

GAHC010175312022



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

Crl. Pet.878/2022

1. RAJU DOWARAH
SON OF SRI DEVA DOWARAH
R/O VILL- POWASAIKIA
P.O. NARUATHAN, P.S. DHEMAJI,
PIN- 787058,
DIST. DHEMAJI, ASSAM.

..... Petitioner

VERSUS

1: THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SRI AMARENDRA HAZARIKA, AJS
SDJM (M) BISWANATH CHARIALI
DIST. BISWANATH CHARIALI
ASSAM, PIN-784176.

..... Respondents

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioner	:	Ms. D. Borgohain, Advocate
Advocate for the Respondents	:	Mr. M.P. Goswami, Addl. PP
Date of Hearing	:	18.01.2024
Date of Judgment	:	19.03.2024

JUDGMENT & ORDER (CAV)

1. Heard Ms. D. Borgohain, learned counsel for the petitioner and Mr. M.P. Goswami, learned Addl. PP for the respondents.
2. The petitioner Sri Raju Dowarah has filed this application u/s 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) with prayer for quashing the proceeding of P.R. Case No. 243/2022 arising out of BNC P.S. Case No. 173/2020, pending in the Court of the Chief Judicial Magistrate (CJM for short), Biswanath. The respondent No. 2 has received notice, and vide order dated 20.07.2023 this case was admitted for hearing.
3. It is submitted on behalf of the petitioner that he was the Investigating Officer in connection with Behali P.S. Case No. 109/2019 registered u/s 370(1) of the Indian Penal Code (IPC for short). This case was registered against Loknath Chetry and this case was pending in the Court of the SDJM(M) of Biswanath Chariali. The petitioner further submitted that by application dated 01.04.2020, he submitted the Status Report before the Court of the SDJM(M) regarding the status of investigation with reference to Behali P.S. Case No. 109/2019.
4. In the afore-mentioned case, during investigation, the victim child was recovered and the arrested accused namely Sri Loknath Chetry was forwarded to judicial custody. After completion of investigation, charge-sheet was laid in connection with Behali P.S. Case No. 109/2019 being C.S. No. 68 of 2019 and the said Case Diary was to be submitted immediately after obtaining approval order. The Court of the SDJM(M) perused the Status Report and directed to place the Case Diary on record. It is further submitted that vide order dated 10.06.2020, the learned SDJM(M), observed that the charge sheet was not yet received by the office and directed the Investigating Officer ('IO', in short) to submit Status Report. A report was also called from the Additional Superintendent of Police, Biswanath regarding the delay in entertaining a prayer for approval of the charge-sheet which was forwarded by the IO, i.e. the present petitioner and the next date was fixed on 22.06.2020 for report and necessary order (Annexure-2). The order dated 22.06.2020 passed by the SDJM(M), Biswanath Chariali reflects that the Addl. Superintendent of Police (Addl. SP, for short) (HQ), Biswanath submitted a report that the petitioner had not submitted the charge-sheet of Behali P.S. Case No. 109/2019 before him for approval till 14.06.2020.

5. It is further submitted on behalf of the petitioner that the petitioner had submitted the Case Diary of Behali P.S. Case No. 109/2019 before the Addl. SP on 15.06.2020 and on that day itself the P.R. was approved. On the same day, the petitioner filed a petition before the SDJM(M), Biswanath Chariali for correction of dates in the FIR and in the charge-sheet. It is submitted on behalf of the petitioner, that at the time of submitting the charge-sheet of the aforementioned case, he unintentionally mentioned the dates in the FIR and on the charge-sheet, respectively as 30.11.2019 and 19.10.2019 instead of 19.10.2019 and 30.11.2019, alternately. The SDJM(M) allowed the petitioner's prayer to rearrange the interchanged dates. The petitioner then filed an application before the learned SDJM(M) with prayer to be pardoned for the inadvertent errors stating that, as he was busy with unavoidable law and order duty, he could not submit the original case-diary (CD for short) along with the charge sheet (C.S., for short), before the Court within time. However, the learned Court had observed that the prayer of the IO, i.e. the present petitioner was illegal, because the petitioner himself, on 01.04.2020 reported to the Court that charge-sheet of Behali P.S. Case No. 109 of 2019 vide C.S. No. 68 of 2019 was submitted for approval. As reflected from the order dated 22.06.2020 passed by the learned SDJM(M) that the learned Court on 10.06.2020, noticed that the year on the C.S. was 2019 and had asked for a report from the Addl. S.P. for reasons of delay in entertaining the prayer for approval of C.S. to be submitted by the Additional SP (HQ). The Additional SP's report depicts that the petitioner had filed a false report on 01.04.2020 to the effect that he had submitted the CD for obtaining approval. It was then observed by the learned SDJM(M) that the petitioner had not only misled the Court by affecting the rights of the UTP-accused involved in this case, but also committed a crime by filing a false report attracting the offences punishable u/s 166(A)/167/182 of the IPC. The conduct of the petitioner was of such a nature that there was no question of pardoning the IO-petitioner herein. The learned SDJM directed to inform the matter with all the relevant materials to the DIG (Administration) immediately and also to the Assam State Police Accountability Commissioner (ASPAC, for short). A direction was also given by the learned SDJM to the S.P., Biswanath for registering a case against the petitioner, in terms of the provisions of law as indicated.

6. It is further submitted on behalf of the petitioner that the S.P., Biswanath by letter No. BSN/Crime/SR/2020/565 dated 30.06.2020, in reply to a direction for an original copy of the order, as passed by the learned SDJM(M) along with the enclosure received in connection with the Behali P.S. Case No. 109/2019 u/s 370(1) IPC, apprised that the OC, Biswanath Chariali P.S. was directed to register a case against the petitioner and the present BNC P.S. Case No. 173 of 2020 u/s

166(A)/167/182 of the IPC was registered on 01.07.2020 against the petitioner. The Inspector of Police, of Biswanath Chariali filed charge-sheet vide No. 202 of 2021 on 13.12.2021 against the petitioner u/s 166(A)/167/182 IPC. The CJM, Biswanath, after perusing the record of PRC Case No. 243/2022 and after taking cognizance of offence under the afore-mentioned sections of law, issued summonses to the petitioner, and the next date fixed for appearance was 20.07.2022. The petitioner was also granted bail vide order dated 20.07.2022 by the learned CJM and the next date was fixed on 01.09.2022. The petitioner is aggrieved by the order passed by the learned SDJM(M) in connection with Behali P.S. Case No. 109/2019, initiating proceedings against the petitioner. It is averred that the learned SDJM(M) has totally ignored the letter dated 01.04.2022 submitted by the petitioner that charge-sheet would be submitted as soon as approval would be received. The learned SDJM(M) has ignored the factum that the petitioner has not stated that charge-sheet has been submitted for approval. It has been misconstrued by the learned SDJM(M) that the petitioner has falsely misrepresented and misled the Court. The petitioner successfully conducted the investigation of Behali P.S. Case No. 109 of 2019 and had recovered the victim child who was a victim of trafficking, but all the endeavours and efforts of the petitioner was not appreciated and stringent action was taken against an officer who discharged his duty with great conviction.

7. It is further submitted that the trial Court has taken cognizance in violation of Section 197 Cr.PC. The petitioner is a public servant who was discharging his duties. No Court can take cognizance of such offence, except with the previous sanction of the State Government if the person is a State Government employee. The petitioner is serving as OC of Khotkhoti P.S., Karbi Anglong and he is thus an employee of the Government of Assam. The learned Court ought to have obtained sanction from the appropriate authority prior to taking cognizance against the petitioner. Due to a slight lapse, a criminal proceeding was brought up against the petitioner, that too in gross violation of the provisions of Section 197 Cr.PC, more so when the provisions u/s 166(A)/167/182 of the IPC are not attracted in connection with this case.

8. It is submitted on behalf of the petitioner that no offence u/s 166(A)/167 and 182 of the IPC has been made out against him. The petitioner has prayed to quash the proceedings of PRC Case No. 243/2022, pending in the Court of the learned CJM.

