

GAHC020003922021



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

Case No. : Crl. Pet./5/2021

SHRI RICHARD YIMTO IPS
INSPECTOR GENERAL OF POLICE (VILLAGE GUARDS),
NAGALAND POLICE, KOHIMA,
RES. H.NO. 159,
WARD NO.8, LANE NO.21,
SEIRUZHA COLONY,
P.O CHUMUKEDIMA 797103,
DISTRICT DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY THE PRINCIPAL SECRETARY AND HOME
COMMISSIONER TO THE GOVT. OF NAGALAND,
HOME DEPARTMENT,
CIVIL SECRETARIAT NAGALAND,
P.O KOHIMA 797001,
NAGALAND

Advocate for the Petitioner : , PRAVIR CHOWDHURY,PFOSEKHO
PFOTTE,SASHIMONGLA JAMIR,TEMJENCHILA AIER

Advocate for the Respondent : GOVT ADV NL,

Linked Case : Crl. Pet./27/2022

SRI. RICHARD YIMTO
IPS
INSPECTOR GENERAL OF POLICE(VILLAGE GUARD)
NAGALAND POLICE
KOHIMA

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NAGALAND
P.O - KOHIMA - 797001
NAGALAND

Advocate for : PRAVIR CHOWDHURY
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND

BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

For the Petitioner : Mr. P. Choudhury, Senior Advocate
: Mr. D. Talukdar, Advocate

For the Respondents: Ms. V. Suokhrie, Public Prosecutor, Nagaland

Date of Judgment : **09.09.2024**

JUDGMENT & ORDER

1. Heard Mr. P. Choudhury, learned senior counsel assisted by Mr. D. Talukdar, learned counsel for the petitioner. Also heard Ms. V. Suokhrie, learned Public Prosecutor for the State of Nagaland.

2. By this common judgment, it is proposed to dispose of two connected criminal petitions, namely, Criminal Petition No. 5/2021 and Criminal Petition No. 27/2022, which were registered on filing of separate applications under Section 482 of the Code of Criminal Procedure, 1973 by the petitioner, namely, Richard Yimto, IPS.

3. In Criminal Petition No. 5/2021, the petitioner had prayed for quashing of the FIR No. 1/2018 which was lodged, on 20.10.2018, in the State Crime Police (PHQ), Kohima, Nagaland, on the basis of which Special Case No. 36/2018 was registered in the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland.

4. The second case i.e., Criminal Petition No. 27/2022 was registered on filing of an application under Section 482 of the Code of Criminal Procedure,

1973, by the above named petitioner praying for quashing of the charge-sheet dated 14.03.2022, which the petitioner describes as the second charge-sheet in the Special Case No. 36/2018, which arose out of FIR No. 1/2018 dated 20.10.2018 in the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland.

5. As both the aforesaid criminal petitions relates to the FIR No. 1/2018, dated 20.10.2018, which led to registration of Special Case No. 36/2018, which is pending before the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland.

6. The above-named petitioner has also filed an application under Article 226 of the Constitution of India for issuance of the Writ in the nature of Mandamus, directing the registration of the FIR which was lodged, on 03.08.2018, by the Commander, Narcotic Cell Check Point, Khuzama, Nagaland on that day. In the said writ petition, it is also prayed that the investigation of the case may be transferred to the Central Bureau of Investigation (CBI). The said writ petition has been registered as WP(Crl.) No. 11/2022. The said writ petition is disposed of by a separate judgment, though the matter therein is also connected to both the criminal petitions which are proposed to be disposed of by this common judgment.

7. The facts relevant for considerations of both the above mentioned Criminal Petitions, in brief, are as follows:-

i. That on 03.08.2018, one Lichathong Lotha, UBSI, Commander, Narcotic Cell Check Point, Khuzama, Nagaland had lodged a written complaint before the Officer-in-Charge of Narcotic Cell, Kohima, Nagaland, *inter alia*, alleging that on 03.08.2018 at around 8:30 Hrs., one Maruti Swift vehicle (White Colour), bearing Registration No. AS-01-BJ-0245, was signaled to stop for checking at Khuzama Narcotic Cell Check Point by the on-duty Police Officials. However, the vehicle did not stop and accelerated and escaped from the check point. On suspicion, the on-duty police personnel chased the vehicle and after a brief chase, intercepted it. Thereafter, the police team conducted the search in the said vehicle. During search operation, Police recovered 11(eleven) packets of suspected brown sugar which were wrapped with brown and yellow tapes and kept inside the back side of

the vehicle. On weighing the seized contraband, it was found to weigh 6.9 kg. The occupants of the vehicle, namely, Rahul Kharel and Deepak Lama were apprehended and a seizure list was also prepared on the same day.

