

GAHC030002272024



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

Case No. : Crl.Pet./5/2024

C. Vanlalmawia
MV-93B, Mission Veng, Aizawl

VERSUS

The State of Mizoram r/b Chief Secretary to Govt. of Mizoram and 4 Ors.
Aizawl2:Secretary to Govt. of Mizoram
Vigilance Department
Aizawl

3:The Mizoram Lokayukta r/b its Chairman
Aizawl

4:The Sr. Superintendent of Police
ACB
Aizawl

5:Inspr. George Lalhmingzauva Chinzah
Aizawl

Advocate for the Petitioner : Mr C Lalramzauva Sr. Adv.

Advocate for the Respondent : P.P./Addl.PP, Mizoram for R1, R2,R4 and R5

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGEMENT & ORDER (CAV)

02.08.2024

Heard Mr. C. Lalramzauva, learned Senior Counsel, assisted by Mr. C.

Tlanthianghlina, learned counsel for the petitioner; Mrs. Linda L. Fambawl, learned Public Prosecutor, for the respondent Nos. 1, 2, 4 & 5; and Mr. J.C. Lalnunsanga, learned Special Public Prosecutor for the respondent No. 3.

2. In this petition, under Section 482 of the Cr.P.C., the petitioner namely, Sh. C. Vanlalmawia has prayed for quashing the letter dated 22.01.2021; order dated 02.02.2021; the Enquiry Report dated 13.04.2022; FIR dated 05.05.2022; charge sheet No. 01/2024, dated 24.01.2024; order dated 22.03.2024; order dated 26.03.2024; and the criminal proceeding in SR (PCA) No. 01/2024, pending before the court of learned Special Judge, Prevention of Corruption Act, Mizoram (trial court).

3. The background facts, leading to filing of the present petition are adumbrated herein below:-

“While the petitioner, Sh. C. Vanlalmawia was working as a Principal at DIET, Kolasib, one Sh. Zosangliana Rokhum, President of Mizo Zirlai Pawl, Kolasib, Mizoram lodged a written complaint to the Senior Superintendent of Police, ACB, Mizoram, Aizawl (respondent No. 4) in respect of alleged misappropriation of funds under Centrally Sponsored Scheme and State Matching Share, during 2013 – 2018. On the basis of the aforesaid written complaint, The Secretary to the Government of Mizoram, Vigilance Department, Aizawl (respondent No. 2) vide letter No. C.31016/93/2019-VIG, dated 12.06.2019, conveyed Government’s permission to register preliminary enquiry. Accordingly, ACB PE No. 09/2019 was registered against the petitioner and Inspector, F. Engkunga was initially appointed as the Enquiry Officer. Then the Enquiry Officer had submitted his enquiry report which was forwarded to the Vigilance Department on 17.01.2020.

However, on careful scrutiny of the Enquiry Report and documents connected therewith, it was found that some crucial points were left out by the said Enquiry Officer and therefore, the case was re-endorsed a Deputy

Superintendent of Police (DSP) for further enquiry. Thereafter, the DSP had submitted his Supplementary Enquiry Report to the Chief Vigilance Officer, Mizoram wherein he had stated that even though liabilities could not be established against the petitioner, necessary action as deem fit may be taken against the petitioner.

Thereafter, the respondent No. 2, vide its letter No. C.31016/93/2019-VIG, dated 22.01.2021, directed to continue preliminary enquiry in a more detail manner, as desired by the Chief Vigilance Officer, Mizoram. Thereafter, the respondent No. 4 vide letter dated 02.02.2021, appointed Additional SP, ACB to conduct preliminary enquiry against the petitioner and thereafter, the said Enquiry Officer had submitted his Preliminary Enquiry Report.

