Serial No. 01 & 02
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev P. No. 9 of 2020 with
Crl.Rev P. No. 10 of 2020

Date of Decision: 15.12.2020

Smti. Lorina Jyrwa Nongsiej Vs. Shri. Robert Feller Kharbuki & 2 Ors.
Miss. Sylvia Nongsiej Vs. Shri. Robert Feller Kharbuki & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

In Crl.Rev.P. No. 9 of 2020

For the Petitioner/Appellant(s) : Ms. P. Chettri, Adv.
For the Respondent(s) : Mr. J.M. Thangkhiew, Adv. for R 1.
Mr. S. Sengupta, Addl. Sr. PP for R 2&3.

Appearance:

In Crl.Rev.P. No. 10 of 2020

For the Petitioner/Appellant(s) : In Person.
For the Respondent(s) : Mr. J.M. Thangkhiew, Adv. for R 1.
Ms. S.G. Momin, Addl. Sr. PP for R 2&3.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. The Petitioner in Crl.Rev.P. No. 9 of 2020 has come before this Court with an application under Section 439(2) r/w Section 482 Cr.P.C. directed against the order dated 10.09.2020 passed by the learned Additional Judge, District Council Court, Shillong, whereby the Respondent No. 1 was enlarged on anticipatory bail by the Court in connection with Rynjah P.S. Case No. 29(3) 2020 u/s 500/506/509 IPC.

2. Similarly, the Petitioner in Crl.Rev.P. No. 10 of 2020 appearing in person has come before this Court with an application under Section 439(2) r/w Section 482 Cr.P.C. directed against the order dated 10.09.2020 passed by the learned Additional Judge, District Council Court, Shillong, whereby the Respondent No. 1 was enlarged on anticipatory bail by the Court in connection with Rynjah P.S. Case No 28(3) 2020 u/s 500/506/509 IPC.

3. It is noticed that the subject matter of both the applications are similar and almost identical and the impugned order also being almost identical, for the sake of brevity and experience, this Court proposes to dispose of these applications vide this common judgment.

4. Ms. P. Chettri learned counsel for the Petitioner in Crl.Rev.P. No. 9 of 2020 has submitted that the Petitioner and the Respondent No. 1 were acquainted official since the Respondent No. 1 is the Myntri in the Office of the Syiem of Mylliem. However, in the year 2019, particularly in the month of December 2019, he started harassing the Petitioner and demanded money from her and even defamed her in the presence of many witnesses, stating that she is a woman of bad character leading to the filing of the FIR, which was registered as Rynjah P.S. Case No 29(3) 2020 u/s 500/506/509 IPC.

5. It is also the case of the Petitioner in Crl.Rev.P. No. 10 of 2020 that an FIR dated 05.03.2020 was lodged before the Officer-in-Charge Rynjah Police Station with an allegation that the Respondent No. 1 herein has been harassing and demanding money as well as has defamed the character of the Petitioner by alleging that she is a characterless person and was having an affair with many men, following which Rynjah P.S. Case No. 28(3) of 2020 under Section 500/506/509 IPC was registered.

6. The Respondent No. 1 (Shri. Robert Feller Kharbuki) who is the named accused in both the FIRs mentioned above, then moved separate applications for grant of anticipatory bail before the Court of the Additional Judge, District Council Court, Shillong, which applications though heard separately, relevant orders were passed on the same date, whereby the learned Court granted interim bail to him on 26.08.2020 and made the same absolute on 10.09.2020.

7. Ms. Chettri has also submitted that the learned Court of the Additional Judge while making the interim bail absolute did not follow the due process of law, inasmuch as, the order was passed in the absence of the Public Prosecutor as well as the Complainant. Infact, on three occasions, the learned Public Prosecutor was absent, which could have prompted the Court to hear the Complainant/Petitioner herein. The case of ***Kunhiraman, K.C. v. State of Kerela: (2005) 2 KLT 685***, paragraph 10 & 11 was relied upon in this respect.

8. It is further submitted that the Court below has failed to considered the settled position of law in this regard as was held in the case of ***State of UP through CBI v. Amarmani Tripathi : (2005) 8 SCC 21*** paragraph 18 which has listed out matters to be considered in an application for bail. One of the conditions to be considered was the character, behavior, means, position and standing of the accused which the learned Court has failed to prima facie see whether the accused/Respondent No. 1 has committed the offence or not, he being a Myntri and an influential member of the community and as such, his action of defaming the Petitioner in public was not taken into account by the learned Court while making the bail absolute.

9. Another ground cited by the learned Court below while making the interim bail absolute is that there was a civil dispute between the parties which is refuted by the Petitioner herein who has submitted that at the time of filing of the said FIR, the Petitioner is unaware of any civil dispute between them and no notice of the same was ever issued to her and as such, the impugned order was passed based on irrelevant grounds.

10. Yet another authority cited by the Petitioner is the case of Dinesh M.N(S.P.) v. State of Gujarat in Criminal Appeal No. 739 of 2008 at paragraphs 14 & 15, whereby the Hon'ble Supreme Court has decided on the point of consideration of irrelevant grounds.

11. It is prayed that the bail granted to Respondent No. 1 be cancelled.

12. The Petitioner-in-person in Crl.Rev.P. No. 10 of 2020 in her submission has also made similar and almost identical submission as was submitted by the learned counsel, Ms. P. Chettri to the extent that even the authorities relied upon by Ms. Chettri was also cited by the said Petitioner-in-

person. The variation in the submission made by the Petitioner-in-person is only to the fact that the primary allegation against the Respondent No. 1, as stated above is that he has harassed and tortured her mentally and has defamed her character in public, notwithstanding the fact that if there is any dispute, the same may have been between the Respondent No. 1 and the mother of the Petitioner-in-person.

13. Similar prayer for cancellation of the anticipatory bail granted to the Respondent No. 1 has been made to the Petitioner-in-person.

14. Per contra, the learned counsel for the Respondent No. 1, Mr. J.M. Thangkhiew in his common reply, i.e. in both the applications bearing Crl.Rev.P. No. 9 and 10 of 2020 has drawn the attention of this Court to the provisions of paragraph 4 and 5 of the Sixth Schedule, which provides that within the tribal areas, only the spirit of the Cr.P.C and CPC will be applicable. This was reiterated in the latest judgment of the Hon'ble Supreme Court in the case of ***State of Meghalaya v. Melvin Sohlangpiaw: (2020) 3 SCC 711.***

15. As to the contention of the Petitioners that they are not aware of any civil dispute between the parties, the learned counsel for the Respondent No. 1 has pointed out to Annexure-4 of the applications, which is a copy of the anticipatory bail application of the Respondent No. 1 before the Court of the learned Judge, District Council Court, Shillong dated 26.08.2020, wherein it was clearly stated that there is a civil dispute between the parties before the Sub-Ordinate District Council Court, Shillong being Title Suit No. 5 of 2020 and has submitted that the Petitioner has made a false submission before this Court in this regard.

16. Learned counsel for the Respondent No. 1 has further submitted that in the FIR registered as Rynjah P.S. Case No. 29(3) of 2020, the Petitioner/Complainant has taken the name of one Mr. Deilang Law whose name was said to have been taken by the Respondent No. 1 as the person who was having a relationship with the Petitioner. However, the said Mr. Deilang Law has also filed an FIR against the Petitioner in this regard for misusing his name.

17. It is also contended that the learned Court below has also issued

notices to the Public Prosecutor, which is reflected in the order dated 26.08.2020, therefore the contention of the Petitioners that no notice was issued to the learned Public Prosecutor is not correct.

18. Another contention raised by the learned counsel is that there is no provision under Section 438 Cr.P.C. for the Complainants/Petitioners to be heard. The learned Court below has taken due note of the case dairy, which contained the statement of the Complainants/Petitioners under Section 164 Cr.P.C. and as such, there is no necessity for the Complainant to be heard.

19. As to the common authorities cited by the Petitioners, learned counsel for the Respondent No. 1 has submitted that all those cases cited involved cases of serious nature, whereas in the case of the Respondent No. 1, the sections involved are all bailable, except Section 506 IPC which has been made non-bailable only in the State of Meghalaya.

20. On the contention that the Complainant has to be heard, the learned counsel has cited the case of ***Smti. Indu Bala & Ors v. Delhi Administration & Ors: 1991 Cr.LJ 1774*** at paragraph 4 which has held that there is no provision of law under Section 438 Cr.P.C, for the Complainant to be heard.

21. It is finally prayed that these instant applications having been made with an intention only to harass the Respondent No. 1, the same is liable to be dismissed with cost.

22. Mr. S. Sengupta learned Addl. Sr. PP in Crl.Rev.P. No. 9 of 2020 has submitted that the case dairy has been produced before this Court and it is seen that the investigation is almost complete and the I/O has also informed that the Respondent No. 1 is cooperating with the investigation.

23. Ms. S.G. Momin, learned Addl. Sr. PP in Crl.Rev.P. No. 10 of 2020 has defended the passing of the impugned order, inasmuch as, it is submitted that the learned Additional Judge is competent to pass the impugned order even in the absence of the Public Prosecutor as the case diary has been produced before the said Court.

24. Ms. Chettri in response to the submission of the learned counsel for the Respondent No. 1 has submitted that on the charge that the Petitioner has denied the existence of any civil dispute, the same is not correct since the

Petitioner has not said that there is no civil dispute between the parties, but what she said is that at the time of filing of the FIR, she has no knowledge of any civil case filed against her.

25. As to the said FIR filed by the said Mr. Deilang Law, the Petitioner has submitted that she is unaware of the same and does not know anything about any complaint against her.

26. On consideration of the submission of the Petitioners, what is observed by this Court is that the main grievance against the impugned order dated 10.09.2020 is that the learned Court while passing the same has totally lost sight of the fact that the contents of the complaint involves an act of defamation where the modesty of a woman was outraged and the fact that the Respondent No. 1 who is holding a position of influence had criminally intimidated them and has therefore come to a wrong conclusion. The case of ***State of UP through CBI v. Amarmani Tripathi (supra)*** at paragraph 18 cited by the Petitioner has only re-stated the well settled principles of grant or refusal of bail, which would again be dependent on the facts and circumstances of a particular case. In the said judgment, the Supreme Court has observed that "…. *While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused…"*

27. Secondly, the absence of the Public Prosecutor at the time of passing of the impugned order and the fact that the Petitioners/Complainants have not been called upon to be heard has also caused the Petitioners to contend that the impugned order was passed without any application of judicial mind.

28. The learned counsel for the Respondent No. 1 as stated above, has countered the submission of the learned counsel for the Petitioners mainly on the ground that the Petitioners had misrepresented certain facts such as the denial of any knowledge that there exist a civil dispute between the parties and also that the contention of the Petitioners that the Public Prosecutor was not present when the impugned order was passed is not totally correct since

adequate notice was issued upon the learned Public Prosecutor to appear at the hearing.

29. Another point raised was that there was no provision in law for the complainant to be heard as was held in the case of ***Indu Bala (supra)*** and as such, the Petitioners has no locus standi to seek cancellation of the anticipatory bail granted to the Respondent No. 1.

30. Having given due consideration to the respective stand of the parties, notwithstanding the fact that the parties have argued pointing to the merits of the case, what is pertinent to mention here is the procedural approach adopted by the learned Additional Judge, District Council Court, Shillong while passing the impugned order where the Public Prosecutor was evidently absent at the hearing.

31. I agree with the submission of the learned counsel for the Respondent No. 1, inasmuch as, the provisions of the Sixth Schedule of the Constitution of India, particularly paragraphs 4 and 5 are applicable to proceedings before the District Council Courts where only the spirit of the Code of Criminal Procedure and not the letter are applicable, but this does not imply that the principle of natural justice can be dispensed with by a Court while hearing a matter before it.

32. Natural justice entails that all affected parties to a lis has to be heard and only after having done so, the Court is competent to reach a decision which can be said to be just and equitable.

33. In the case before the learned Additional Judge, District Council Court, Shillong, the admitted fact is that at the time of hearing of the matter resulting in the passing of the impugned order, only the counsel for the Petitioner/Respondent No. 1 was present and the Public Prosecutor was not present. It may be pointed out that in a criminal proceeding, the Public Prosecutor is the forerunner in the defence of a case where apparently the State is a party. Section 301 sub-Section 1 Cr.P.C. provides that the Public Prosecutor shall appear on behalf of the State in related proceedings, the said provision reads thus:

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> ***"301. Appearance by Public Prosecutors**.-(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal."*

34. It is therefore incumbent upon the Court to hear the learned Public Prosecutor to come to a just and proper finding. In this regard, the learned Additional Judge has failed to observe nature justice to the detriment of the Complainants/Petitioners herein by failing to hear the learned Public Prosecutor and has passed the impugned order only on the basis of the case diary produced before this Court.

35. Another factor to be considered by this Court is the contention of the Petitioners that they were not heard at the time of consideration of the anticipatory bail to the Respondent No. 1, more so when the learned Public Prosecutor was not present then which has caused prejudice to them.

36. In this regard, the case of ***Kunhiraman, KC (supra)*** cited by the Petitioners is worth considering, wherein at paragraph 17 of the same, the Hon'ble Kerala High Court has observed that:

> ***"17**. Summing up my discussions I hold that there is no legal bar for hearing the de facto complainant in an application for anticipatory bail. Theoretically of course, there is no provision in the Code for impleading a party, but nothing prevents the Court from hearing the de facto complainant or aggrieved in an application for anticipatory bail. In fit cases, the Court can afford to the aggrieved or the de facto complainant an opportunity of hearing. Technicalities shall not baffle the judicial mind. It cannot hinder course of justice, either. Principles of natural justice shall not remain a mere paper-philosophy. If adhered to, it can never spill over and tend to spoil justice delivery system. Court can hear the aggrieved and not bang its doors to the one who knocks. The Court exists to redress the grievance that of the accused or the aggrieved. After all, it is all for the purpose of taking a right decision in the case."*

37. To counter the above, the learned counsel for the Respondent No.1 has cited the case of ***Indu Bala (supra)*** wherein at paragraphs 4 & 6, the Court has held as under:

> ***"4**. Section 438 of the Code of Criminal Procedure does not*

contemplate by itself any hearing to be given to the complainant party in a police case. Mr. K. K. Sud, counsel appearing for the complainant, has not been able to bring to my notice any provision of law or any case wherein it may have been laid that even in a police case a complainant party can be given hearing. The various provisions in the Code of the Criminal Procedure, particularly Sections 417, 422, 493 & 494 bring out the importance of functions and duties of a Public Prosecutor, who is the sole authority to conduct the cases instituted by the police on behalf of the State. He is supposed to act independently and exercise his own discretion to see that justice is done in such cases. He has to conduct the proceedings in a fair mind without any prejudice towards the accused whereas if the complainant is allowed to interfere in the proceedings, it is evident that object of the complainant would not be to see only that justice is done in a particular case but in all probability such a complainant would be swayed with the emotions to seek revenge or vendetta for his own satisfaction. Counsel representing the complainant cannot be as unbiased as a public prosecutor would be.

6. *So, it is evident that a complainant can only assist the Public Prosecutor when the proceedings are being conducted at the stage of inquiry, trial or appeal. Such a complainant can submit written arguments after the evidence is closed in the case but as far as application for grant of bail is concerned there is no provision made in the Code of Criminal Procedure that a complainant or a third party can intervene and make any submissions independently in opposing the application for grant of bail or anticipatory bail. A Single Bench of Punjab and Haryana High Court in Kuldip Singh v. State of Haryana, 1980 Cri LJ 1159, also considered the provisions of S. 301 of the Code of Criminal Procedure in the same manner. Counsel for the petitioner has also made reference to Sarwan Kumar v. State of Haryana, 1989 (2) Recent Criminal Reports 459, wherein a Single Judge of that Court also held that the first informant or the complainant in proceedings seeking grant of anticipatory bail neither can be considered as necessary party nor a proper party and has no locus standi to be heard. It was held that the complainant party may hold a watching brief and may bring the relevant facts to the notice of the State counsel and apart from that the complainant party has no right to be heard when particularly the State is duly represented."*

38. What can be seen when comparing the above citations in juxtaposition is that the Hon'ble Kerala High Court has come to a conclusion that there is no bar for hearing the de facto complainant in an application for anticipatory bail,

the Hon'ble Delhi High Court has opined that the complainant can only assist the Public Prosecutor when the proceedings are conducted at the stage of inquiry, trial or appeal, but not at the stage of consideration for grant of bail.

39. However, taking a cue from the provision of sub-Section 2 of section 301 Cr.P.C. which provides that:

> ***"301. Appearance by Public Prosecutors**. – (2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case."*

It is understood that the complainant as a private person can appoint a pleader to assist the Public Prosecutor in a case, apparently, concerning the said private person which can be allowed by the Court. However, as far as participation in a bail matter is concerned, the Hon'ble Supreme Court in the case of ***Brij Nandan Jaiswal v. Munna@ Munna Jaiswal & Anr: (2009) 1 SCC 678*** at paragraph 12 has held that:

> ***"12.** It is now a settled law that the Complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of misuse…"*

40. How can the Complainant question the order granting bail? The answer would be either in an application like the present one, or by participating in the process when the order was being passed.

41. In an overall consideration of the matter, this Court is of the considered opinion that the learned Additional Judge, District Council Court has failed to apply the principle of natural justice by not hearing the Petitioners in the absence of the Public Prosecutor and as such, the said impugned order is vitiated.

42. Accordingly, on this ground alone, the impugned order dated 10.09.2020 is liable to be set aside and quashed. However, for ends of justice, it would be proper for the learned Additional Judge, District Council Court,

Shillong to re-hear these applications for grant of anticipatory bail of the Respondent No. 1 by ensuring the presence of the Public Prosecutor and the Complainant, who may appoint a Pleader to assist the Public Prosecutor in this regard.

43. It is made clear that this Court has not gone into the merits of the said impugned order and as such, the authorities cited in this regard has not been discussed.

44. Let copy of this order be issued upon the learned Additional Judge, District Council Court, Shillong for due compliance with a direction to re-hear the said applications on 22.12.2020 for grant of anticipatory bail in respect of the Respondent No. 1 by ensuring that the Public Prosecutor is present and also to allow the participation of the Petitioners as per procedure of law, particularly the provision analogous to Section 301 Cr.P.C. The concerned parties are accordingly directed to appear before the said Court on the said date.

45. With the above, these applications are hereby disposed of by this common judgment. No cost.

46. Registry is directed to send back the case dairy.

Judge

Meghalaya
15.12.2020
"D. Nary, PS"