9. It is submitted that there was no violation of rights of the Under Trial Prisoner to attract

Section 163 (A) of the IPC. On the contrary, the Behali P.S. Case No. 109 of 2019 is related to human trafficking. The allegedly trafficked victim was already recovered by the petitioner during investigation. There was no inordinate delay. Except the errors highlighted by the petitioner in mentioning the dates which were interchanged, there was no false statement. The dates were not newly inserted dates but it is ex-facie evident that the dates have been interchanged. As alleged by the learned SDJM(M) vide order dated 22.06.2020, more particularly Annexure-3 of the petition, the petitioner has not reported on 01.04.2022 to the SDJM that charge-sheet has been submitted, but on the contrary the petitioner had mentioned that charge-sheet was submitted for approval in connection with Behali P.S. Case No. 109 of 2019.

10. Per contra, the learned Addl. PP, Mr. M.P. Goswami laid stress in his argument that sanction can also be obtained at a later stage. At this juncture the proceedings of PRC Case No. 243/2022 is not required to be quashed and set aside and the charge-sheet No. 202 of 2021 dated 13.12.2021 is not required to be set aside and quashed.

11. I have considered the submission at the Bar with circumspection.

12. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in *Indra Devi v. State of Rajasthan and Another*, reported in (2021) 8 SCC 768, wherein it has been held and observed that-

“11. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent No.2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction, i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was held in discharge of his official duties. Not only that, Sandeep Mathur, who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent No.2 pertained to the subject matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner

signed the file. The result is that the superior 5 supra officers, who have dealt with the file, have been granted protection while the clerk, who did the paper work, i.e. Respondent No.2, has been denied similar protection by the trial court even though the allegation is of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 of the CrPC qua these two other officers.

12. We are, thus, not able to appreciate why a similar protection ought not to be granted to Respondent No.2 as was done in the case of the other two officials by the Trial Court and High Court respectively. The sanction from competent authority would be required to take cognisance and no sanction had been obtained in respect of any of the officers. It is in view thereof that in respect of the other two officers, the proceedings were quashed and that is what the High Court has directed in the present case as well.”

13. I have considered the submissions at the Bar with circumspection.

14. I have also relied on the decision of Hon’ble the Supreme Court in *Indra Devi’s case (supra)*.

15. Hon’ble the Supreme Court has held in *State of Maharashtra –Vs- Dr. Budhikota Subbarao*, reported in (1993) 3 SCC 339, that-

“6.....Use of the expression ‘official duty’ implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In P. Arulswami v. State of Madras this Court after reviewing the authorities right from the days of Federal Court and Privy Council held:

“...It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection

contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.” It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature.....”

16. In a recent judgment of Hon’ble the Supreme Court in *A. Srinivasulu Vs. State represented by the Inspector of Police*; (2023) SCC OnLine SC 900, it has been observed that-

“48. Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal vs. State of Punjab. It reads as follows:-

“50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.”

49. On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of cheating, cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.

50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will

fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.”

17. In this instant case, it is alleged that the IO committed an error while discharging his official duty. It has been fervently submitted by the learned counsel for the petitioner that the error was not intentional and he has not misled the Court. Interchange of dates is also noticed, when the IO erroneously typed the wrong dates, but it is discernible that this was an inadvertent typographical error.

18. I have considered the submissions with circumspection. The window within which the offence is alleged to have been committed by the petitioner was from 19.10.2019 upto 14.06.2020.

19. The yardstick to be followed is to form a *prima facie* view whether the offence allegedly committed by the petitioner had a reasonable connection with the discharge of his official duty. In the light of the decision of Hon’ble the Supreme Court in **Dr. Budhikota Subbarao’s case (supra)** and **A. Srinivasulu’s case (supra)**, it is held that the offence was allegedly committed by the petitioner while he was discharging his official duty.