Thereafter, the petitioner was served with an Order and Notice dated 02.02.2022, in MLC No. 38/2022, by the respondent No. 3, fixing 23.02.2022 for hearing on the Enquiry Report as per Section 19(3) of the Mizoram Lokayukta Act, 2014 and subsequently, hearing was held on 23.02.2022, wherein the petitioner was present in person and vide order dated 30.03.2022, the respondent No. 3 had passed an order for full investigation against the petitioner and the ACB, Mizoram was directed to carry out the investigation. It was further ordered that the investigation shall be carried out expeditiously as possible and thereafter, the respondent No. 2 vide letter dated C.31016/93/2019-VIG, dated 13.04.2022, addressed to the respondent No. 4 had conveyed Government's approval for registering a regular case as per Section 17(A)(1)(b) of the P.C. Act, 1988 and the said investigation was not completed within the stipulated time period of 6 months. However, the Enquiry Officer had submitted an FIR, dated 05.05.2022, to the respondent No. 4, for registration of criminal case against the petitioner.

On receipt of the FIR, the respondent No. 4, vide order dated 05.05.2022, had registered a criminal case against the petitioner vide ACB P.S. Case No. 02/2022, under Section 409/468/471/420 of the IPC, read with Sections 13(1)(a)(b) and 13(2) of the P.C. (Amendment) Act and endorsed respondent No. 5 to carry out the investigation. Thereafter, the I.O. had carried out the investigation and submitted charge sheet on 26.10.2023, to the respondent No. 3, much after the stipulated period for submission of charge sheet. Thereafter, the respondent No. 3, vide order dated 23.11.2023, passed in MLC No. 38/2022, had directed the respondent No. 4 to file charge sheet against the petitioner without affording him any opportunity of being heard. Thereafter, the I.O. had filed charge sheet No. 01/2024, dated 24.01.2024, before the court of learned Special Judge, Prevention of Corruption Act, Mizoram.

Thereafter, the petitioner was served with a summon to appear before the learned trial court on 19.02.2024 and thereafter, he was furnished with relevant documents of the case and the case was fixed on 27.02.2024, for framing charge. On that day, the learned counsel for the petitioner had raised certain grounds for consideration, before charge is framed against the petitioner, regarding non-compliance of Section 17(A) of the P.C. Act, 1988 and violation of Section 19(6) and (7) of the Mizoram Lokayukta Act, 2014. But, the learned trial court had fixed on 22.03.2024, though on that day, the petitioner had filed an application under Section 227 of the Cr.P.C. for discharging him, but, the learned trial court, vide impugned order, dated 26.03.2024, had framed charges against the petitioner, under Sections 409/420 of the IPC and read with Sections 13(2)/13(1)(c) & (d) of the P.C. Act.”

4. Being highly aggrieved the petitioner has approached this Court by filing the present petition with the prayers mentioned herein above, on the following grounds :-

- (i) That, the learned trial court had erred in law and in fact in passing the impugned orders, dated 22.03.2024, and 26.03.2024;
- (ii) That, the decision of the learned trial court in paragraph No. Nos. 9 & 10 of the impugned order, dated 22.03.2024, is highly illegal and unsustainable in law;
- (iii) That, the law is well settled that the learned trial court has to give reasons while deciding any issue, but the learned trial court had failed to give any reasons to conclude that the offences alleged to have been committed by the petitioner are not relatable to recommendations made or decision taken by the petitioner in the discharge of official functions or duties so as to conclude that the provision of Section 17(A) of the P.C. Act, 1988 is not attracted;
- (iv) That, the learned trial court in paragraph No. 10 of the impugned order, dated 22.03.2024, had illegally held that the ratio laid down in the case of **Nara Chandrababu Naidu vs. State of Andhra Pradesh and Anr.**, reported in **(2024) SCC OnLine SC 47** is not attracted in the present case;
- (v) That, the learned trial court had failed to consider the fact that the respondent No. 2, vide letter No. C.31016/93/2019-VIG, dated 22.01.2021, under Sections 17(A)(1)(b) of the P.C. Act had directed the respondent No. 4 to conduct enquiry in a more detailed manner and in fact, in view of the decision of Hon'ble Supreme Court in the case of **Yashwant Sinha & Ors. vs. CBI & Anr.**, reported in **(2020) 2 SCC 338**, the respondent No. 2 had no authority to direct Preliminary Enquiry under Section 17(A) of the P.C. Act, as the respondent No. 2 is not the authority competent to remove the petitioner from his office at the time when the offence was alleged to have been committed;

