

GAHC010176292021



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

Case No. : Crl.Pet./610/2021

MAJOR (NOW LT. COL) ZAMEER AHMED KHAN AND 9 ORS.
S/O MAJOR (RETD) HAKIM ALI
AFI BUILDING, DHOBI TALAO, NCC DIRECTORATE, MUMBAI-400020.

2: NO. 3183065F EX NK KARAN SINGH
S/O HAWA SINGH
VILL AND P.O. BAMAL
TEHSIL AND DIST. BHAIWANI
HARYANA-127021.

3: JC- 490906X SUB SAHAB SINGH
S/O KARTAR SINGH
11 JAT

C/O 56 APO
PIN-911211.

4: JC- 315689M SUB BHIM SINGH
S/O PREET SINGH
23 JAT

PIN-911223.

5: NO. 31895793A EX SEP ALOK PAUL

S/O VEERPAL SINGH
395 DSC PI ATT TO 16 FAD
PIN-909716

6: NO. 3187089H EX SEP SANJAY KUMAR
S/O SUKHPAL SINGH

1210B DSC PI ATT 51 SUB AREA GP
PIN-916591

7: NO. 3187176W EX HAV SUBASH CHANDER SHIVRAN
S/O PARMESHWAR SINGH
VILL- SHIVRANA KA BAS
P.O. NARODRA

TEHSIL-LAXMANGARH
DIST. SIKAR
RAJASTHAN
PIN-332311.

8: NO. 3189242M EX HAV RAKESH KUMAR
S/O HARLAL SINGH
VILL AN DP.O. MOJAWASH

TEHSIL AND DIST. JHUNJHUNU
RAJASTHAN
PIN-333704.

9: NO. 3189900N EX NK BHUP SINGH
S/O LATE SH
RAMKAR
VILL AN DP.O. NAIWA
TEHSIL AND DIST. HISSAR
HARAYANA
PIN-125037

10: NO. 3189972 EX NK NARENDER SINGH
S/O BHAG SINGH
VILL AND P.O. DIGHAL
TEHSIL AND DIST. JHAJJAR
HARYANA
PIN-12410

VERSUS

THE STATE OF ASSAM AND 3 ORS.
TO BE REP.BY THE PP, GOVT. OF ASSAM

2:THE SUB-INSPECTOR OF POLICE

(ANIL CHUTIA
S.I.)
DIBRUGARH
P.S. DIBRUGARH

3:POLLY RAJKHOWA GOGOI
W/O. LATE RANA GOGOI

R/O. MILAN NAGAR E LANE
NEAR MILAN JYOTI CLUB
P.O. C.R. BUILDING
P.S. AND DIST. DIBRUGARH
ASSAM
PIN- 786003

4:DIPA DAS PHUKAN
W/O. LATE RAJU PHUKAN
R/O. RODALI PATH
NEAR ASTC BUS STAND
P.O. C.R. BUILDING
P.S. AND DIST. DIBRUGARH
ASSAM
PIN- 78600

Advocate for the Petitioner : MR. R K D CHOUDHURY,

Advocate for the Respondent : PP, ASSAM, MR A HAWARI(R-3 & 4)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT AND ORDER (CAV)

Date : 27-08-2024

The petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for quashing and setting aside the order dated 18.09.2021 passed by the learned CJM in GR Case No. 1266/1998 registered under Sections 302/427/120(B)/201 of the Indian Penal Code, 1860 (the IPC for short) corresponding to Dibrugarh Police Station Case No. 410/1998.

2. The petitioners in this case are Major (now Lt. Col) Zameer Ahmed Khan,

No. 3183065f Ex Nk Karan Singh, JC-490906X Sub Sahab Singh, JC- 315689M Sub Bhim Singh, No. 31895793A Ex Sep Alok Paul, No. 3187089H Ex Sep Sanjay Kumar, No. 3187176W Ex Hav Subash Chander Shivran, No. 3189242M Ex Hav Rakesh Kumar, No. 3189900N Ex Nk Bhup Singh, No. 3189972 Ex Nk Narender Singh. The respondents in this case are the State of Assam arrayed as respondent No. 1, the Sub-Inspector of Police (Anil Chutia, S.I.) arrayed as respondent No. 2. Smt. Polly Rajkhowa Gogoi and Smt. Dipa Das Phukan were later on arraigned as respondent Nos. 3 and 4 in this case. The petitioners are in service and retired armed forces personnel. The State of Assam was declared as disturbed area by the Government of India vide Notification dated 21.09.1990 and 17.09.1991, issued by the Ministry of Home Affairs and thus the provisions of the *Armed Forces (Special Powers) Act, 1958* (the Act of 1958, for short) was applicable at that point of time. The army personnel were active in combating militant activities.

