

GAHC010082592023



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

Crl.Pet./382/2023

1. Smti Kabita Deka, ACS
W/o Dr. Kumudlal Saikia,
R/O H. No. 07, Jalukbari, Pragjyotish
Nagar, P.S.-Jalukbari,
Guwahati-781014,
Dist-Kamrup (M), Assam

Petitioner

-Versus-

1. The State of Assam
Represented by the Public Prosecutor,
Assam
2. Pinaki Prasad Mitra,
Inspector of Police,
Vigilance and Anti-Corruption,
Assam, Srimantapur
Guwahati-3

Respondents

For Petitioner : Mr. P. N. Choudhury, Advocate

For Respondent(s) : Mr. K. Baishya, Advocate

Date of Judgment : 24.06.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT**

24.06.2024

(M.K.Kalita, J)

- 1)** Heard Mr. P. N. Choudhury, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Public Prosecutor, Assam representing the State.
- 2)** This Criminal Petition has been registered on filing of an application under Section 482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India by the petitioner, namely, Smt. Kabita Deka, praying for setting aside/cancelling/expunging her name from the Charge Sheet No. 3/2021 dated 06.07.2021, wherein the petitioner has been shown as an accused person not charge sheeted. In alternative, the petitioner has also prayed for dropping her name from the ongoing criminal proceeding. During the course of the hearing, learned counsel for the petitioner has also submitted that the relief sought for by the petitioner in her criminal petition may be moulded to the stoppage of the further investigation as regards the petitioner in connection with the aforesaid case.
- 3)** The petitioner is an Officer of Assam Civil Service and it is claimed by her that she has an unblemished service record of 29 years in the said service.
- 4)** The facts relevant for consideration of the instant criminal petition, in brief, are as follows:

- i.** On the basis of a letter dated 15.11.2018 written by Shri Rajesh Prasad, IAS, the then Principal Secretary to the Government of Assam, Revenue and Disaster Management Department to the Divisional Commissioner, Lower Assam Division, Panbazar, wherein certain anomalies and irregularities of serious nature in respect of some plots of land settled in favour of "North East Agricultural Seed Farms & Research Centre" and "Nilachal Cold Storage & Godown" followed by subsequent transfer of the said lands to others, in violation of existing Government instruction, which had come to the knowledge of the Revenue and Disaster Management Department, were pointed out.
- ii.** It is alleged in the said letter that three plots of land measuring 04 bigha 0 katha 0 lechha, 03 bigha 0 katha 0 lecha and 03 bigha 02 katha 15 lechas were settled by the Government in favour of North East Agricultural Seed Farms & Research Centre and Nilachal Cold Storage & Godown respectively in violation of the existing Government circulars.
- iii.** It was also mentioned in the said letter that the settlement order issued in favour of the aforesaid entities were found to be forged and manipulated and thereafter, the aforesaid entities sold the said land within a short period of time to one M/s Pradeep

Kumar Agarwala and M/s KRC Warehouse in violation of the Government instructions.

- iv.** It is also alleged in the said letter that it was found that
- a.** the VGR land which was settled was not de-reserved before such settlement;
 - b.** no documentary evidence for SDLAC recommendation was available;
 - c.** it was also alleged that correction of land records were done without confirming payment of the premium;
 - d.** The original settlement order dated 25.04.2006, original settlement order (No. RSS 514/2004/39 dated 25.04.2006 was found to be forged;
 - e.** The issuance of NOC for land sale was given within 5-10 years of the settlement in violation of the Government instructions;
 - f.** Similarly, it was alleged that transfer of newly settled land was also done within 5-10 years of the settlement; and
 - g.** The mutation of the land transfer was also done within 5-10 years of the settlement in violation of the Government circulars.
- v.** It was alleged that as per the report of Deputy Commissioner Kamrup (M) as well as from the records available in the Department, five government

officials were found to be involved in the process, including the present petitioner who was at that time posted as Circle Officer (A), Dispur Revenue Circle.

vi. On the basis of the aforesaid letter one Pinaki Prasad Mishra, Inspector of Police, Vigilance and Anti-Corruption, Assam, on 28.05.2019, had lodged an FIR before the Officer-In-Charge of Anti-Corruption Bureau Police Station cum Superintendent of Police, Vigilance and Anti-Corruption Assam.

- 5)** On receipt of the said FIR, the ACB P.S. Case No. 07/2019 was registered under Section 119/120B/167/420/468/471 of the Indian Penal Code read with Section 13(1)(a) of the Prevention of Corruption Act, 1988.
- 6)** Ultimately, on completion of the investigation, the Chargesheet was laid on 06.07.2021 against two accused persons namely, Jamini Kalita Talukdar and Dilip Kumar Kalita under Section 120B/420/467/468/471/34 of the Indian Penal Code.
- 7)** The Petitioners and the other government officials named in the FIR were not sent up for trial due to want of credible evidence against them and the name of the petitioner was shown in the Chargesheet in the column of the accused persons who are not sent up for trial.
- 8)** However, while submitting the chargesheet the Investigating Officer has mentioned in the chargesheet that due to lack of prosecutable evidence against the other accused persons including the present petitioners they

could not be sent up for trial and efforts are on to collect credible evidence against them and in view of above investigation will be continued as per Section 173(8) of the Code of Criminal Procedure, 1973 to collect further evidence against them.