ii. A copy of the said FIR dated 03.08.2018 as well as seizure list dated 03.08.2018 has been annexed as Annexure- P-1 and P-2 in both the criminal petitions.

iii. On the basis of the FIR lodged by the Commander of Narcotic Cell Check Point, Khuzama, Nagaland on 03.08.2018, no police station case has been registered.

iv. However, on 20.10.2018, the DSP (Crime), Kohima, namely, Tulakha K. Sumi, NPS, had lodged an FIR against the above named petitioner, namely, Richard Yimto, IPS who was posted as Inspector General of Police (CID), Nagaland, Kohima at that point of time, before the Officer-in-charge of State Crime, (PHQ), Kohima, Nagaland, *inter alia*, alleging therein that based on

seizure memo dated 01.09.2018, 6.9 kgs of suspected brown sugar was seized from the official residence of the petitioner at New Reserve, Phe sema, Kohima, Nagaland.

v. The said FIR was registered as FIR No. 1/2018 under Sections 409/420 of the Indian Penal Code read with Section 13(1)(c)(d) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 22 of the NDPS Act, 1985.

vi. Thereafter on completion of the investigation, charge-sheet was laid bearing Charge-sheet No. 3 dated 14.03.2022 against the above named petitioner under Sections 409/420 of the Indian Penal Code read with Section 21(c) of the NDPS Act, 1985 as well as under Sections 7(a), 7(c), 13(1)(a) and 13(2) of the Prevention of Corruption Act, 1988.

8. Mr. P. Choudhury, learned senior counsel for the petitioner has submitted that the petitioner has been falsely implicated in the instant case at the instance of some senior and junior police officers, who are closely involved with the drugs kingpins.

9. It is also submitted by the learned senior counsel that though on 03.08.2018 itself a *suo moto* FIR was lodged by Lichathong Lotha, UBSI, however, the Officer-in-charge of Narcotic Cell Police Station, Kohima, namely, Nirola Sophie, did not register the FIR on 03.08.2018.

10. The learned senior counsel has also submitted that the petitioner came to know about the incident, which occurred on 03.08.2018, for the first time, only on 18.08.2018, when Smt. Nirola Sophie, the then SSP, who was also the Officer-in-charge of Narcotic Cell Police Station, Kohima informed the petitioner about the incident and requested him to save her for her lapses.

11. It is also submitted by the learned senior counsel for the petitioner that the Officer-in-charge of Narcotic Cell Police Station, Kohima also informed the petitioner that the Malkhana of the Police Station was not safe to keep the seized material and as no proper guards were available, therefore, she requested the petitioner to keep the seized packets in his official residence to which the petitioner agreed and kept the seized brown sugar in his official residence for security purpose.

12. It is further submitted by the learned senior counsel that on 01.09.2018, a police team led by Sri Renchamo P. Kikon, IPS, Additional DGP (L/O) came to

the official residence of the petitioner at about 7.00 PM and they re-seized the consignment of 11 packets of contraband from his residence.

13. The learned senior counsel for the petitioner has submitted that the police team again prepared a second seizure memo on 01.09.2019. The learned senior counsel for the petitioner has submitted that thereafter on 20.10.2018 again a second FIR was lodged which was registered as FIR No. 1/2018 dated 20.10.2018.

14. The learned senior counsel for the petitioner has submitted that thereafter on 25th October, 2018, the petitioner was also put under suspension contemplating disciplinary proceeding against him. Though, the learned senior counsel also made submissions regarding the pending departmental proceedings against the petitioner, however, as same is not the subject matter of the present criminal petitions, this Court is refraining itself from discussing the questions pertaining to pending departmental proceeding against the petitioner. More so, as the said departmental proceeding has been challenged by the petitioner by filing a separate writ petition.

15. The learned senior counsel for the petitioner has submitted that as the aforesaid contraband was seized initially, on 03.08.2018 and same was illegally kept in

the possession of Officer-in-charge of the Narcotic Cell Police Station, Kohima from 03.08.2018 to 18.08.2018 and thereafter from 01.09.2018 to 05.11.2018. It is further submitted that on 05.11.2018, the engaged counsel for the petitioner pointed out the fact to the learned Special Judge, NDPS, Kohima, regarding non-deposit of seized contraband and thereafter, the Investigating Officer was directed by the learned Special Judge, NDPS, Kohima to deposit the suspected brown sugar before the learned CJM, Kohima. The learned senior counsel for the petitioner has submitted that during this period, the contraband was kept in the Malkhana of the Police Station and the keys of the said Malkhana were kept by the ADGP (L/O), Nagaland, thereby raising the suspicion that as the contraband was kept illegally in the custody of the police instead of custody of the Court during this period, the same might be replaced.

16. The learned senior counsel for the petitioner has submitted that in the instant case initially the charge-sheet was laid on 23.11.2021 by the Superintendent of Police (Crime) and Officer-in-charge, State Crime Police Station before the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland. Thereafter, the said charge-sheet was again taken back by the Investigating Officer without any

order of the Court in that regard and it was again submitted before the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland, on 16th March, 2022 and the date in the charge-sheet was mentioned as 14.03.2022 without mentioning therein anything about the filing of the charge-sheet on 23.11.2021.

17. The learned senior counsel for the petitioner has submitted that by replacing the original charge-sheet with the second charge-sheet, the prosecution side has flouted the provisions of Sections 173 of the Code of Criminal Procedure, 1973 and on that count itself the second charge-sheet is liable to be quashed. In support of his submission learned senior counsel has cited the following rulings:-

- a) **"Ram Lal Narang Etc. Etc Vs. State Of Delhi (Admn.)** reported in **"(1979) 2 SCC 322"**
- b) **T.T. Antony Vs. State of Kerala and others** reported in **"(2001) 6 SCC 181"**,
- c) **Jeevan Singh Vs. State of Rajasthan** reported in **"2004 Crl.L.J. 3469 (Raj.)"**
- d) **Kishan Lal Vs. Dharmendra Bafna & Anr** reported in **"(2009) 7 SCC 685"**
- e) **Lalita Kumari Vs. Govt. of U.P. & Ors** reported in **"(2014) 2 SCC 1"**

18. The learned senior counsel for the petitioner has

submitted that the second charge-sheet has been filed by the prosecution side mainly on the basis of statement of PW-1, Shri Tulaka K. Sumi, PW-2-Nirola Sophie, PW-3-Keviekhrie Angami, PW-4- Lichanthung Lotha and PW-5-Imtikumba, wherein they have made statement to the effect that on 06.08.2018 one packet of seized contraband was handed over to the petitioner by the in-charge of Narcotic Cell Police Station and, thereafter, on 17.08.2018 the remaining ten packets of suspected brown sugar which was kept in Malkhana was handed over to the petitioner, however, none of the aforesaid witnesses has stated anything about making GD entry to that effect on 06.08.2018 while delivering the contraband to the petitioner, hence, the statement made by the said witnesses are not reliable.

19. The learned senior counsel for the petitioner has submitted that by not registering the first FIR on 03.08.2018, the Officer-in-charge of Narcotic Cell Police Station had flouted the provisions of law as well as guideline of the Apex Court in this regard.

20. The learned senior counsel for the petitioner has also submitted that the plea taken in the second charge-sheet that the petitioner prevented the Officer-in-charge of Narcotic Cell Police Station not to register the FIR is not believable as under All India Services

(Conduct Rules), 1968, no oral instructions may be given by the petitioner and in that regard the Officer-in-charge of Narcotic Cell Police Station did not obtain any confirmation of the alleged oral direction in writing. The learned senior counsel for the petitioner has submitted that the allegation of giving oral instructions by the petitioner for not registering the FIR is a false and concocted allegation.

21. The learned senior counsel for the petitioner has submitted that though while forwarding the sample of the contraband to the Central Forensic Laboratory, Kolkata, four specific questions were raised seeking expert opinion on those questions. However, all the questions were not replied by the CFSL, Kolkata therefore, the learned senior counsel for the petitioner submits that on the basis of such incomplete FSL report, no charge-sheet under Section 21(c) of the NDPS Act, 1985 could have been submitted against the petitioner.

22. The learned senior counsel for the petitioner has also submitted that the call data records of the mobile phone of the petitioner would show that the petitioner was not in Kohima on 06.08.2018 and 17.08.2018, which belies the accusation made against the petitioner by PW-2 and PW-5 that the contraband was delivered to the petitioner on the said dates.

23. The learned senior counsel for the petitioner has submitted that the Investigating Officer could not find any evidence against the petitioner regarding preventing the Officer-in-charge of Narcotic Cell Police Station from registering the FIR on the basis of written complaint which was lodged on 03.08.2018. There is also no evidence which show that the prosecution witness No. 2 and 3 listed in the charge-sheet, were prevented from making GD entry with regard to the incident which happened on 03.08.2018. He also submits that there is no evidence on record to show that the petitioner had instructed to release, on bail, the two accused persons from whose possessions the contraband was seized on 03.08.2018.

24. The learned senior counsel for the petitioner submits that the only charge against the petitioner is regarding keeping the contraband illegally in his residence which is also not substantiated by evidence collected during the investigation. The learned senior counsel for the petitioner has also submitted that though the charge-sheet was laid under Sections 409/420 of the Indian Penal Code, however, no ingredients of said offences are present in the instant case against the petitioner.

25. The learned senior counsel for the petitioner has also submitted that though the charge-sheet was also

lodged under Sections 7(a) and (c) of the Prevention of Corruption Act, 1988, however, he submits that the Court of learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, Nagaland, does not have the jurisdiction to try the offence under the Prevention of Corruption Act, as in the State of Nagaland, the Tribunal for Disciplinary Proceeding (TDP) at Kohima is having the jurisdiction to try the offences under the Prevention of Corruption Act, 1988.

26. The learned senior counsel for the petitioner has submitted that the seized contraband was handed over to the petitioner for keeping it in safe custody as no security was there in the Malkhana, hence, under the facts and circumstances of the case, the petitioner may not be regarded as having conscious possession of contraband and, therefore, it is submitted that no offence under Section 21(c) of the NDPS Act, 1985 has been committed by the petitioner.

27. The learned senior counsel for the petitioner, therefore, submits that the second charge-sheet laid down against the petitioner as well as the FIR filed against the petitioner on 20.10.2018 is liable to be quashed.

28. On the other hand, Ms. V. Suokhrie, learned Public Prosecutor, Nagaland has vehemently opposed the prayer of the petitioner and has submitted that the

petitioner, who, at the relevant point of time, was posted as the Inspector General of Police (CID) and was senior to the Officer-in-charge of Narcotic Cell Police Station, has abused his official position to pressurize his junior officers to compel the Officer-in-charge of Narcotic Cell Police Station not to register a regular FIR on the basis of *suo moto* complaint lodged by the UBSI, Lichathong Lotha on 03.08.2018. She has also submitted that the petitioner also pressurized his junior officers to not to disclose the seizure and arrest of two accused persons from whose possession the contraband was seized on 03.08.2018 to any superior officers.

29. It is also submitted that the petitioner had also directed to bring the seized consignment straight to his office chamber at PHQ, Kohima from the place of seizure. He also directed to release the seized vehicle after taking zimmanama. It is also submitted that the petitioner also directed his junior officers to release the arrested accused persons on furnishing PR bond.

30. The learned Public Prosecutor, Nagaland has also submitted that the petitioner has also sent a message to the Officer-in-charge of Narcotic Cell Police Station in her Mobile No. 9436262528, wherein he wrote "*that price of 1 kg brown sugar in international market as on today is Rs. 2.5 Crore where we are making the*

Magistrate rich”. After sending the said message, he had directed the Officer-in-charge of Narcotic Cell Police Station that from then onward if there is any detection, the petitioner should be informed also over WhatsApp message from the spot of detection.

31. The learned Public Prosecutor, Nagaland has also submitted that at the time of the handing over the seized contraband to the petitioner, the General Diary Entry were made on 06.08.2018 and 17.08.2018. Learned Public Prosecutor, Kohima, Nagaland has also submitted that as the petitioner was a senior officer, the Officer-in-charge of the Narcotic Cell Police Station was compelled to comply with his directions and, therefore, the contraband was handed over to the petitioner when he demanded the same.

32. The learned Public Prosecutor has also submitted that the submissions made by the learned counsel for the petitioner that there was no security in the Malkhana and, hence, the petitioner had kept the seized contraband in his residence is not true as there were 24 hours static guards on duty in addition to night Chowkidar at PHQ.

33. The learned Public Prosecutor has also submitted that in a spite of being a senior police officer, the petitioner kept commercial quantity of contraband i.e., 6.9 kg of brown sugar in his residence in violation of

all the norms and, therefore, there is a clear case of illegal possession of commercial quantity of heroin by the petitioner.

34. The learned Additional Public Prosecutor, Nagaland has also submitted that the petitioner having been a senior police officer committed the alleged offence with *mala fide* intention and has now filed this frivolous petition in his desperate attempt to thwart the ends of justice, therefore, the petition filed by the petitioner is liable to be dismissed with exemplary cost. She also submits that if there is any irregularity committed by the State respondents, during investigation, it would not vitiate the entire criminal proceeding and same cannot be basis for quashing of the pending criminal proceeding against the petitioner when there are sufficient and cogent incriminating materials against him on record.

35. The learned Additional Public Prosecutor fairly submits that though initially the charge-sheet was forwarded to the learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, through Public Prosecutor by letter dated 23.11.2021, however, same was never placed before the Trial Court on that occasion neither the Trial Court took cognizance of any offence on that occasion. It is submitted by the learned Public Prosecutor, Nagaland that as in the first

occasion Public Prosecutor found deficiency in the charge-sheet and, accordingly, suggested some rectification by a concise memo dated 25.12.2021, therefore, the charge-sheet was returned back to the Investigating Officer on that occasion. Thereafter, after rectification, the charge-sheet was again submitted before the learned Principal Sessions Judge-cum-Special Judge, NDPS, Kohima, on 16th March 2022. She also submits that as the charge-sheet was placed before the Court for the first time after it was submitted on 16th March, 2022, therefore, it may not be regarded as second charge-sheet as submitted by learned senior counsel for the petitioner and same may not be a ground for quashing the entire criminal proceeding pending against the petitioner. In support of her submissions, learned Public Prosecutor, Nagaland has cited the following rulings:-

- a) **"Ram Singh Vs. Central Bureau of Narcotics"** reported in **"(2011) 11 SCC 347"**
- b) **"State of Gujarat Vs. Kishanbhai"** reported in **"(2014) 5 SCC 108"**
- c) **"Ramesh Rajagopal Vs. Devi Polymers Pvt. Ltd"** reported in **"(2016) 6 SCC 310"**
- d) **"Arnab Ranjan Goswami Vs. Union Of India"** reported in **"(2020) 14 SCC 12"**
- e) **"K.V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai and Ors.,"** reported in **"(2013) 12 SCC**

480."

36. I have considered the submissions made by the learned counsel for both the sides and have perused the materials on record carefully including the case record of Special Case No. 36/2018, which was requisitioned from the Trial Court by order dated 14.02.2023 passed in Criminal Petition No. 27/2022. I have also gone through the rulings cited by the learned counsel for both the sides in support of their respective submissions.

37. In the case of "**M/S Neeharika, Infrastructure Pvt. vs The State Of Maharashtra**" reported in "**(2021) 19 SCC 401**", the Supreme Court of India has observed as follows:-

"33.5. 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.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule."

33.12. The first information report is not an encyclopaedia 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.

33.14. *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 R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.*

38. In the case of "**State of Haryana and Ors. Vs. Bajan Lal and Ors.**" reported in "**1992 Supp. 1 SCC 335**", the Apex Court has made following observation while laying down the guidelines for exercise of inherent powers of the Court for quashing of the FIR.

"102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of*

the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid formulae and to give an exhaustive list of 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 FIR 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.

(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."

39. In the case of **"*Shaileshbhai Ranchhodbhai Patel & Anr. Vs. State Of Gujrat and Ors.*"** (Criminal Appeal No.1884/2013, dated 28.08.2024), the Apex Court has observed as follows:-

"7. The question of law involved in these two appeals as to whether quashing of the FIR should have been refused for no other reason than that the Investigating Officer has filed the charge-sheet is no longer res integra. Decisions of this Court to such effect are legion. We may profitably refer to

the decisions of this Court in "Ruchi Majoo v. Sanjeev Majoo (2011) 6 SCC 479), Anand Kumar Mohatta vs State (Govt. of NCT of Delhi) Home Department (2019) 11 SCC 706 and Abhishek vs. State of Madhya Pradesh 2023 SCC OnLine SC 1083.

8. On the authority of the aforesaid decision, law seems to be well settled that the High Court under Section 482 of the Code of Criminal Procedure retains to powers to quash the FIR even after charge-sheet under Section 173 (2) thereof is filed, provided as a satisfaction in reached, inter alia, that either the FIR and the charge-sheet read together even accepted as true and corrected without rebuttal that does not disclose commission of any offence or that continuation of proceeding arising of such FIR would in fact be an abuse of the process of law as well of Court given peculiar the circumstances of each particular case.

40. In the light of the above observations of the Apex Court, let us examine as to whether the FIR dated 20.08.2018 and the charge-sheet submitted on the basis of the said FIR, on 16.03.2022, in NDPS Case

No. 36/2018 is liable to be quashed or not.

41. Though, it appears that investigation in this case was initiated on receipt of FIR dated 20.10.2018, however, during the investigation, which ensued thereafter, many facts came to the light. During the course of investigation, it was revealed from the materials collected that the seized contraband was initially recovered, on 03.08.2018, from a vehicle bearing Registration No. AS-01-BJ-0245, from the possession of two persons namely, Rahul Kharel and Deepak Lama. It also appears from the investigation that the Investigating Officer found that both the accused persons, namely, Rahul Kharel and Deepak Lama were arrested on 03.08.2018 and arrest memo were prepared. However, the evidence collected during investigation also revealed that the Officer-in-charge of Narcotic Cell Police Station, Kohima was prevented from registering the FIR by the petitioner, namely, Richard Yimto. The facts and circumstances under which the FIR could not be registered, on 03.08.2018, constitutes the main allegation in the instant case and during the investigation it was found that only due to the pressure by the petitioner, his junior officers did not register the FIR.

42. Though, the learned senior counsel for the petitioner has submitted that the aforesaid accusation

made against the petitioner in the charge-sheet is not true, however, on perusal of the charge-sheet it appears that at least four witnesses have stated on oath that the petitioner asked for producing the contraband before him and not to discuss the matter to any of the senior Police Officer. It also appears that there are evidence on record, collected during investigation, to the effect that it was the petitioner who directed to release the apprehended accused persons on furnishing of PR bonds.

43. There is also, *prima facie*, materials in the case diary to suggest that the petitioner directed his subordinate to produce the seized contraband in his office chamber and also directed to hand over to him the seized contraband and thereafter, same was kept in his official residence. It also appears from the case diary that the seized contraband was recovered from his residence and thereafter the same was seized on 01.09.2018 from his official residence.

44. Though, in the instant case, the learned senior counsel for the petitioner has been emphasizing up on the fact that the complaint lodged by Sri Lichathong Lotha, UBSI, Commander, Narcotic Cell Check Point, Khuzama, Nagaland, on 03.08.2018, regarding seizure of 6.9 kgs of contraband from Maruti Swift vehicle bearing Registration No. AS-01-BJ-0245 has not been

registered, hence the FIR dated 20/10/2018 and the charge-sheet filed thereafter are liable to be quashed. However, in the charge-sheet laid against the petitioner, one of the main allegations is that he prevented the Officer-in-Charge of Narcotic Cell Police Station from registering the FIR on 03.08.2018. He also instructed to release the two accused persons, who were apprehended, on PR Bond.

45. When the main allegation, in the charge sheet, against the petitioner is that he prevented the Officer-in-Charge of Narcotic Cell Police Station from registering the FIR, on 03/08/2018, and when, *prima facie*, sufficient materials appears to have been collected during investigation to substantiate the said accusation, hence, under such circumstances, the non-registration of the FIR, on 03.08.2024 cannot be a ground for quashing the FIR dated 20.10.2018 and the charge sheet filed thereafter.

46. Thus, there are clear incriminating materials against the petitioner in the case diary. Under such circumstances, the petitioner cannot be allowed to take advantage of his own wrong as it is alleged that, it was he who has prevented the registration of FIR and this fact is revealed during the investigation, which was initiated after registration of formal FIR on 20.08.2018.

47. From the materials on record, it appears that the FIR in this case was registered for the first time on 20.08.2018 i.e., the FIR which was lodged by the DSP(Crime), Kohima and during the investigation which was initiated on the basis of the said FIR, many facts came to the light, including the fact that recovery and seizure of the contraband was done initially on 03.08.2018 from the possession of two persons, namely, Rahul Kharel and Deepak Lama. The mere fact that the contraband was initially recovered from the possession of two above named persons would, in itself, not absolve the petitioner, at least at this stage, from the accusation made against him that he had prevented the registration of the FIR on 03.08.2018 and also kept the recovered contraband illegally in his official residence.

48. It has been observed by the Apex Court in the case of **"M/S Neeharika, Infrastructure Pvt. Vs. The State of Maharashtra"** (supra) that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

49. In the instant case, there are sufficient incriminating materials against the petitioner which was collected during the investigation. Further,

presently the Special Case No. 36/2018 is pending before the Trial Court at the stage of consideration of charges and the charges are yet to be framed, and as there are sufficient incriminating materials at this stage against the petitioner, hence, this Court would not embark upon the question of the reliability or genuineness of the evidence collected by the Investigating Officer during investigation.

50. As regards the submission of learned senior counsel for the petitioner that though, the contraband was initially recovered from the possession of two persons, namely, Rahul Kharel and Deepak Lama, however, they are not named as accused in the charge-sheet, which has been impugned in this case, it appears from perusal of the case record that the *suo moto* FIR filed by Lichathong Lotha, UBSI, on 03.08.2018, has been forwarded along with the charge-sheet as D-5. The seizure memo dated 03.08.2018 has been forwarded along with the charge-sheet as D-6. Similarly, the arrest memo of Rahul Kharel and Deepak Lama has also been forwarded along with the charge-sheet as D-7. There are also other incriminating evidence collected against Rahul Kharel and Deepak Lama by the Investigating Officer, during the investigation. Hence, it appears that during the investigation apart from collecting sufficient

materials against the present petitioner, the Investigating Officer also collected materials against the said Rahul Kharel and Deepak Lama from whose possession contraband was initially recovered on 03.08.2018.

51. The Supreme Court of India in the case of "**Nahar Singh vs The State Of Uttar Pradesh**" reported in "**(2022) 5 SCC 295**" has observed as follows:-

"29. In Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] , SWIL Ltd. [SWIL Ltd. v. State of Delhi, (2001) 6 SCC 670 : 2001 SCC (Cri) 1205] and Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , the power or jurisdiction of the court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section

193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in Column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the FIR or police report.”

52. Thus, from the above, it appears that if there are sufficient materials against Rahul Kharel and Deepak Lama in the charge-sheet, they cannot be absolved from being prosecuted merely because they are not

named in the charge-sheet as accused person by the Investigating Officer. Under such circumstances, the learned Sessions Judge-cum-Special Judge, Kohima would be well within his powers to take cognizance against both Rahul Kharel and Deepak Lama on the basis of incriminating materials against both of them in the charge-sheet.

53. Thus, merely because of the fact that the charge-sheet submitted by the Investigating Officer does not include the names of the aforesaid persons as accused in the charge-sheet, in itself, may not be a good ground for quashing the charge-sheet on the prayer of a co-accused (petitioner) against whom there are sufficient materials in the charge-sheet.

54. As regard the submission made by the learned senior counsel for the petitioner, that the charge-sheet which was laid before the learned Sessions Judge-cum-Special Judge, Kohima, is the second charge-sheet and that the first charge-sheet was submitted on 23.11.2021, it appears on perusal of the case record of NDPS Case No. 36/2018, that it is on 24.03.2022 that the charge-sheet was first put up before the learned Sessions Judge-cum-Special Judge, Kohima. To that effect, in the order dated 24.03.2022, there is a mention about the receipt of the Charge-sheet No. 3 dated 14.03.2022, on that day. It appears that on that

day itself i.e., on 24.03.2022, the learned Sessions Judge-cum-Special Judge, Kohima took cognizance of offence against the petitioner. Thus, it appears that the charge-sheet, which the learned senior counsel for the petitioner is referring to as the second charge-sheet is, in fact, the charge-sheet which was placed before the learned Sessions Judge-cum-Special Judge, Kohima for the first time on 24.03.2022. There is no material on record to show that before the said date (i.e., 24.03.2022), any charge-sheet was placed, before the learned Sessions Judge-cum-Special Judge, Kohima, in connection with Special Case No. 36/20018.

55. Rule 207 of Nagaland Police Manual Part-V provides that as soon as after the charge has been substantiated against the offender, the charge-sheet must be sent by the quickest means to the Court Officer for submission to the Magistrate. Thus, it appears that it is for the Court officer to submit the charge-sheet before the Magistrate and in the instant case before the learned Session Judge-cum-Special Judge, NDPS, Kohima. However, as submitted by learned Public Prosecutor, Nagaland, the charge-sheet which was sent to the Court by the forwarding report dated 23rd November, 2021 was never placed before the learned Principal Session Judge-cum-Special Judge, Kohima, as some defects were noticed in the

said charge-sheet by the Public Prosecutor, who submitted a concise memo on 15.12.2021 suggesting certain rectifications in the charge-sheet and, therefore, the charge-sheet was sent back to the Investigating Officer and thereafter it was again forwarded to the learned Session Judge-cum-Special Judge, Kohima by the Officer-in-charge of State Crime Police Station, PHQ, Kohima, Nagaland on 16th March, 2022.

56. As from the available records, it appears that the charge-sheet was placed before the learned Session Judge-cum-Special Judge, Kohima for the first time on 24.03.2022 only and as on that day only for the first time, learned Special Judge had gone through the charge-sheet and had passed orders in that respect, it cannot be regarded as second charge-sheet and that may not be a ground for quashing the said charge-sheet. Though, the petitioner may be at liberty to take these pleas before the Trial Court at appropriate stages of the trial.

57. Though, the learned Senior Counsel for the petitioner has submitted that on the basis of CFSL report dated 27.09.2019, the petitioner could not be charged under Section 21(c) of the NDPS Act, 1985, as the said report does not confirm that the seized contraband was brown sugar, however, it appears that

the result of examination of samples sent to the forensic laboratory showed presence of opium alkaloids like morphine, codeine, thebaine in the said samples which are included in the list of prohibited narcotic and psychotropic substances in the notification issued by the Central Government in that regard. Therefore, it appears that the seized contraband in this case is of commercial quantity of prohibited drugs. The question as to under what provisions of NDPS, Act, 1985, the charges may be framed against the petitioner is for the Trial Court to consider at the appropriate stage. As the charges are yet to be framed against the petitioner, the submissions that the ingredients of Section 21(c) of the NDPS Act, 1985 may not be a ground to be enquired into in a proceeding under Section 482 of the Code of Criminal Procedure, 1973. More so, when *prima facie*, there are materials against the petitioner of illegally keeping commercial quantity of prohibited contraband in his residence.

58. Thus, from above discussion we have seen that the allegation made against the petitioner in the FIR dated 20.10.2018 and thereafter on the basis of the materials collected during investigation in the charge-sheet which was laid before the learned Session Judge-cum-Special Judge, Kohima, on 24.03.2022,

prima facie, discloses ingredients of cognizable offence committed by the petitioner.

59. Now, as to whether the ingredients of some of the offences alleged against him i.e., Sections 409/420 of the Indian Penal Code or under the provisions of Prevention of Corruption Act, 1988 are there or not is to be considered by the Trial Court at the time of framing of charges. The inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 may be invoked only if the materials before the Court i.e., the first information report, charge-sheet and the other materials accompanying the charge-sheet do not disclose a cognizable offence, which is not a case in the instant case.

60. As already discussed herein before in a proceeding under Section 482 of the Code of Criminal Procedure, 1973 wherein prayer has been made for quashing of the charge-sheet and the FIR, the Court cannot embark upon an inquiry as to the reliability or genuineness or otherwise of the materials available on record. When apparently the material collected during investigation discloses commission of a cognizable offence, it is not appropriate for this Court to invoke its inherent jurisdiction and quash the charge-sheet and the FIR. It is also a settled law that the quashing of FIR and the charge-sheet is an exception rather than

ordinary rule and in the instant case when there are grave charges made against the petitioner which is, *prima facie*, supported by the materials collected during investigation, the prayer for quashing of the FIR and the charge-sheet may not be considered in this case.

61. This court is of considered opinion that as per the parameters laid down by the Apex Court in the ruling cited herein before in this judgment, this is not a fit case where the FIR dated 20.10.2018 and the charge-sheet submitted thereafter are required to be quashed.

62. The prayer of the petitioner, in both the criminal petitions, i.e., Criminal Petition No. 5/2021 as well as Criminal Petition No. 27/ 2022 are hereby rejected and both the criminal petitions are hereby dismissed. However, for reasons discussed in the foregoing paragraphs, the learned Sessions Judge-cum-Special Judge, Kohima would be well within his powers to take cognizance also against both Rahul Kharel and Deepak Lama on the basis of incriminating materials against both of them in the charge-sheet.

63. The Registry of the Principal Seat of this Court is directed to send the record of this case along with the records of the Special Case No. 36/2018 along with the connected files and a copy of this judgment to the

Registry of the Kohima Bench of this Court for transmitting the same to the Court of learned Sessions Judge-cum-Special Judge, NDPS, Kohima immediately.

Sd/-
JUDGE

Comparing Assistant