3. It is submitted that on 27.08.1998 during night time, an anonymous phone call was received by the Dibrugarh Police relating to three bullet riddled bodies inside a white Maruti car near the Chaulkhowa Kabarsthan. The Dibrugarh Police Station Case No. 410/1998 was registered on the basis of the FIR under Sections 302/427 of the Indian Penal Code, 1860 (IPC for short). Later on, one Raghu Gogoi lodged another FIR on 31.08.1998 which was taken

as the Supplementary FIR (Annexure-A). It is further submitted that on 26.08.1998, a military operation was conducted and two hardcore ULFA militants who were controlling the finance of Dibrugarh and Tinsukia districts, were neutralized and huge cache of arms were recovered. It is submitted that surrendered militants are at times providers of secret information and they used to be in a precarious situation under the ire of the militant organization. As such, there is every possibility that the three bodies were of surrendered militants and could have been victims of such retaliatory actions of the militants.

4. As the public was outraged, the army authority conducted the enquiry but nothing incriminating could be garnered to hold the present petitioners complicit of having eliminated the deceased. It is contended that the learned Chief Judicial Magistrate, Dibrugarh (CJM for short) was bent upon proceeding against the petitioners, despite the fact that the army authorities have assured the investigating authority that the petitioners will appear before the Investigating Officer (IO for short) whenever called upon and supporting documents were also handed over to secure appearance of the petitioners before the IO. The petitioners appeared before the IO on 15.04.1999 and 19.04.1999 and, the statements of some of the petitioners were recorded. It is contended that the petitioner No. 1 appeared before the IO on 3rd and 4th of May, 1999 and he was

interrogated for about 4 (Four) hours. Despite the fact that the petitioners were protected under the provisions of the Act of 1958, the petitioners appeared before the IO and have got their statements recorded. It is contended that the learned CJM however overstepped his jurisdiction as vested upon him at the incipient stage of the matter and had opined that prosecution sanction is not required as the incident was an act of cold-blooded murder suggesting that there was no necessity for trial of the petitioners who can be directly held guilty.

5. The petitioners have challenged the adverse orders passed by the learned CJM through a separate petition, which was registered as CrI. Petition No. 1500/2019 and is pending before this Court. The issue of sanction was raised before the learned CJM vide a petition dated 22.03.1999 (Annexure-B). It is submitted that from the letters dated 05.05.1999 and 06.05.1999 (Annexure-C & C-1), it is apparent that the petitioners have cooperated with the investigation but despite their cooperation, the investigating agency did not record the statements of all the petitioners. The Dibrugarh Police have also sought prosecution sanction from the Ministry of Defence, Government of India vide letter dated 10.09.2011 followed by another letter dated 06.12.2016 (Annexure-D & D-1). It is averred that the learned Court is biased against the petitioners and has already come to a conclusion that the petitioners are complicit. It is

averred that trial will be a farce in such a situation. An order of issuing summonses and warrant of arrest has already been passed by the learned CJM and against this order, the petitioners moved this Court for bail, which was not allowed. The petitioners finally moved the Hon'ble Apex Court and vide order dated 28.01.2020 and 31.01.2020 (Annexure-D-2 & E) passed in connection with two different special leave petitions, the investigating agency was restrained from taking any coercive action against the petitioners.

6. Following the directions of the Hon'ble Apex Court the army authority had handed over the arms and ammunitions as asked for by the learned CJM and the direction was complied with (Annexure-F dated 01.02.2020). It is submitted that the petitioners are protected under Section 6 of the Act of 1958 and Section 45 (1) of the CrPC.

7. It is averred that against the basic legal provisions vide order dated 18.09.2021, summonses were issued to the petitioners by the learned CJM.