- 9)** On filing of the aforesaid charge sheet, the PRC Case No. 1551/2021 was registered and by order dated 09.08.2021, the learned Chief Judicial Magistrate, Kamrup (M), Guwahati had transferred the said PRC case to the learned Additional Chief Judicial Magistrate, Kamrup (M), Guwahati for disposal. Thereafter, by order dated 18.09.2021, on receipt of the aforesaid PRC case, on transfer for disposal, the learned Additional Chief Judicial Magistrate, Kamrup (M), Guwahati, considering the materials available on record, took cognizance of offence under Section 120B/467/68/471/34 of the Indian Penal Code against the accused persons namely, Jamini Kalita Talukdar and Dilip Kalita Talukdar and issued summons to both of them. The fact that the present petitioners were not sent for trial was also reflected in the order sheet.
- 10)** Mr. P. N. Chaudhary, learned counsel for the petitioner has submitted that though, the Investigating Officer has mentioned in the charge sheet that efforts are on to collect credible evidence against the accused persons who are not sent up for trial including the present petitioner and the investigation will be continued as per Section 173(8) of the Code of Criminal Procedure, 1973, however, no leave to

continue such further investigation was granted by learned Additional Chief Judicial Magistrate when the charge sheet was laid before the said Court.

- 11)** The learned counsel for the petitioner has also submitted that when after completion of the investigation, charge sheet was laid and when during investigation no evidence was found against the present petitioner, the Investigating Officer was wrong to state in the charge sheet that the investigation shall continue against her as unless investigation is completed, charge sheet could not have been filed and unless some new information comes to light, no further investigation could have been initiated.
- 12)** Further, it is also submitted that as no leave was granted by the learned Additional Chief Judicial Magistrate to continue further investigation, the Investigating Officer, who had already recorded the statement of the present petitioner on 09.04.2021 before during the course of investigation could not have continued the investigation against the present petitioner after submitting the charge sheet. However, it is submitted by learned counsel for the petitioner that again, on 03.02.2024, the statement of the above-named petitioner was recorded under Section 161 of the Code of Criminal Procedure, 1973 by the Investigating Officer wherein the petitioner had reiterated her statement which she gave before the Investigating Officer on 09.04.2021.

- 13)** The learned counsel for the petitioner has submitted that the petitioner was an attached Circle Officer during the relevant period of time i.e., 06.11.2006 till 20.11.2006 and was not in a position of decision making for settlement of land, which took place in the month of September, 2006.
- 14)** Moreover, it is submitted by learned counsel for the petitioner that even after a prolonged investigation of more than 2 years when the charge sheet was laid no credible evidence was found against the present petitioner, hence without any new information coming to light, the further investigation against the present petitioner ought not to have continued.
- 15)** It is also submitted that as the present petitioner is holding a responsible post in the Government of Assam and is on the verge of retirement, the continuation of the further investigation against the present petitioner without any basis is a stigma to her service career, therefore, the learned counsel for the petitioner has submitted that by invoking the inherent power of this Court under Section 482 of the Code of Criminal Procedure, 1973 the continuation of the further investigation against the present petitioner should be quashed for the ends of justice.
- 16)** The learned counsel for the petitioner has cited following rulings in support of his submissions:
- i. Vishnu Shukla and Another Vs. State of UP and another reported in 2023 SCC online SC 1582*

- ii. Abhishek Saxena Vs. State of UP and Another (Judgment dated 28.11.2023 in Criminal Appeal No. 3628 dated 2023) by the Supreme Court of India*
- iii. State of Gujarat Vs. Dilip Singh G (Judgment dated 09.11.2023 in Criminal Appeal No. 2504/2023) by the Supreme Court of India*
- iv. Abhishek Vs. State of Madhya Pradesh Judgment dated 31.08.2023 (in Criminal Appeal No. 1457/2015) by the Supreme Court of India*
- v. Mahmood Ali and others Vs. State of UP and others reported in 2023 SCC online SC 950*
- vi. State of Andhra Pradesh Vs. Golconda Linga Swami reported in 2004 6 SCC 522*
- vii. State of Rajasthan Vs. Aruna Devi and others reported in 1995 1 SCC 1*

17) On the other hand, the learned Additional Public Prosecutor has submitted that the Investigating Officer of the case has informed that the further investigation in the matter is still going on and the petitioner's fresh statement under Section 161 of the Code of Criminal Procedure, 1973 was also recorded on 09.02.2024.

18) Citing the provision of Section 173(8) of the Code of Criminal Procedure, 1973, the learned Additional Public Prosecutor has submitted that to pursue further investigation by the Investigating Officer is a statutory right and to find out the truth in a criminal case there may not be any bar in pursuing the further investigation.

- 19)** He has also submitted that in the letter 15.11.2018 and thereafter, in the FIR which was lodged on the basis of the said letter which was written by the then Principal Secretary to the Government of Assam, Revenue and Disaster Management Department wherein certain anomalies in settlement of three plots of lands were mentioned and there was a clear allegation of violating the provision of laid down government circular. It is also submitted that as the present petitioner was posted as the then Circle Officer (A) of the Civil Revenue Circle, there is likelihood of her involvement in the offence alleged in the FIR and therefore, he has submitted that continuation of the further investigation in this case against the above-named petitioner is in the interest of justice. He has also submitted that considering the facts and circumstances of this case, this is not a fit case for invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 to grant the relief as prayed for by the petitioner.
- 20)** I have heard the submissions made by learned counsel for both the sides and have perused the materials available on record including the scanned copy of the PRC Case No.1551/2021, which was called for in connection with this case.
- 21)** In the instant case, it appears that the FIR was lodged on 28.05.2019 and after a lapse of more than two years of investigation, the charge sheet was laid only against two

accused persons on 06.07.2021, and the above-mentioned petitioner was not sent up for trial due to lack of credible evidence against her. It also appears from the charge sheet that the Investigating Officer has stated therein that efforts are on to collect credible evidence against the accused persons who were not sent up for trial including the present petitioner and the investigation will be continued as per the provision of Section 173(8) of the Code of Criminal Procedure, 1973 to collect further evidence and a leave was sought for the same.

- 22)** It is important to note that under Section 173(2)(i) of the Code of Criminal Procedure, 1973, a police report can be sent to the Magistrate empowered to take cognizance of the offence only after the completion of the investigation and filing of such a report is not envisaged in the code if the investigation is not completed.
- 23)** It also appears that when the charge sheet was filed before the learned Additional Chief Judicial Magistrate Kamrup (M), while taking cognizance of the offence against the charge-sheeted accused persons, the mention of the present petitioner was made in the order dated 18/09/2012 in PRC Case No. 1551/2021, only to indicate that she was not sent up for trial. However, no leave was granted to the Investigating Officer to continue further investigation against the petitioner as sought for by the Investigating Officer in the charge sheet.

- 24)** The Supreme Court of India in the case of "**Ramlal Narang Vs. State (Delhi Administration)**" reported in **(1979) 2 SCC 322** has observed as follows:

"20. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh

information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final

word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that

the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation."

- 25)** Thus, from the above observation of the Apex Court, it appears that though, Section 173(8) of the Code of Criminal Procedure, 1973, permits further investigation by the Investigating Officer, even after submitting the charge sheet. However, such a further investigation should be conducted only after getting formal permission from the Court. Further, such an investigation may be permitted

only if fresh facts come to light after submission of the charge sheet.

- 26)** However, in the instant case, it appears that at the time of submission of chargesheet after two years of investigation, nothing credible could be collected against the present petitioner, therefore, she was not sent up for trial.
- 27)** This Court is of the considered opinion that merely because the law enables further investigation, same course could not have been taken recourse to by the Investigating Officer without obtaining the leave of the Court and without there being any fresh fact coming to light after submission of the charge sheet necessitating such a further investigation against the petitioner who is on the verge of her retirement. In the FIR, we have seen that the allegation against the present petitioner has been made for an offence which was allegedly committed in the year 2006 as regards settlement of VGR land without following the standing circular of the Government and even after a long investigation, nothing could be collected against the present petitioner. Hence, continuation of further investigation against the present petitioner, who was not sent up for trial, after completion of investigation, without there being any fresh facts coming to light after submission of charge sheet, which could have formed the basis for such a further investigation, this Court is of considered opinion that continuation of the further investigation

against the present petitioner would not only be stigmatic but also be an abuse of the process of law.

- 28)** Hence, this Court is of the considered opinion that this is a fit case where the inherent power of this Court may be invoked and further investigation, against the present petitioner may, in the Anti-Corruption Branch Case No. 07/2019, corresponding to PRC Case No. 1551/2021, be stopped for the ends of justice.
- 29)** Accordingly, the further investigation, against the petitioner Smt. Kabita Deka, in the Anti-Corruption Branch Case No. 07/2019, corresponding to PRC Case No. 1551/2021, is hereby stopped and quashed.
- 30)** This Criminal Petition is accordingly, allowed to the extent indicated herein above.

JUDGE

Comparing Assistant