20. The allegation against the petitioner is that he had misled the Court while submitting the charge sheet. The order dated 10.06.2020, passed by the learned SDJM (M) in connection with Behali PS Case No. 109/2019, reflects that the IO, as far back as on 01.04.2020, informed the Court that he had submitted the charge sheet being C.S. No. 68/2019, in connection with Behali PS Case No. 109/2019 and the Case Diary would be submitted after obtaining approval order. Thereafter, the status report was called by the learned SDJM (M) from the Addl. SP, regarding the delay in entertaining the prayer for approval and a reply was received from the Addl. SP that the IO had not submitted the Case Diary till 14.06.2020, and the Case Diary was submitted to him on 15.06.2020 and on the same day, the Additional Superintendent of Police approved the PR. This report of the Additional Superintendent of

Police has been reflected in the order dated 22.06.2020, passed in connection with Behali PS Case No. 109/2019. Moreover, the learned SDJM(M), vide order dated 22.06.2020, in the aforementioned case, has also highlighted that the date of the FIR number and the charge sheet number has been erroneously typed. The date of the FIR ought to be '19.10.2019', but it was typed as '30.11.2019' and the date of the charge sheet number ought to have been '30.11.2019' and was erroneously typed as '19.10.2019'.

21. On being displeased with the conduct of the IO, the learned SDJM(M) directed the DIG (Administration) as well as the ASPAC to take appropriate action against the erring official.

22. It is *ex-facie* evident that the offence was allegedly committed while the IO was discharging his official duty. The submission of the IO/petitioner herein, that his conduct has been misinterpreted by the learned SDJM and his submission that he will submit the Case Diary after obtaining approval order has also been misconstrued, cannot be ignored. At the same time, the apathetic manner of discharging his official duty is manifested with the errors of interchange of dates during submission of the CD and C.S..

23. The submission of the IO that he had conducted the investigation of the case and recovered the victim in connection with Behali PS Case No. 109/2019, has been highlighted by the learned counsel for the petitioner. The learned counsel for the petitioner has also emphasized through his argument that the learned trial Court, i.e., the Court of the learned SDJM (M) has wrongly opined that the petitioner tried to mislead the Court. The petitioner never tried to mislead the Court, but while discharging his official duty, he had inadvertently erred. Drastic action was taken against him by initiating a criminal case against a dutiful officer. It is also further submitted by the learned counsel for the petitioner, that it is not the case of the petitioner that the accused in connection with Behali PS Case No. 109/2019, was behind bars since 08.11.2019 upto 10.06.2019. In fact, the accused ought to have been released on default bail, if charge sheet was not submitted within the statutory period of time and the petitioner cannot be held liable for the incarceration of the accused booked in connection with Behali PS Case No. 109/2019.

24. In the instant case, an order was passed by the learned SDJM(M) in connection with Behali PS Case No. 109/2019, on 22.06.2019, directing the DIG (Administration) as well as the ASPAC to take action against the petitioner and the Superintendent of Biswanath vide letter No.

BSN/Crime/SR/2020/565 dated 30.06.2020, directed the OC of Biswanath Police Station, to register a case against the petitioner and the BNC P.S. Case No. 173/2020 was registered on 01.07.2020.

25. It has been fairly submitted by both the parties that prosecution sanction was indeed not obtained from the competent authority. Admittedly, no sanction was accorded by the competent authority to register a case against the petitioner and without prosecution sanction as mandated under Section 197 of the CrPC, investigation commenced and finally, charge sheet was laid against the petitioner and cognizance was taken by the learned trial Court in connection with BNC P.S. Case No. 173/2020, under Sections 166(A)/167/182 of the IPC.

26. I would like to reiterate that the offence was allegedly committed by the petitioner while he was discharging his duty and within the realm of his duty, he had knowingly or unknowingly erred.

27. In the wake of the foregoing discussions, it is held that this is a fit case to invoke the inherent jurisdiction under Section 482 CrPC, for the interest of justice.

28. The order passed by the learned SDJM (M) dated 22.06.2020, in connection with Behali PS Case No. 109/2019 was registered as FIR No. BNC Case No. 173/2020. The proceeding of P.R. Case No. 243/2022, GR Case No. 422/2020, arising out of BNC P.S. Case No. 173/2020, registered under Sections 166(A)/167/182 of the IPC, CS No. 68/2019, against the petitioner, Raju Dowarah, is hereby set aside and quashed.

29. No order as to cost(s).

JUDGE

Comparing Assistant