kumar.

- 32.** It also appears from record that the petitioner Alok Kumar was arrested in connection with the case on 14.06.2022, and later on, he was allowed to go on bail.
- 33.** It also appears that after completion of the investigation, charge sheet was laid amongst other, against the petitioner Alok Kumar, with an allegation that investigation disclosed that the above-named petitioner abused his official position as public servant and entered into criminal conspiracy for ensuring favourable reports from Authority Engineer of EGIS India Consulting Engineers Pvt. Ltd. for timely release of bank guarantee by suppressing the questionable report of the consultant.
- 34.** It was also alleged that the petitioner assured the other accused persons, namely, Sunil Kumar Agarwala and Pankaj Singh, for timely and smoothly release of bank guarantee of M/s GR Infra Project Limited and obtain undue advantage by securing a job for his distant relative in the M/s GR Infra Project Limited.
- 35.** It is not in dispute that the petitioner Alok Kumar, who is the Regional Officer, NHAI, RO Guwahati, is a public servant. However, no prior approval as mandated under Section 17A of the Prevention of Corruption Act, 1988 was obtained, prior to initiating investigating against the present petitioner, in this case.
- 36.** Further, as per Clause 7.4 of the agreement between the NHAI and M/s GR Infra Project Limited, the authority shall

have to return the performance security to the contractor within 60 days of the later of expiry of the maintenance period or the defect liability period under the agreement. Thus, the petitioner, being the Regional Officer of the NHAI, was under an obligation to release the bank guarantee as per the recommendation of the Authority Engineer to the contractor.

- 37.** Though, the allegation of securing undue advantage by the petitioner has been made in the charge sheet, however, from the materials available in the case diary, there is nothing to suggest that the petitioner demanded any undue favour in lieu of release of bank guarantee.
- 38.** It also appears that, though, the recorded telephonic conversation between the petitioner and the officials of M/s GR Infra Project Limited does show that they had conversation in respect of the recommendation made by the Authority Engineer. However, there is nothing, which suggests that the petitioner demanded anything in lieu of timely release of bank guarantee to M/s GR Infra Project Limited. Apart from mere allegation, the available materials on record does not suggest that the petitioner secured any undue advantage in lieu of doing his official duty of releasing bank guarantee to the M/s GR Infra Project Limited.
- 39.** It appears that the release of performance bank guarantee was by the NHAI was in consonance with the terms of contract between NHAI and the contractor and the petitioner

only discharged his official duty assigned to him as Regional Officer of the NHAI.

- 40.** As regards the allegation against the petitioner that he secured a job for Kumar Ankit, who is alleged to be his cousin brother, in M/s GR Infra Project Limited on instructions of Alok Kumar. However, on perusal of the materials available on record, it appears that there is no evidence on record, apart from the recorded telephonic conversation between the petitioner and the officials of M/s GR Infra Project Limited, wherein the petitioner only made an inquiry regarding appointment of the said person. However, there is nothing in the conversation to suggest that anything was assured in lieu of such an appointment or that any demand was made to the officials of M/s GR Infra Project Limited to appoint Mr. Kumar Ankit.
- 41.** It also appears that during the telephonic conversation between the petitioner and Pankaj Charan, there was only an inquiry regarding the work done in respect of the change of scope (COS) of the allotted work to the tune of Rs. 4 lakhs, which does not suggest that anything was paid to the petitioner or any undue favour was demanded by him.
- 42.** Further, from the statement of Rajesh Kumar Sharma, the proprietor of M/s MR Construction, which the prosecution side is relying, it appears that he has categorically stated that he had not paid a single penny to Alok Kumar and he had only alleged that the petitioner was demanding a reward

of Rs. 50,000/- from him. However, he never committed to give any bribe to the petitioner for purchase of DM-50 Plant, DG-125 KVA container along with other items from M/s GR Infrastructure Project Ltd.

- 43.** Thus, in the instant case, though, allegations are made against him of having obtained undue favour of release of bank guarantee to the M/s GR Infra Project Limited, the materials collected during investigation do not disclose commission of any offence by the petitioner
- 44.** Though, taking of bribe or taking undue favour, by a public servant, cannot be regarded as anything connected with the work in discharge of official duties, however, in the instant case there is no evidence which suggests that the petitioner took any bribe or any undue favour in lieu of releasing of bank guarantee, which the NHAI was bound to release under the terms of contract between it and the contractor's company.
- 45.** Further, the provision of Section 17A of the Prevention of Corruption Act, 1988, prohibits conducting of inquiry or investigation into any offence under the act unless to have been committed by a public servant where the act is relatable to any recommendation made on decision taken by such public servant in discharge of his official function.
- 46.** In the instant case, manifestly, the release of bank guarantee to the contractor's company by the petitioner was done in discharge of his official duty. Therefore, before

initiating any inquiry or investigation against him under the provision of Prevention of Corruption Act, 1988, prior approval of the authorities mentioned in Clause (a), (b) or (c) of Section 17 of the Prevention of Corruption Act, 1988, was a *sine qua non* and the investigation against the present petitioner could not have been taken up without such approval from the concerned authorities.

47. Hence, this Court is of considered opinion that without complying with the provisions of Section 17A of the Prevention of Corruption Act, 1988, the initiation of investigation and laying of charge sheet against the petitioner Alok Kumar was illegal and in violation of the statutory provisions and it amounts to an abuse of the process of law.

48. In the case of "***State of Haryana and Others Vs. Bhajan Lal and Others***" (*Supra*) the Supreme Court of India has laid down that where an express legal bar engrafted in any of the provision of the code or the concerned act to the institution and continuation of proceeding and/or where there is a specific provision in the code or concerned act providing efficacious redressal for grievance of the interest of the party, the inherent powers of the Court under Section 482 of the Code of Criminal Procedure, 1973 may be exercised to prevent the abuse of the process of Court or otherwise to secure ends of justice. In the instant case also, in view of the statutory bar of Section 17A of the Prevention

of Corruption Act, 1988, the continuation of proceedings against the above-named petitioner would be an abuse of the process of court.

49. In light of discussions made herein above, this Criminal Petition deserves to be allowed, and accordingly, the charge sheet laid before the Court of Special Judge, CBI, Assam Additional Court No. 2, Chandmari in connection with a FIR No. RC2162022A0007, *qua* the petitioner Alok Kumar, is hereby quashed and set aside.

50. This Criminal Petition is accordingly disposed of.

JUDGE

Comparing Assistant