8. Vide order dated 25.01.2022 passed by this Court, the learned counsel for the petitioners was directed to submit the notification declaring the entire Assam as disturbed area at the relevant time of occurrence.

9. Heard learned counsel Mr. R.K.D. Choudhury for the petitioners and learned Additional Public Prosecutor Mr. B.B. Gogoi, for the respondent Nos. 1

and 2 and learned counsel Mr. S. Islam and Mr. A. Hawari for respondent Nos. 3 and 4.

10. It is contended on behalf of the respondents that the FIR prima facie reveals that on 27.08.1998 at about 8:15 PM, while Raghu Gogoi was in Rituraj Gogoi's house at Chowkidinghee, Dibrugarh, one Major Zameer Khan (petitioner No. 1) of Jat Regiment along with some army personnel arrived at the residence and shot dead Rana Gogoi and Utpal Baruah in presence of Rituraj Gogoi, Shayamal Baruah and many others including the PSOs. The Major then forcefully took the dead bodies of Rana Gogoi and Utpal Baruah in a car along with Raju Phukan, whom he killed by firing at him at 'Bokel' near Kabristan. The Major also riddled the car bearing registration No. AS01-D-2485 of Raju Phukan with bullets. An FIR was lodged by Raghu Gogoi.

11. It is submitted on behalf of the respondents that the Major Zameer Khan (petitioner No. 1) has not acted while discharging his duty. Major Zameer Khan (petitioner No. 1) has shot at point blank range, three persons without any rhyme or reason. It is prima facie apparent that there was not even an encounter to act in such a deplorable manner.

12. It is submitted by the learned Additional Public Prosecutor that the letter marked as Annexure-D dated 10.09.2011 is relating to the information of the

aforementioned incident to the Defence Secretary forwarded by the then Officer-in-Charge Dibrugarh Police Station Hiranya Kumar Borah, Inspector of Assam Police. A reminder dated 06.12.2016 was also issued by the Officer-in-Charge of Dibrugarh Police Station, Pradip Kr. Bora, which is marked as Annexure-D-1. Prosecution sanction was also sought for through the aforementioned documents.

13. It is submitted that the petitioners were not on duty and they were intruders who were dressed in civil attires. The petitioners were also inebriated and the security personnel of the deceased fled during the incident. It is contended that during any operation, army personnel has to inform the local authority. This Court has directed the petitioners to appear before the IO but they have not appeared. The Hon'ble Supreme Court has also directed the petitioners to appear but the petitioners have preferred this petition instead. This petition ought to be dismissed as the petition is devoid of merits.

14. It is averred that the Hon'ble Supreme Court in Major (now Lt. Col.) Z.A. Khan vs. The State of Assam and ors., vide order dated 28.01.2020 in Special Leave Petition (Criminal) No. 3336/2020 granted Z.A. Khan interim protection till 28.01.2020 when the matter was listed for anticipatory bail. The bail application was adjourned to 04.02.2020 by this Court. It is submitted that the Hon'ble

Supreme Court has passed an order directing the police not to arrest the petitioner Z.A. Khan subject to the condition that he will cooperate with the investigation and appear before the investigating agency as and when required to do so. The petitioner Z.A. Khan, however did not appear before the investigation agency and has preferred this petition.

15. In reply, the learned counsel for the petitioners has submitted that vide order of the Hon'ble Supreme dated 31.01.2020 in connection with Special Leave to Appeal (Crl.) No. 853/2020 the other petitioners were also protected by the order of the Hon'ble Supreme Court, as an order was passed restraining the State of Assam from taking any coercive action against the petitioners subject to the condition that the petitioners would participate in the investigation, and cooperate with the Investigating Agency.

16. It is submitted that the petitioners have cooperated with the Investigation, but they are prejudiced by the order passed by the learned CJM, Dibrugarh on 18.09.2021 in connection with GR Case No. 1266/1998, PRC No. 371/2020. The learned counsel for the petitioners has brought to the notice of this Court the Act of 1958 wherein vide Section 6, a protection is endowed to persons acting or purported to be acting in exercise of powers conferred by the Act, as it has been mandated that no prosecution, suit or other legal proceedings shall be

instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by the Act of 1958.

