

GAHC010093732020



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

Case No. : Crl.Pet./361/2020

RAMESH KUMAR JHA
S/O- BRIJ LOCHAN JHA, ADDRESS JALDHARI CHOWK, WRD NO. 21, DIST-
MADHUBANI, BIHAR, PIN- 847211

VERSUS

CENTRAL BUREAU OF INVESTIGATION
THROUGH ITS HEAD OF BRANCH OFFICE, ACB, BETKUCHI, OPP BALAJI
TEMPLE, GUWAHATI- 781035

Advocate for the Petitioner : MR. S S S RAHMAN, MR S T ADNAN,MR SARFRAZ
NAWAZ,MR. S B RAHMAN,A W AMAN,MR S A BARBHUIYA

Advocate for the Respondent : SC, CBI, MR M HALOI, Retainer Counsel,CBI,MR. S C KEYAL

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 08.05.2024

Date of Judgment & Order : 21.08.2024

JUDGMENT & ORDER (CAV)

Heard Mr. A. W. Aman, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Special Public Prosecutor, CBI for the respondent No. 1.

2. This is an application under Section 482 of Cr.P.C for quashing of the FIR No. RC11(A)/2018-GWH(RC 0172018A0011) dated 09.06.2018 under Section 120B/420/467/468 and 471 IPC, R/w Section 13(2) and 13(1)(d) PC Act, 1988.

3. The case of the petitioner in brief is that he was posted as a Credit Manager, Scale-III in bank of India, Guwahati Branch. On 09.06.2018 an FIR bearing No. RC11(A)/2018-GWH(RC 0172018A0011) was filed by the respondent under Section 120B/420/467/468 and 471 IPC, R/w 13(2) and 13(1)(d) PC Act. With the allegation that the present petitioner who was working as Chief Manager, Bank of India, Guwahati Main Branch during the years 2012-14, by misusing his official position entered into a criminal conspiracy with Shri Lhakpa Tsering proprietor of M/s Lhakpa Tsering Agency & unknown others has sanctioned the Term Loans and Cash Credit Loans for purchasing the Machinery/Excavators and civil contract work by violating the procedures and guidelines of bank and disbursed the loan without any due diligence causing wrongful loss to the bank of the tune of Rs. 2.69 crore and wrongful gain to themselves. Apart from the allegation brought against the present petitioner there are some other allegation against the accused Nos. 2 & 3 and accordingly, after investigating, the case has been charge-sheeted on 25.03.2020 and the present petitioner was wrongfully arrayed as accused No. 1 in the charge-sheet. It is further stated that the task of the Senior Manager Credit is to see if the

loan seeker in his proposal adduce the proper documents like PAN Card, Property documents, Income Tax Return, certificate issued by Chartered Accountant etc. In this case also as far as the pre sanction of the collateral mortgage was concerned, it was found to be correct and a house located in Indrapuram in NCR region is now duly acquired by the Authority on the failure to return the loan amount. Moreover, the present petitioner is not a proposer of the loan amount nor is the sanctioning authority. In the charge-sheet, it is stated that the Kabi Ram Rabha then Manager In-charge recommended for the purpose of approval of application of M/s Lhakpa Tsering. But the said Kabi Ram Rabha is not even arrayed as accused in this matter while the present petitioner who is junior officer is wrongly made an accused in the instant case. It is further stated that actually the Zonal Level Credit Committee, who has sanctioned the said loan and the petitioner was not a member of the said committee. Further, the accused No. 5 who is a registered surveyor and loss assessor had submitted the pre inspection insurance report to the Insurance Company and he physically verified the machine and it was found to be fit for insured. Hence, the present petitioner is not at all responsible for any wrong doing.

4. Mr. Aman, learned counsel for the petitioner further submitted that the FIR and the charge-sheet did not reveal anything against the present petitioner for his dishonest intension, at the time of discharging the official duty. He further submitted that even if the allegation made in the charge-sheet is taken at their face value and accepted in their entirety do not even constitute a prima facie case against the present petitioner.