- (vi) That, the respondent No. 2 had no authority to convey the Government's approval to register regular case, under Sections 17(A) (1)(b) of the P.C. Act, as the respondent No. 2, is not the authority competent to remove the petitioner from his office at the time when the offence was alleged to have been committed, in view of the law laid down by Hon'ble Supreme Court in the case of **Yashwant Sinha (Supra)**;
- (vii) That, a plain reading of the letter No. C.31016/93/2019-VIG, dated 22.01.2021, and No. C.31016/93/2019-VIG, dated 13.04.2022, apart from giving approval to conduct enquiry and investigation, do not show anything which is indicative of the fact that they have applied their mind and as the approval was given under Section 17(A) of the P.C. Act, without giving the reason, is not maintainable in law and as such, the letters dated 22.01.2021, and 13.04.2022, are liable to be set aside;
- (viii) That, the petitioner was not given an opportunity of being heard before making a decision, whether to file charge sheet or closure report, before the learned trial court and even though the statute is silent and there was no positive word in the Act or the Rule there under, in view of the decision of Hon'ble Supreme Court in the case **Mangilal vs. State of MP**, reported in **(2004) 2 SCC 447**, the respondent No. 3 ought to have given an opportunity of being heard to the petitioner and as the impugned order dated 23.11.2023, was passed by directing the respondent No. 4 to file charge sheet before the learned trial court is liable to be set aside;
- (ix) That, the investigation of the case could not be carried out within the stipulated period of 6 months, rather it took about 20 months from

the date of the order of the respondent No. 3, without obtaining any permission for extension of time to submit charge sheet on 24.01.2024, which shows that the investigation is bad in law and unsustainable under Section 19(5) of the Mizoram Lokayukta Act, 2014;

- (x) That, a perusal of the FIR and the materials collected during the investigation, no prima-facie case appears to be made out against the petitioner under Sections 409/420 of the IPC and the learned trial court had illegally framed charge against the petitioner under Sections 409/420 of the IPC and 13(2) read with Sections 13(1)(c) & (d) of the P.C. Act and as such, the proceeding is liable to be quashed; and
- (xi) That, the proceeding of the said case i.e. SR (PCA) No. 01 of 2024, arising out of ACB P.S. Case No. 02/2022, pending before the learned trial court is the result of non-application of mind and therefore, the same is liable to be set aside.

5. It is to be noted here that the respondent No. 3 had filed written objection and contended to dismiss the petition, highlighting following points :-

- (i) That, the criminal petition is not maintainable and that the provision of Section 17(A) of the P.C. Act is not applicable in the instant case, as it never relates any recommendation made or decision taken by the petitioner in discharging of his official function;
- (ii) That, though the approval, under Section 17(A) of the P.C. Act is not attracted, yet, the respondent No. 4 obtained previous approval from the respondent No. 2 on 12.06.2019, vide Memo No. No. C.31016/93/2019-VIG before conducting preliminary enquiry, which is also a part of the record and annexed as Annexure - 2;
- (iii) That, the respondent No. 3 is protected by Section 22 of the Mizoram

Lokayukta Act and it did not require obtaining previous sanction as provided in Section 22 of the Mizoram Lokayukta Act;

(iv) That, the decision referred by the petitioner, in the case of **Nara Chandrababu Naidu (Supra)** is not applicable in the present case; and

(v) That, no provision of Section 19(6) & (7) of the Mizoram Lokayukta Act is violated herein this case.

6. Mr. Lalramzauva, learned Senior Counsel, appearing for the petitioner reiterated the grounds mentioned in the petition and submits that the investigation of the case was carried out without obtaining prior approval from the Government. Mr. Lalramzauva further submits that the petitioner had filed a petition under Section 227 of the Cr.P.C. for discharging him, but the learned trial court had erroneously dismissed the same and held that the Section 17(A) of P.C. Act is not applicable in the present case and on the ground that the petitioner was charged prior to amendment of the P.C. Act, by which the Section 17(A) of the P.C. Act was inserted and that the said period was from 2013 – 2018 and that the complaint was lodged in the month of March, 2019 after coming into force of the Amendment Act. Mr. Lalramzauva has pointed out that the investigation was conducted only after coming into force of Section 17(A) of the P.C. Act and therefore, the petitioner is entitled to protective umbrella of the said Section. Mr. Lalramzauva further pointed out that a petition was filed before this Court for staying the proceeding pending before the learned trial court, but this Court after hearing learned counsel for both the parties was pleased to dismiss the same. Mr. Lalramzauva also pointed out that though the initial approval under Section 17(A) of the P.C. Act was not given to the respondent authorities, yet, subsequently they had been given approval, under Section 17(A) of the P.C. Act and the said approval is also falling short of the requirement, in view of the decision of the Hon'ble Supreme Court in the case of **Yashwant Sinha (Supra)**. Mr. Lalramzauva

further pointed out that the charge sheet was submitted after 20 months, on 24.01.2024, though it was directed to complete the investigation within a period of 6 months, but, no extension of time was sought for and granted herein this case and that the authority, who had given approval under Section 17(A) of the P.C. Act, is not the competent authority to remove the petitioner from his office. Referring to Section 19(6) & (7) of the Mizoram Lokayukta Act, Mr. Lalramzauva submits that the principle of natural justice has not been complied with and that no prima-facie case under Sections 409/420 of the IPC and 13(2)/13(1)(c) & (d) of the P.C. Act, is made out against the petitioner and the present petition is the outcome of non-application of the mind by the respondent No. 2 and therefore, it is contended to allow this petition by quashing the proceeding, pending before the learned trial court.

7. On the other hand, Mr. Lalnunsanga, learned Special Public Prosecutor for the respondent No. 3, submits that Section 17(A) of the P.C. Act is not at all applicable in the present case as the same is not related to any recommendation made by the petitioner while discharging his duty as a public servant and that the allegation relates to misappropriation of fund in the name of fictitious and dead persons. Mr. Lalnunsanga further submits that the ratio in the case of **Nara Chandrababu Naidu (Supra)**, so, relied upon by the petitioner is not applicable herein this case besides, in the said case Hon'ble Supreme Court had given split verdict and the matter was referred to a larger bench and the same is yet to be decided. Mr. Lalnunsanga also submits that the petitioner has filed a petition before this Court for staying the proceeding pending before the learned trial court citing non-compliance of the provision of Section 17(A) of the P.C. Act, wherein a coordinate bench of this Court, vide order dated 19.05.2024, had overruled all the arguments advanced by the learned counsel for the petitioner in respect of Section 17(A) of the P.C. Act and against the said order, the petitioner had preferred one Special Leave Petition before Hon'ble Supreme Court and Hon'ble Supreme Court, vide order dated 14.06.2024, was pleased to dismiss the same and requested this Court to dispose of the present

petition as expeditiously as possible. Referring to a decision of Kerala High Court in the case of **Shankara Bhat vs. State of Kerala**, reported in **(2021) SCC OnLine Ker 3427**, Mr. Lalnunsanga submits that when the Section 17(A) of the P.C. Act will be applicable, had elaborately been discussed and the ratio laid down in the said case is applicable in the present case also and that there is no reason to quash the present proceeding as the trial is almost completed and that the case is pending for defence evidence and within a month the judgment may be pronounced and therefore, it is contended to dismiss this petition.

8. Whereas, Mrs. L.L. Fambawl, learned Public Prosecutor for the respondent Nos. 1, 2, 4 & 5 has adopted the submissions so advanced by Mr. Lalnunsanga, learned Special Public Prosecutor for the respondent No. 3.

9. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also gone through the case laws, referred by the learned counsel for both the parties and also gone through the record of the learned trial court.

10. Before a discussion is directed into the points so raised by the learned counsel for both the parties, it would be apposite to understand the power of this Court, under Section 482 of the Cr.P.C. in respect of quashing a criminal proceeding. While dealing with the issued, in the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.**, reported in **(2021) SCC OnLine SC 315**, a three Judges Bench of Hon'ble Supreme Court has held as under :-

- “(1) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.
- (2) Courts would not thwart any investigation into the cognizable offences.
- (3) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the

Court will not permit an investigation to go on.

- (4) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- (5) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.
- (6) Criminal proceedings ought not to be scuttled at the initial stage.
- (7) Quashing of a complaint/FIR should be an exception rather than an ordinary rule.
- (8) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operation two specific spheres of activities and one ought not to tread over the other sphere.
- (9) The functions of the judiciary and the police are complementary, not overlapping.
- (10) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.
- (11) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.
- (12) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application

made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

- (13) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.
- (14) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and BhajanLal (supra), has the jurisdiction to quash the FIR/complaint.
- (15) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.
- (16) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High

Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge sheet is filed under [Section 173](#) Cr.P.C., while dismissing /disposing of the quashing petition under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India.

- (17) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.
- (18) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

11. In the case of **State of Haryana and Others vs. and Others**, reported in **(1992) Supp (1) SCC 335**, the Hon’ble Supreme Court, having discussed its earlier decisions, on the subject of scope and jurisdiction of High Court to quash an FIR by excising the power under Article 226 of the Constitution of India, has held in para No. 102 as under:-

“In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure

the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- (3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- (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; and
- (7) 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.”

12. Having informed ourselves about the legal proposition, presently occupying the field, now, we will proceed to examine the issues raised in this petition and also to adjudge the submissions of learned counsel for both the parties.

13. That, a bare perusal of the FIR, which is sought to be quashed in the present petition, reveals the following facts and circumstances :-

- (i) That, SCERT, Aizawl, Mizoram had acquired fund amounting to Rs. 164.05 lakhs for DIET, Kolasib during the period of 2013 – 2018;
- (ii) That, there is no information with regard to use of the aforesaid fund by the DIET, Kolasib;
- (iii) That, the Directorate of SCERT replied to the informant that there is no separate money for in-service, but, according to DIET, Kolasib it was shown as Rs. 25,27,341/- that was received for in-service training;
- (iv) That, after examination of the information received through RTI, it has found that the names mentioned in the attendance sheet include pensioners as well as some deceased persons; and
- (v) That, the attendance sheet also included some names who had never participated in the said training.

14. Further, it appears from the order dated 23.11.2023, passed by the Mizoram Lokayukta, (Annexure – 10) which is also sought to be quashed in the present petition, that :-

- (i) In order to mislead and misguide the investigating agency, the petitioner had supplied additional expenditure vouchers of Government,

fund under the Head-OE and OC for the year 2013 – 2018, amounting to Rs. 42,19,583.43/- while DIET, Kolasib has received fund amounting to Rs. 1,86,35,000/-, however, voucher amounting to Rs. 2,28,54,583.43/- was supplied to the Enquiry Officer during the said period;

- (ii) Vouchers for purchasing 6 nos. of LED TV along with wall mount and voltage stabilizer from Head-OE amounting Rs. 3,01,170/- was unearthed, however, on physical inspection by the Enquiry Officer, only one LED TV was found at the quarters of Principal, DIET, Kolasib, whereas the rest of the LED TV amounting to Rs. 2,43,670/- were found missing;
- (iii) One voucher for purchasing 3 nos. of IFB Refrigerator and its accessories with the total cost of Rs. 2,20,000/- was unearthed from the Head OE of DIET, Kolasib. However, said Refrigerators are not found in the office and its ancillary building units of DIET, Kolasib during enquiry; and
- (iv) Statement of Santosh Sharma, the person who was looking after Canteen of DIET, proved that the vouchers of Rs. 51,795/- for DIET Canteen Bill, prepared by the alleged official, were fake.

15. The charge sheet, Annexure – 11, which is enclosed with the petition and which is also sought to be quashed in the present petition, also indicates that materials have been collected to show misappropriation of the Government fund as alleged in the FIR and in the order dated 23.11.2023, and it also indicates that out of the total amount of fund Rs. 1,95,12,825/-, which was credited into the account of DIET, Kolasib, Rs. 1,89,20,345/- was credited into the account of the petitioner and the balance was of Rs. 52,177/-.

16. Thus, a careful perusal of the aforesaid documents and also other materials

enclosed therewith, it cannot be said that no prima-facie case under Sections 409/420 of the IPC and read with Sections 13(2)/13(1)(c) & (d) of the P.C. Act is made out against the petitioner. And as such, the submission of Mr. Lalramzauva, learned Senior Counsel appearing for the petitioner that no prima-facie case, under the aforesaid Sections, made out, against the petitioner, left this Court unimpressed.

17. It also appears from the record that the petitioner had filed a petition before this Court for staying the proceeding, pending before the learned trial court and made a submission in respect of non-compliance of Section 17(A) of the P.C. Act. And a co-ordinate bench of this Court, vide order dated 09.05.2024, had refused to grant interim order for staying the proceeding pending before the learned trial court and held that the facts in the case of **Nara Chandrababu Naidu (Supra)** is distinguishable from the present case and also held that as held by Kerala High Court, in the case of **Shankara Bhat (Supra)**, the present case is not relatable to any recommendation made or decision taken by the petitioner and as such, the said provision is not applicable in the present case.

18. Notably, the petitioner had challenged the aforesaid order of this Court before the Hon'ble Supreme Court, by filing one Special Leave Petition, being SLP (Criminal) No.(s) 8048 of 2024 and the Hon'ble Supreme Court, vide order dated 14.06.2024, was pleased to dismiss the petition and requested this Court to dispose of this petition as expeditiously as possible.

19. This being the position, the finding of the coordinate bench of this Court, in respect of applicability of Section 17(A) of the P.C. Act in the case in hand, attained finality and this Court cannot reopen the same.

20. Although, Mr. Lalramzauva, learned Senior Counsel appearing for the petitioner has pointed out that non-compliance of the provision of Section 19(6) & (7) of the Mizoram Lokayukta Act by the respondent No. 3, which led to violation of the principle of natural justice, yet, it involves appreciation of facts and in view of the decision of

Hon'ble Supreme Court, in the case of **M/s Neeharika Infrastructure (Supra)** this Court cannot embark into a roving enquiry and appreciate the facts like a trial court, to arrive at a finding in respect of the same.

21. It also appears from the record that the respondent No. 2 has granted permission to the respondent No. 4, to conduct enquiry, under Section 17(A) of the P.C. Act in more detailed manner and to submit a report. Though the learned Senior Counsel for the petitioner submits that the said approval is falling short of the requirement as prescribed by Hon'ble Supreme Court in the case of **Yashwant Sinha (Supra)**, as respondent No. 2 is not the competent authority to remove the petitioner from his office at the time when the offence was allegedly been committed, yet, the said aspect also cannot be examined by this Court while dealing with a petition under Section 482 of the Cr.P.C., as analysis of the factual aspect will be required therein and in view of the ratio laid down in **M/s Neeharika Infrastructure (Supra)**, this Court is not entitled to embark into appreciation of factual aspect.

22. Indisputably, in the present case, the learned trial court had already examined all the prosecution witnesses and thereafter, examined the petitioner, under Section 313 of the Cr.P.C. and now, the case is pending for defence evidence only and Mr. Lalnunsanga, learned Special Public Prosecutor for the respondent No. 3 has submitted that the entire proceeding will be completed within a month. That being so, the FIR and the criminal proceeding cannot be quashed at this stage. The petitioner has failed to make out any exceptional case to invoke the inherent power of this Court. The learned counsel for the respondent No. 3 has rightly pointed it out in his argument and this Court record concurrence to the same.

23. In the result, in view of the parameters laid down by Hon'ble Supreme Court, in the case of **Bhajanlal (Supra)** and in **M/s Neeharika Infrastructure (Supra)**, in respect of quashing of a petition under Section 482 of the Cr.P.C., this Court find no merit in the petition and accordingly, the same stands **dismissed**.

24. However, it is made clear that dismissal of this petition would not stand in the way of raising the aforementioned points before the learned trial court, at the stage of hearing of arguments. Further, it is being clarified that the observation made herein above are only for the purpose of disposal of the present petition not on merit of the case and the learned trial court shall proceed to hear and dispose of the case, without being influenced by any observation made herein above.

25. The parties have to bear their own costs.

JUDGE

Comparing Assistant