17. The learned counsel for the petitioners has also brought to the notice of this Court the Notification New Delhi, the 4th November, 2016 vide S.O.3382 (E) whereby the State of Assam was declared as 'disturbed area' w.e.f. 27.11.1990, which was in continuation of the Notification New Delhi, the 27th November, 1990 vide S.O. 916 (E). Thus, there is no dispute that the State of Assam was declared a disturbed area during the time when the alleged offence was committed.

18. Learned counsel for the petitioners Mr. R.K.D. Choudhury has relied on the decision of the Hon'ble Supreme Court in *General Officer Commanding Rashtriya Rifles vs. Central Bureau of Investigation and Another* reported in (2012) 6 SCC 228 wherein it has been held and observed that:

“42. The protection given under Section 197 CrPC is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution.

This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. Use of the expression “official duty” implies that the act or omission must have been done by the public servant in the course of his service and that it should have been done 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 cooperation to only those acts or omissions which are done by a public servant in discharge of official duty. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty, then it must be held to be official to which applicability of Section 197 CrPC cannot be disputed.”

“55. In P.K. Choudhury v. Commander, 48 BRTF (GREF), this Court dealt with the issue wherein an army officer had allegedly indulged in the offence punishable under Section 166 IPC – public servant disobeying law, with intent to cause injury to any person and Section 167 IPC – public servant framing an incorrect document with intention to cause injury, and as to whether in such an eventuality sanction under Section 197 CrPC was required. The Court held as under: (SCC p. 232, para 12)

“12. ... As the offence under Sections 166 and 167 of the Penal Code have a direct nexus with commission of a criminal misconduct on the part of a public servant, indisputably an order of sanction was prerequisite before the learned Judicial Magistrate could issue summons upon the appellant.”

19. Learned counsel for the petitioners Mr. R.K.D. Choudhury has also relied on the decision of the Hon’ble Supreme Court in *State of Karnataka vs. M. Devendrappa & Anr. reported in 2002 1 Supreme 192* wherein it has been held and observed that:

“8. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

20. Learned counsel Mr. R.K.D. Choudhury for the petitioners has relied on the decision of this Court in Tulumoni Duarah vs. The State of Assam and 2 Ors. in Crl. Pet./607/2016 wherein it has been held and observed that:

“54. The learned Senior Counsel for the petitioner accordingly summed up his arguments by contending that no case for initiation of a trial is made out by the side of the complainant and therefore, no cognizance could have been taken on the basis of the existing materials before the Court below. In any case, there being no dispute regarding the status of the petitioner to be a police officer and the fact that the offence was committed while discharging his official duties, the requirement of Section 197 Cr.P.C would come into operation and in absence of sanction to be taken from the competent authority, no cognizance otherwise would have also been taken.”

“65. The protective umbrella given under Section 197 of the Code is to protect responsible public servants against institution of vexatious criminal proceedings for alleged offences committed by them in acting or purported to act as public servant. The said protection, as has been observed above is to give a sense of security to discharge their function without any fear or favour. The legislative intent for such enactment is to afford adequate protection to the public servants to ensure that they are not prosecuted for actions taken as part of official duties without reasonable cause. As the statute itself prescribes, certain limits are attached to such protection and only when the allegation is in connection with

discharge of official duties and not merely a cloak for doing objectionable acts. The Hon'ble Supreme Court has gone to the extent of holding that if in doing the official duty, the public servant acted in excess of its duty but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The Section however does not extend its protective cover to each and every act or omission done by the public servant in service but restricts its scope of operation to only those acts or omission done by the said public servant in discharge or purported discharge of official duties.

66. In the opinion of this Court, gravity or seriousness of the offence has got no manner of connection with the law requiring procurement of sanction under Section 197 of the Cr.P.C. The only requirement is that the offence alleged has to be committed in discharge or purported discharge of official duties by a public servant who falls within the definition of the said Section.

*67. The Constitution Bench of the Hon'ble Supreme Court in the case of Matajog Dobey having upheld the vires of Section 197 of the Cr.P.C., the only duty left to this Court is to see whether a case for applying the rigors of the said Section are duly complied with or not. As stated above, the status of the petitioner as a police officer is not disputed. There is also no dispute regarding the notification dated 29.05.1990 issued by the Home Department, Government of Assam in accordance with Section 197(3) of the Cr.P.C. to bring in a police officer within its ambit. The applicability of the said notification regarding in charge of maintenance of public order or maintenance of law and order would not be relevant as the thin distinction has been done away with by the Hon'ble Supreme Court in the case of **Rizwan Ahmed** (supra). This Court has already held above that the offence alleged was committed in discharge of official duties when the petitioner along with its team were led to the place of occurrence by the deceased and when the deceased had tried to flee by snatching the pistol, he was shot. Whether, the said commission constitutes an offence is for the prosecution to establish but in accordance with the law and by overcoming the hurdle of Section 197 of the Cr.P.C. At this juncture, it would be beneficial to refer to the case of **Nazir Ahmed vs. King Emperor**, reported in **AIR 1936 PC 253 (II)** wherein*

it has been laid down when a particular procedure is prescribed by the statute, that procedure must be followed and all other modes are necessarily forbidden. For ready reference, the relevant part is extracted herein below:

“ The rule which applies is a different and not less well recognized rule— namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

21. Reverting back to this instant case, charge sheet has already been laid against the petitioners being CS No. 112/2020 dated 18.03.2020.

22. It is submitted by the learned counsel for the petitioners that after submission of charge sheet, learned CJM has been contemplating to take cognizance against the petitioners without even prosecution sanction. It appears that cognizance has not yet been taken by the Court. As the petitioners have not cooperated with the proceeding, the learned CJM was impelled to issue summonses to the petitioners. Now the question that falls for consideration is that whether at this nascent stage the inherent jurisdiction under Section 482 of the CrPC can be invoked to quash the proceedings. It has been held by the Hon'ble Supreme Court in *Dineshbhai Chandubhai Patel vs. State of Gujarat* reported in (2018) 3 SCC 104 that:

“ 26. The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with such question is fairly

well settled.”

“31. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.”

“34. The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here.”

“40. Though learned senior counsel appearing for the parties argued the issues touching the merits of the case by referring to hundreds of documents but, in our view, it is wholly unnecessary to enter into the factual arena once we record a finding that a prima facie case is made out on reading the FIR including the documents enclosed therein. We, therefore, do not consider it necessary to go in detail of their submissions. Needless to say, all these submissions and unproved and disputed documents on which reliance was placed by the parties would be dealt with at a later stage as and when the occasion arises.”

23. It has been held by the Hon’ble Supreme Court *in Varala Bharath Kumar vs. State of Telangana reported in (2017) 9 SCC 413* that:

“7. It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under Section 482 of Code of Criminal Procedure may be exercised.

While exercising power under Section 482 or under Article 226 in such matters, the court does not function as a Court of Appeal or Revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised ex debito justitiae to do real and substantial justice, for the administration of which alone courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extra ordinary jurisdiction of quashing the proceedings at any stage.”

24. In the instant case, it is an admitted fact that prosecution sanction has not been accorded as mandated under Section 197 CrPC. This case is at its nascent stage, charge sheet has been laid against the petitioners and summonses have

been issued against all the petitioners and warrant of arrest has been issued against petitioner No. 2. The petitioners have been exonerated in the internal enquiry conducted against them. The Act of 1958 was still in force at the time of the incident and the petitioners were under the protection of Section 6 of the Act of 1958 and Section 45(1) of the CrPC.

25. It is true that an FIR cannot be considered to be an encyclopedia but the FIR in this instant case is a cryptic FIR. This Court is hesitant to delve into the merits of this case.

26. The brief facts of this case is that on 28.08.1998 at about 8:15 PM, SI Anil Chutia lodged an FIR contending *inter-alia* that on the night of 27.08.1998, some unknown miscreants shot dead 3 (Three) surrendered ULFA militants namely Raju Phukan, Rana Gogoi, Joon Baruah @ Utpal Baruah. The bodies were found inside a maruti car bearing registration No. AS-01D-2485, which was found parked by the NH-37 near Chaulkhowa Kabarsthan facing towards Tinsukia. There were bullet holes on the right side of the body of the car and 8 (Eight) empty cartridges of sophisticated weapons were also found on the ground by the side of the maruti car along with one M-20 pistol loaded with 5 (Five) rounds ammunition, which was found on the backseat of the car.

