

GAHC020005942022

2024:GAU-NL:488



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

Case No. : CRL.REVN/7/2022

INSPECTOR GENERAL OF ASSAM RIFLES
REPRESENTED BY MAJOR NAGARAJ P STAFF OFFICER
(ADMINISTRATION-1)
HQ IGAR APO

VERSUS

THE STATE OF NAGALAND
NAGALAND KOHIMA

Advocate for : YANGER WATI
CGC.

Advocate for : appearing for THE STATE OF NAGALAND

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT & ORDER (ORAL)

Date : 12-09-2024

Heard Mr. Yangerwati, learned CGC for the petitioner. I have also heard Mr. V. Zhimomi, learned PP for the State.

2. By filing this application under section 482 of the Code of Criminal

Procedure, 1973, the petitioner has assailed amongst others the order dated 09.04.2021 passed by the Court of Sessions Judge, Phek in Misc Application (Discharge) No. 47/2020 arising out of GR case no. 46/15 in Meluri PS case no. 06/2015 and made the following prayers;

- (i) To quash and set aside the impugned order dated 09.04.2021 passed in Misc Application (Discharge) No. 47/2020 in GR case no. 46/15 arising out of Meluri PS case no. 06/2015 U/S 302/307/338/166/34 IPC.
- (ii) To quash and set aside the proceeding of GR case no. 46/2015 arising out of Meluri PS case no. 06/2015 under section 302/307/338/166/34 IPC pending before the learned Court of District and Sessions Judge, Phek, Nagaland.

3. The facts leading to the filing of this Criminal Revision in brief is that on 15.07.2015, on the basis of specific information received, a military operation was carried out wherein 2 (two) terrorists were killed and a number of arms and ammunitions were recovered from the terrorists. During the said operation, some Armed Forces Personnels were injured. While transferring the dead bodies of the terrorists at Wuzu village, the villagers had assembled at both sides of the road and blocked the movement of the column, demanding handing over of the body of the self-styled Captain Puhochu. While Major Surinder Singh was seated inside his vehicle and was interacting with the village elders, there was a sudden burst of gun fire whereby the column retaliated with fire. After the firing stopped, the Officer-in-Charge found that one Officer had sustained glass

splinter injuries on right hand and one Rifleman sustained gunshot injury in lower back. It was also learnt that two minor children had succumbed to their injury and another lady was also injured.

4. Against the said incident, the villagers filed an application before the Meluri PS to file an FIR and the Assam Rifles had also filed an FIR before the said police station. The case was accordingly registered being Meluri PS case no. 06/2015 under section 302/307/338/166/34 IPC. After completion of the investigation, the IO submitted chargesheet against the accused for offence under section 302/307/338/166/34IPC. Upon consideration of the Police papers, the case was taken into cognizance by the District and Sessions Judge, Phek on 20.07.2020 and thereafter the process of summons were issued against the accused Major Surinder Singh for his appearance on 13.08.2020. Thereafter, several days were fixed for his appearance.

5. It is submitted that in the meantime, the accused, Major Surinder Singh filed an application before the Court of District and Sessions Judge, Phek praying for his discharge from the case on the ground that before filing of the chargesheet, prosecution sanction of the Central government is required under the Armed Forces (Special Powers) Act, 1958 and the provision under the Code of Criminal Procedure, 1973 which are mandatory has not been sought from the competent authority, i.e., the Central Government. However, after hearing the parties, the learned Sessions Judge, Phek by an order dated 09.04.2021 has dismissed the said discharge petition. It is submitted that the said dismissal order was passed by the learned Sessions Judge, Phek relying on the judgment

passed by the Hon'ble Supreme Court in the case ***PK Pradhan Vs. State of Sikkim*** reported in ***(2001) 6 SCC 704***, wherein it was held that the question of sanction under section 197 of the Code, "*... can be raised at any time after the cognizance, may be immediately after the cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well.*"

6. Being highly aggrieved by the above impugned dismissal order dated 09.04.2021, the petitioner has filed this application amongst others on the following grounds:

- (i) That the provision under section 6 of the Armed Forces (Special Powers) Act, 1958 is mandatory and non-compliance therewith would vitiate the prosecution or legal proceedings.

Section 6 of the Armed Forces (Special Powers) Act, 1958 reads as under:

"6. Protection to person acting under Act- No prosecution, suit or other legal proceeding 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 this Act."

- (ii) That sub section 2 of section 197 Cr.P.C also protects the Armed Forces from prosecution without obtaining prosecution sanction.

Section 197 (2) of Cr.P.C reads as under:

"(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

7. The learned counsel for the petitioner submits that in view of the above provisions of section 6 under Armed Forces (Special Powers) Act, 1958 and sub section 2 of Section 197 of Cr.P.C, no proceedings can be initiated against the accused without obtaining prior prosecution sanction against the him. However, in the instant case, the on receipt of charge sheet, the learned Sessions Court has taken cognizance of the case and issued summon against the accused person which is against the above provisions of law. Hence, prays for setting aside and quashing of the impugned order dated 09.04.2021 and the proceeding of GR case no. 46/15 in Meluri PS case no. 06/2015 under section 302/307/338/166/34 IPC.

8. In support of his submission, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme in the case of ***General Officer Commanding Rashtriya Rifles Vs. Central Bureau of Investigation and Anr*** reported in ***(2012) 6 SCC 228***. The relevant portion of the judgment is reproduced herein below:

"95.4. In case option is made to try the accused by a court-martial, sanction of the Central Government is not required.

96.1. The competent authority in the Army shall take a decision within a period of eight weeks from today as to whether the trial would be by the criminal court or by a court-martial and communicate the same to the Chief Judicial Magistrate concerned immediately thereafter.

96.2. In case the option is made to try the case by a court-martial, the said proceedings would commence immediately and would be concluded strictly in accordance with law expeditiously.

96.3. In case the option is made that the accused would be tried by the criminal court, the CBI shall make an application to the Central Government for grant of sanction within four weeks from the receipt of such option and in case such an application is filed, the Central Government shall take a final decision on the said application within a period of three months from the date of receipt of such an application.

96.4. In case sanction is granted by the Central Government, the criminal court shall proceed with the trial and conclude the same expeditiously.”

9. Mr. V. Zhimomi, learned PP fairly submits that as per section 6 of the Armed Forces (Special Power) Act, 1958 read with Sub section 2 of section 197 of Cr.P.C, prosecution sanction from the Central Government is necessary before prosecution of the accused who is working as an Army Officer in the rank of Major in the Indian Army. The learned PP however, submits that the prosecution side has already forwarded the application to the Central Government for granting prosecution sanction against the accused and the response is still awaited. Under the circumstances, he further submits that some time may be granted to obtain prosecution sanction as the application has already been submitted.

10. Heard both the learned counsel for the parties. I have also perused the materials available on record.

11. Upon hearing the parties and on perusal of the records, it appears that the investigation of the case has already been submitted into chargesheet against the accused Major Surinder Singh for offence under

section 302/307/338/116/34 IPC and on receipt of the chargesheet, the learned Trial Court has taken cognizance of the case on 20.07.2020 and had issued summons to the accused, Major Surinder Singh for his appearance. It also appears that in the meantime, the accused, Major Surinder Singh had filed the petition for his discharge; however, by an order dated 09.04.2021, the said discharge application has been dismissed.

12. The learned counsel for the petitioner submits that as per the provision under Section 6 of the Armed Forces (Special Powers) Act, 1958 and sub section 2 of section 197 of the Cr.PC, it is mandatory to obtain prior prosecution sanction against the accused belonging to the Armed Forces and non-compliance of the said prosecution would vitiate the prosecution or legal proceedings.

13. In view of the above provisions of section 6 of the Armed Forces (Special Powers) Act, 1958 and sub section 2 of Section 197 of the Cr.P.C, and also in view of the decision of the Hon'ble Supreme Court in ***General Officer Commanding Rashtriya Rifles Vs. Central Bureau of Investigation and Anr*** (supra), I find sufficient force in the submission of the learned counsel for the petitioner. The trial of the criminal case against the accused person who is an army personnel cannot proceed without obtaining prior prosecution sanction under the provision of section 6 of the Armed Forces (Special Powers) Act, 1958.

14. In view of the above and for the reasons stated above, this Criminal Revision is disposed and the respondent authority is granted 4(four)

months' time from the date obtaining certified copy of this order to obtain prosecution sanction against the accused, Major Surinder Singh. Till then, the earlier interim order dated 18.11.2022, suspending the further proceedings of the GR case no. 46/2015 before the learned District and Sessions Judge, Phek arising out of Meluri PS case no. 06/2015 under section 302/307/338/166/34 IPC shall continue.

15. The State respondent through the IO of the case is also at liberty to make fresh application before the Central government for grant of prosecution sanction against the accused Major Surinder Singh, if necessary, within 2(two) weeks from the date of receipt of the certified copy of this order. Considering that the matter is pending at the stage of obtaining prosecution sanction since 2016, it is made clear that, in the event of failure to obtain prosecution sanction against the accused within the given 4(four) months time as above, the case of the accused shall be tried by the Court Martial in accordance with law.

16. With the observation made above, this Criminal revision petition stands disposed of, in terms above.

17. Return the Trial Court record.

JUDGE

Comparing Assistant