GAHC020003292025 2025:GAU-NL:346

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

Case No. : CRL.REVN/8/2025

NYIMBEMO SHITIO AND 3 ORS
S/O NRIO SHITIRI, R/O PANGTI VILLAGE, SUNGRO, WOKHA,
NAGALAND

2: JANPEN SHITIRI
R/O SOVIMA VILLAGE
CHUMOUKEDIMA
NAGALAND

3: AVUNGTHUNG NGULLIE
R/O N/LONGIDANG VILLAGE
WOKHA NAGALAND

4: LIMHACHAN KITHAN
R/O YIKHUM VILLAGE
WOKHA NAGALAN

VERSUS

STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : N Z LOTHA, SHUBHI SRIVASTAVA,PRINCE KUMAR,GARIMA SINGH

Advocate for the Respondent : P.P, NAGALAND,

Linked Case : I.A.(Crl.)/12/2025

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STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for : N Z LOTHA
Advocate for : P.P
NAGALAND appearing for STATE OF NAGALAND

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

O R D E R

29.07.2025

This is an application under Section 442 of the BNSS, 2023 for quashing and setting aside of the impugned Order dated 30.05.2025 passed by the learned Judicial Magistrate First Class, Wokha in GR Case No. 74/2019 in connection with FIR No. 44/2019 under Section 128, 129,

223 and 224 IPC.

2. I have heard learned counsel for the petitioners, Mr. N.Z. Lotha and Ms. Livika, learned Public Prosecutor for the State respondents. This Court has also perused the scanned copy of the Trial Court Records, which has been received from the Court of the JMFC, Wokha.

3. The case of the petitioners is that they were serving as Warders in the District Jail, Wokha and on 23.12.2019 a complaint report was received from the Deputy Superintendent of Jail, Wokha to the effect that one UTP, namely Tsatheo Odyuo had escaped from the District Jail, Wokha at around 0520 Hrs. On receipt of the complaint report and upon checking the CCTV footage from the District Jail, Wokha it came to light that the UTP has escaped from the District Jail, Wokha by climbing the main gate by taking support of the hinge attached to the gate. In this connection, a case was registered being Wokha PS Case No. 0044/2019 under Section 128/129/223 IPC and the Charge-sheet was filed. Thereafter, the petitioners had filed a discharge application before the learned Trial Court under Section 262 of the BNSS, 2023 praying for discharge of the petitioners from the charges against them. The said discharge application was rejected by the learned Trial Court by Order dated 30.05.2025 on the ground that the question of whether the accused persons were negligent in causing the escape of the UTP from the jail is a matter to be determined after leading evidence during the trial. The learned Trial Court held that it would be too premature to come to a conclusion that the accused persons were involved in the case. Being aggrieved, the petitioners are before this Court praying for setting aside and quashing of

the impugned Order dated 30.05.2025.

4. Learned counsel for the petitioners submits that the Charge-sheet was filed against the present petitioners and they were charged under Section 129 read with 223 of the IPC. However, on 07.08.2024, when the learned Trial Court took cognizance of the matter, the cognizance was taken only under Section 224 in spite of the fact that the petitioners herein are charged with Section 129 and 223 of the IPC. Without the cognizance, the case cannot proceed to trial.

5. Learned counsel for the petitioners has also drawn the attention of this Court to the RTI disclosure of the Prison Department wherein the powers and duties of its officers and employees are set out in Manual-II. At Serial No. 12 it is shown that the Jailor is the Chief Executive Officer of the Jail and he is responsible for safe custody of the inmates and ensures that proper disciplines are maintained. The functions of Warder is given at Serial No. 16 wherein it is stated that the Warder is in charge of a ward or set of wards to see that the prisoners maintain cleanliness and also to examine the wards, cells of the prisoners and to report immediately to the Jailor of any sign of sickness or any prisoners complain of sickness. Learned counsel, therefore, states that being Jail Warders, the present petitioners at the material time were not in charge of the custody of the inmates and therefore, any escape of such inmates from the confinement of the jail would be the responsibility of the Jailor or the Assistant Jailor and not the petitioners. In view of the aforementioned ground, the learned counsel for the petitioners submits that the petitioners ought to have been discharged from the liabilities of the present case and have,

therefore, prayed for quashing and setting aside of the impugned Order dated 30.05.2025 passed by the learned JMFC, Wokha and prays for their discharge.

6. Learned Public Prosecutor, Ms. Livika has submitted that at the relevant point of time the petitioners had been detailed for duty on the day when the UTP escaped from the Jail. She has also submitted that the petitioners had stated that they were on leave on that day though such leave had not been granted to them officially. The learned P.P. also submits that there may be some irregularities in the cognizance Order dated 07.08.2024, and this Court can pass appropriate orders directing the learned Trial court to rectify the same and moreover, the learned P.P. also states that the question as to whether the petitioners were responsible for the escape of the UTP or not can only be determined after the trial is completed and by considering the evidence adduced during the trial as it is an admitted fact that the UTP had escaped from the Jail. She has, therefore, prayed that the present petition may be dismissed.

7. This Court has considered the submissions of the learned counsel for the petitioner as well as the learned P.P. and also perused the scanned copy of the Trial Court Records. This Court, on going through the Charge-sheet which was submitted on 20.04.2024 has observed that in the Charge-sheet, the petitioners have been charged under Section 129 and 223 of the IPC and they have been placed as A4, A5, A6 and A7 in the Charge-sheet.

8. This Court has also perused the Order dated 07.08.2024 by which the

cognizance has been taken against the accused persons/petitioners. In the Order dated 07.08.2024, the learned Trial Court has taken cognizance only for offences under Section 224 IPC whereas as per the Charge-sheet only the UTP/A1 has been charged under Section 224, IPC. Therefore, this Court is of the view that the learned Trial Court has committed an error by not taking cognizance against the present petitioners under Section 129 and 223 of the IPC. If the Magistrate fails to take cognizance, the accused is not formally before the Court. The prosecution could have still sought fresh cognizance by filing appropriate application, but the same was not done. In ***Subramaniam Swamy Versus Manmohan Singh*** reported in ***(2012) 3 SCC 64***, the Supreme Court held that cognizance is not a mechanical act. It requires application of mind.

9. This Court has also perused the duties and functions allotted to the present petitioners who were admittedly serving as Warders in the District Jail, Wokha. As per the disclosure under the RTI Act as per Manual-II the Warders are only in charge of the ward to maintain cleanliness and to report to the jailor regarding any complaint of sickness by the prisoners. In fact, it is only the Jailor and the Assistant Jailor, who are responsible for the safe custody of the inmates and it is the Chief Head Warder who is responsible for enforcement of discipline and security of the inmates and also in charge of all the locks and keys of the prisoners' cells. Therefore, it cannot be said that the present prisoners were in charge of the custody of the UTP at the time of his escape.

10. In view of the discussion and observations made hereinabove, the present petition is allowed. The impugned Order dated 30.05.2025 passed

by the learned JMFC, Wokha is quashed and set aside. The petitioners are discharged from the liabilities of the case in GR Case No. 74/2019 in connection with FIR No. 44/2019 pending before the learned JMFC, Wokha.

11. The petition is disposed of accordingly.

12. Send back the Trial Court Records along with a copy of this Order.

JUDGE

Comparing Assistant