27. Although this case was registered against unknown miscreants but during

the course of investigation, it was unearthed that the deceased were invited to the house of Rituraj Gogoi and on their arrival, the petitioner No. 1 Major Zameer Khan fired at Joon Baruah @ Utpal Baruah and Rana Gogoi and; Raju Phukan was taken away from the house of Rituraj Gogoi in a Maruti car wherein the bodies of the other 2 (Two) eliminated militants were also taken. They all proceeded to Chaulkhowa Kabarsthan. Thereafter, Raju Phukan was also shot dead. The prime accused Major Zameer Khan was assisted by the other petitioners. The petitioners were protected by the order of the Hon'ble Supreme Court and the investigating team could not arrest them in connection with this case. Charge sheet was laid with the allegation that during investigation empty cartridges were found near the bodies of the deceased and ammunitions, which were recovered, reveals that the army personnel were issued those ammunitions. Meanwhile, at the time of submitting the charge sheet one accused Nk Narendra Singh had already passed away.

28. It is also submitted by the learned counsel for the petitioners that the petitioner No. 4 has suffered a brain stroke and the petitioner No. 5 has undergone major surgeries. Both the petitioner Nos. 4 and 5 are unable to attend the Court and if this case proceeds against them, the petitioners will be highly prejudiced.

29. In the instant case, there is also a statutory embargo laid down in Section 197 of the CrPC. The decision in Nazir Ahmed (supra) still holds the field. It has been observed that *'where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.'* Over and above Section 197 CrPC, the petitioners in this case are also protected by Section 6 of the Act of 1958 and Section 45(1) of the CrPC. With the FIR and the brief facts of this case, it cannot be decided at this juncture as to whether this case will end in conviction or whether the possibility of conviction is remote and bleak.

30. However, the FIR and the charge sheet prima facie reveal that the petitioners were donned in civil attires and they went to the place of occurrence at night. There is no instance of any encounter at the place of occurrence. No instance of any cross firing or attack by the victim/deceased has surfaced. It does not appear that firing was triggered by any act or conduct of the victim/deceased. Solely relying on the FIR and, on the charge sheet, it cannot be ascertained that the petitioners have acted while discharging their official duties without a hint of any operation or cross firing. It cannot be conclusively decided at this incipient stage that the petitioners have acted while in discharge of their official duties.

31. The allegations are that the petitioners led by Major Zameer Khan eliminated the deceased in execution style at point blank range. Can such acts be protected by a cloak provided under Section 197 of the CrPC, Section 6 of the Act of 1958 and Section 45 (1) of the CrPC. This Court is also not inclined to conclusively decide at this initial stage that the petitioners are protected under the aforementioned sections of law as they have acted or purported to have acted in discharge of their official duties.

32. It is true that the investigating team tried to obtain an order of sanction to proceed against the petitioners without any positive result. It has to be borne in mind that not one but three victims were eliminated in this instant case. The facts and circumstances in Tulumoni Duarah's case are not similar to this case. The petitioner Tulumoni Duarah in Criminal Petition No. 607/2016, was discharging his official duty when the deceased in the pretext of leading to recovery of dead body tried to flee, which is not so in this instant case.

32. It appears from the argument of the petitioners and the impugned order that the learned CJM has not taken cognizance against the petitioners. The petitioners are apprehending that the learned CJM is contemplating to take cognizance against them. The issue of sanction can be raised at any stage or on a later stage, even during the stage of framing of charges. At this juncture, it

would not be justified to stifle the proceeding by quashing and setting aside the impugned order. Summonses have been issued against all the petitioners and warrant has been issued against the petitioner No. 2.

33. I have also relied on the decision of the Hon'ble Supreme Court relied by the petitioners and have come to a conclusion that this is not a fit case to invoke the inherent jurisdiction under Section 482 of the CrPC at this juncture.

34. However, the petitioners can raise the issue of maintainability of the case due to lack of prosecution sanction at a later stage or even at the stage of framing of charges. The respondents are at liberty to apply for sanction from the competent authority and thereafter, take subsequent steps in accordance with law.

35. In terms of the above observation, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant