

GAHC010150142024



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

Case No. : Crl.Pet./859/2024

PRITHWIRAJ RAJKHOWA AND 2 ORS
S/O NAREN RAJKHOWA ADDL SUPERINTEDENT OF POLICE CRIME
KOKRAJHAR CURRENTLY RESIDING AT JAIL ROAD KOKRAJHAR PS
KOKRAJHAR DIST KOKRAJHAR ASSAM

2: NITUL DAS
S/O JOGESH DAS INSPECTOR OF POLICE BORDER BRANCH ASSAM
POLICE CURRENTLY RESIDING AT JANA PATH KHANAPARA P.S. DISPUR
KAMRUP M ASSAM

3: DIGANTA KALITA
S/O BIRENDRA KALITA SUB INSPECTOR OF POLICE CURRENTLY
RESIDING AT CHANDMARI PUB SARANIA PS CHANDMARI DIST. KAMRUP
MASSA

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:MANISH KUMAR AGARWAL
S/O O P AGARWAL CURRENTLY RESDING AT 178 CANAL STREET PP
SHREE BHUMI P.S. LAKE TOWN WEST BANGAL KOLKATA 70004

Advocate for the Petitioner : MR SARFRAZ NAWAZ, MR. SURAJIT DAS,MR A W AMAN,MS
SURAYA RAHMAN,MR S A BARBHUYAN,SAMIM RAHMAN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 30.07.2024

Heard Mr. S. Nawaz, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. M. K. Agarwal, respondent No. 2 in person through video conferencing.

2. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 *read with* Article 227 of the Constitution of India for setting aside and quashing the order dated 12.07.2024, passed by the learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati in C.R. Case No. 443 of 2024.

3. Mr. S. Nawaz, learned counsel for the petitioners, submitted that the respondent No. 2 filed a petition under Section 156(3) Cr.P.C. against the petitioners alleging irregularities and improprieties in the investigation of Latasil P.S. Case No. 326/2019, which had been lodged by him. He further submitted that the petition did not disclose commission of any cognizable offence, but the learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati mechanically and without any application of mind allowed the petition and directed for registration of an F.I.R. The learned counsel for the petitioner further submitted that the learned Court below also did not take note of the settled position of law that prior sanction under Section 197 Cr.P.C. is essential for preferring a petition under Section 156(3) for investigation in cases of offence committed by any government servant in discharging of their official duties.

4. Mr. Nawaz further submitted that respondent No. 2 filed the complaint before the Court of learned Chief Judicial Magistrate, Kamrup(M) only with the allegation against the petitioner No. 1 that he did not collect the original copy of the equipment rental agreement during the investigation of this case, though the fact was known to him as an Investigating Officer that the copy of the agreement was annexed in the anticipatory bail application, which was duly certified by the advocate of the accused and the original was not placed before this Court while obtaining the anticipatory bail by the accused in connection with Latacil P.S. Case No. 326/2019. Further, the allegation brought against the petitioner No. 2 is that he filed the Charge-Sheet with 14 days delay in the case filed by the respondent No. 2, which was registered as Latacil P.S. Case No. 326/2019. Similarly, he brought the allegation against the petitioner No. 3 that without arresting the accused of Latacil P.S. Case No. 326/2019, he served a notice under Section 41A Cr.P.C. upon the accused, though the interstate movement was allowed for a specific purpose only to nab the culprit. Mr. Nawaz accordingly submitted that basically on these allegation, the complaint was filed before the learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati under Section 156(3) of the Cr.P.C. without disclosing any cognizable offence against the present accused/petitioner and the learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati also sent the case for investigation and for registering an F.I.R. without even considering the fact that no cognizable offence has been disclosed in the said complaint and no sanction was obtained as required under Section 197 Cr.P.C.

5. Mr. Nawaz further submitted that the sanction is even required while

referring the case under Section 156(3) Cr.P.C. and in that regard, he also cited a decision of the Apex Court reported vide **(2013) 10 SCC 705 (Anil Kumar & Ors. Vs. M. K. Aiyappa & Anr.)** and further emphasized on paragraph Nos. 17 and 21 of the judgment, which read as under:

"17. We may now examine whether, in the above mentioned legal situation, the requirement of sanction is a pre-condition for ordering investigation under [Section 156\(3\)](#) Cr.P.C., even at a pre-cognizance stage.

22. Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else [Section 19\(3\)](#) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of [Section 19](#) has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under [Section 156\(3\)](#) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases."

6. Mr. Nawaz, learned counsel for the petitioners, further cited another decision of Apex Court passed in the case of **Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors. [(2015) 6 SCC 287]** and emphasized on paragraph Nos. 27 & 30 of the judgment, which read as under:

"27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the

accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

30. In our considered opinion, a stage has come in this country where [Section 156\(3\)](#) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under [Article 226](#) of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.”

7. Referring above judgments, Mr. Nawaz further submitted that the matter may be remanded back to the learned Court below to assess as to whether the complaint disclose any cognizable offence or as to whether prior sanction under Section 197 Cr.P.C. is also required while dealing with an application under Section 156(3) Cr.P.C. when the offence is alleged to have been committed by the public servant.

8. Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1, submitted in this regard that from the mere reading of the complaint lodged by the respondent No. 2, it is seen that he brought allegation that the accused person that he filed a forged document before this Court while

obtaining the anticipatory bail, but that cannot be the ground to prosecute a police officer. It is the accused who produced the forged document which was certified to be true by the engaged counsel for obtaining the bail. More so, it is seen that on the basis of the allegation of forged document, a case has already been registered as Latasil P.S. Case No. 326/2019. Accordingly, the learned Additional Public Prosecutor has submitted that if there would have been any grave allegation against the present petitioners, the prosecution would have never supported the case of the present petitioners.

9. Mr. M. K. Agarwal, respondent No. 2 in person, submitted in this regard that perfunctory investigation has been carried out by the Investigating Officer. The accused got bail from this Court on production of a forged document but the I.O. never tried to collect the original document nor any Notice under Section 91 Cr.P.C. was issued to the accused for production of the original document. But, without collecting the original document, the Charge-Sheet has been filed wherein there is no report of the FSL as the original could not be produced before the FSL. Thus, the police officer in connivance with the accused person had carried out the entire investigation and filed the Charge-Sheet. The accused was not arrested in connection with this case as he was served with a Notice under Section 41A Cr.P.C., rather he stated that he was never served with any summon from the Investigating Authority. The case was kept pending for investigation for 4 (four) years and thereafter only the Charge-Sheet was filed with a statement that the original document could not be collected during the investigation and thus, on the basis of a perfunctory investigation, the police filed the Charge-Sheet helping the accused person to get the order of acquittal from the Court. Thus, the police officer, who are the

petitioners in the present case, are liable to be prosecuted and there cannot be any mercy on them who committed grave injustice to the informant of the said case of the Latasil P.S. Case No. 326/2019. Accordingly, he submitted that this is not a case for quashing of the proceedings at this stage and the investigation should be carried out as the learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati had already passed the order for investigation under Section 156(3) of the Cr.P.C.

10. After hearing the submissions made by the learned counsels appearing for the parties as well as the respondent No. 2 in person, I have perused the case record and the relevant documents filed along with the petition.

11. From the entire submissions recorded above, it is seen that basically the allegation brought against the present accused/ petitioners is that the accused/petitioner No. 1 did not obtain the original copy of the forged document and on the basis of which, the accused of Latasil P.S. Case No. 326/2019 obtained the anticipatory bail from this Court, in spite of knowing the fact that the accused person annexed a copy of the forged document, i.e. equipment rental agreement, before this Court while obtaining the anticipatory bail. It is also alleged that the accused/petitioner No. 1 did not issue any Notice under Section 91 Cr.P.C. directing the accused person to provide the copy of the original document to the police officer so that it can be sent for FSL examination. Accordingly, on the basis of the said perfunctory investigation, the accused/petitioner No. 2 had filed the Charge-Sheet with a delay of 14 days. Further it is the case of the respondent No. 2 that the accused/petitioner No. 3 did not arrest the accused of Latasil P.S. Case No. 326/2019 during the investigation, rather he served with a notice under Section 41A Cr.P.C. without

arresting the accused person in connection with the said case. Thus, the present respondent No. 2 brought these allegations in the complaint filed under Section 156(3) Cr.P.C. and on the basis of which, the learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati had sent the case for investigation by police and to file the F.F. But, it is seen that the learned Trial Court below had passed a mechanical order while sending the record for investigation without recording any satisfaction that there is a disclosure of cognizable offence and in the same time, it is seen that no previous sanction was obtained before sending the record for investigation under Section 156(3) of the Cr.P.C.

12. As relied by the learned counsel for the petitioners, in the case of **Anil Kumar (supra)**, the sanction is required against the public servant even invoking powers under Section 156(3) Cr.P.C.

13. In view of above, without going by the merit of the case, I find it appropriate to remand back the case before the Court of learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati to examine the issue as to whether the complaint filed by the respondent disclose any cognizable offence and as to whether prior sanction under Section 197 Cr.P.C. is required at the time of dealing with a petition under Section 156(3) Cr.P.C. Accordingly, the learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati, after examining these issues, will pass a fresh order in that regard.

14. State/Officer-In-Charge of the concerned police station will send back the case record before the Court of learned Sub Divisional Judicial Magistrate (S)-II, Kamrup(M), Guwahati.

15. With the above observation and direction, the present criminal petition stands disposed of.

JUDGE

Comparing Assistant