5. Mr. Aman, learned counsel for the petitioner further submitted that a task

of the Senior Manager Credit is only to see as to whether the proposer has produced all the relevant documents like PAN Card, property documents, Income Tax Return, certificate issued by the Chartered Accountant, etc to pass the pre sanctioned of the collateral mortgage is concerned which was found to be correct at the time of the verification. The present petitioner is also not a proposer of the loan amount nor is he the proper sanctioning authority. Moreover, it is the accused No. 3 who issued the 3(three) invoices to the Bank of India regarding the purchase of Kobelco Excavator machine which was also inspected by the accused No. 5 who is a registered surveyor and loss assessor but the present petitioner has no role in verifying the machine nor he acted as a proposer of the loan amount neither the present petitioner is the sanctioning authority. The present petitioner was also discharging his official duty and he is not at all involved in any criminal conspiracy and it is the accused Nos. 2, 3 & 5 who actually cheated the bank and not by the present petitioner.

6. Mr. Aman, learned counsel for the petitioner accordingly has submitted in view of the above that the impugned FIR dated 09.06.2018 and the charge-sheet dated 25.03.2020 is liable to be set aside and quashed and as stated above, even if the statement made in the FIR, the charge-sheet has taken in its face value do not constitute any prima facie case against the present petitioner rather it will be an abuse of process of law and hence, he has submitted that it is a fit case wherein, the FIR as well as the charge-sheet against the present petitioner can be set aside and quashed by invoking the power under Section 482 of Cr.P.C.

7. Mr. Haloi, learned Special Public Prosecutor, CBI has submitted in this

regards that the machinery were never purchased by Mr. Lhakpa Tsering i.e., the accused No. 2, who took the loan from the concerned bank and he prepared all the false documents and it was submitted before the bank authority even the insurance paper was also forged by the accused No. 2. During the investigation, it was reveal that the pre sanction and post sanction report were also forged. The false and forged sanction report was submitted by the present petitioner showing that he verified the machineries but from the statement made by the PW-13 i.e., Munush Kumar Doimari, it is seen that the machineries were purchased by him on 24.07.2014 which was financed by SREI Equipment Finance Limited and the insurance of the machine was done with the Oriental Insurance Company and it is stated by him that he never sold his machine to any other person till date when it was enquired by the Investigating Agency.

8. Mr. Haloi, learned Special Public Prosecutor further submitted that from the statement made by the PW-8 i.e., one Arnab Sen Gupta, the Senior Manager, Customer Support, Kobelco Construction Equipment India Private Limited gave detail report which also establishes that the money sanctioned for the loan was misused by the present accused/petitioner by entering into a criminal conspiracy. Thus, he submitted that the present accused/petitioner being a Senior Manager had misused/misappropriate the money and accordingly, Section 13(1) of the PC Act is also found to be established against the present accused/petitioner.

9. Further it is submitted from the document Nos. 09, 53, 54, 84 etc., also proves that machines were purchased by one Munush Kumar Doimari and the document No. 167, the FSL report also clearly establishes the case against the

present accused/petitioner. Mr. Haloi, learned counsel accordingly submitted that there cannot be any reason for setting aside and quashing of the FIR dated 09.06.2018 and the charge-sheet dated 25.03.2020 as prayed for by the present accused/petitioner.

10. After hearing the submissions of learned counsels for both sides, I have also perused the scanned copy of case record along with the Case Diary.

11. on perusal of the documents Nos. 09, 53, 54, 84 & 167 etc., and from considering the statement made by the PWs- 05, 07, 09, 13, 37 etc., it is seen that there is a prima facie case established against the present accused/petitioner that he misused his official power and position and conspired with other accused persons in creating the forged documents used them as genuine and also made conspiracy with the accused No. 2 and thus, post sanction of loan was granted and from the investigation report and also from the charge-sheet, it is seen that prima facie case is found to be established against the present accused/petitioner.

12. It is to be noted here that in the case of ***State of Madhya Pradesh Vs. Laxmi Narayan & Ors.***, reported in ***(2019) 5 SCC 688***, the Hon'ble Apex Court has observed that in respect of the non-compoundable offences, the power under Section 482 of Cr.P.C. can be invoked if the case is private in nature and if the same do not have a serious impact on the society.

13. For ready reference, paragraph No. 13 of the ***Laxmi Narayan*** (Supra) is extracted herein below:-

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC.

For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated

hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

14. In the present case, it is seen that allegation brought against the present accused/petitioner is serious in nature and has a serious impact on society and hence, I find that it is not a fit case to quash the FIR as well as the charge-sheet filed against the present accused/petitioner by invoking the power under Section 482 of Cr.P.C., this would encourage the unhealthy trend and will also send a message to the society which will affect the objective and spirit beyond the legislation of PC Act.

14. In the result, I find no merit in this petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant