

GAHC020005632023



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

Case No. : Crl. Pet./30/2023

SHRI CHUNU KUMAR MAHATO,
S/O BUDESHAR MAHTO,
R/O WARDD 3, JIMISINGH TOLA,
LALGARH YOGIYA,
DUMRI, SHEOHAR
BIHAR 843327

VERSUS

THE STATE OF NAGALAND AND ANR.
NAGALAND

2:SHRI I. MEKANDO ODYUO
UBI
STATE CRIME POLICE STATION
NAGALAND
KOHIMA

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : P.P, NAGALAND

Linked Case : Crl. Pet./29/2023

SHRI PANKAJ KUMAR SINGH
S/O LT. NAGENDER SINGH
R/O UPHIRUL VILLAGE
PS DESARI
DIST VAISHALI

BIHAR 844504

VERSUS

THE STATE OF NAGALAND AND ANR
NAGALAND

2:SHRI I. MEKANDO ODYUO
UBI
STATE CRIME POLICE STATION

NAGALAND
KOHIMA

Advocate for : SENTIYANGER
Advocate for : P.P
NAGALAND appearing for THE STATE OF NAGALAND AND ANR

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 16-05-2024

Heard Mr. Sentianger, learned counsel for the petitioners. I have also heard Ms. S. Mere, learned P.P. Nagaland.

2. This is an application under section 482 of the Criminal Procedure Code 1973 praying for quashing of the FIR and all consequential criminal proceedings against the petitioners/accused being GR No.602/2022 in connection with State Crime PS Case No.07/22 under section 120 B/379/411 IPC pending before the learned Court of Chief Judicial Magistrate Dimapur.

3. The case of the petitioners is that a suo moto FIR was lodged by one UBI Mekando Odyuo I/C CID Branch Dimapur inter alia stating therein that he has received information from reliable source regarding involvement of anti social elements

dealing in illegal smuggling of contraband and areca nut (supari) from neighboring country and a conspiracy to launder illegal money from various source including arms smuggling and avoid legal taxation on behalf of organized groups of operatives working in multiple States. It is further alleged that in connection with the matter on 14.9.2022 at about 19.00 hrs at Naharbari Dimapur and 7th Mile Chumoukedima was searched and recovered:- (1) 220 bags of areca nut from the godown at 7th mile Shokuvi road, Chumoukedima which was managed and owned by Pankaj Kumar Singh and (2) about 78 bags of areca nuts from the godown at Naharbari near Kachari Baptist Church which was owned by Chunnu Mahato.

4. Basing on the above FIR, the case was registered being State Crime PS Case No.07/22 under section 120 B/379/411 IPC and investigated into. Then, the petitioners also were arrested.

5. On the submission of the learned P.P that the case has already been charge-sheeted, LCR was called for, produced and I have perused the same.

6. The record reveals that after completion of investigation, the I.O. of the case has submitted the above P.S Case No.07/22 in Final report. In his Final Report, the I.O of the case amongst others has made the following observation:

"On the complaint received from UBI Mekando Odyuo I/C CID Branch, Dimapur, regarding the suspected smuggling of areca nuts and conspiracy to launder illegal money from various sources including arms smuggling and avoid legal taxation on behalf of or-

ganized groups of operatives working in multiple States, investigation searched the seized bags of areca nuts with HHMDs in the presence of independent witnesses and also requisitioned the bank account statement of the 2(two) accused persons namely Chunu Kumar Mahato and Pankaj Kumar Singh and examined them but investigation could not find concrete evidence to corroborate the stamen of the complainant.....”

7. The I.O. further remarks that the instant case was investigated from various aspects by affording all possible means with available resources and having ascertained that⁶ the suspects/accused namely, Chunu Kumar Mahato and Pankaj Kumar Singh against whom substantial evidence to charge under section 120B,379 and 411 could not be established. Accordingly, the I.O prays for discharging the 2(two) accused namely, Chunu Kumar Mahato and Pankaj Kumar Singh from the liability of the said case. And as a result, the I.O return the case in Final Report to the Hon’ble High Court with a liberty to re-open the case for investigation as and when further clues or evidences are found in future.

8. At this stage, Mr. Sentianger, learned counsel for the petitioner while submitting that the petitioner/accused has been unnecessarily harassed by the police placed citation the decision of the Hon’ble Supreme Court in the case of Vijay Singh vs State of Uttar Pradesh and Others reported in (2012) 5 SCC 242. The relevant paragraph 21 is quoted here below:-

“21. Undoubtedly, in a civilized society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in crim-

inal jurisprudence to this effect is prescribed in the legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law."

9. In view of the final report submitted by the I.O of the case with a prayer to discharge the petitioners/accused namely, Chunu Kumar Mahato and Pankaj Kumar Singh from the liability of the instant case, this criminal petition is disposed of with a direction to the learned Chief Judicial Magistrate, Dimapur to pass necessary orders discharging the accused Chunu Kumar Mahato and Pankaj Kumar Singh by following the due process of law.

He also cited the decision of the Hon'ble Supreme Court in the case of Sanjay Singh Ramrao Chavan vs Dattatray Gulabrao Phalke and Others reported in (2015) 3 SCC 123 which held in paragraph 17 as under "*17.....summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.....*"

10. It is made clear that the learned Chief Judicial Magistrate, Dimapur shall pass such orders within a period of 45 days from today.

11. With the above the criminal petition is disposed of.

12. Return the LCR immediately.

**Sd/-
JUDGE**

Comparing Assistant