GAHC040016162026 undefined

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

Case No. : Crl.Petn./312/2026

Chopa Cheda
Son of Late Bolu Cheda, residence of Lasak Cheda Village, PO Pipu, PS Chayang Tajo, East Kameng District, Arunachal Pradesh 790104 and presently residing at Sienky Valley, Itanagar, PO and PS Itanagar, Papum Pare District, Arunachal Pradesh 791111

VERSUS

The State of AP and 2 Ors
represented through its Special PP

2:The Superintendent of Police
Age: 0
Occupation :
Anti Corruption Bureau (ACB)
Civil Secretariat
Block 3
Itanagar
Papum Pare District
Arunachal Pradesh..

3:The Officer in Charge
Age: 0
Occupation :
Anti Corruption Bureau (ACB)
Itanagar
Govt of Arunachal Pradesh

Advocate for the Petitioner : Jambey Tsering Kee, Logsang Yountan,Techi Topu

Advocate for the Respondent : Ojing Pada, SC (ACB)

BEFORE
HONOURABLE MRS. JUSTICE YARENJUNGLA LONGKUMER

JUDGMENT & ORDER (ORAL)

10.11.2026

1) By filing this application under section 528 of the BNSS, the petitioner has prayed for setting aside the order dated 22.09.2026, passed by the learned Court of Special Judge PC Act, Yupia, Papum Pare, Arunachal Pradesh, in C.R. Case 03/2026, rejecting the Applicant's application under Section 175(3) of the BNSS, seeking registration of an FIR and further investigation.

2) Heard Mr. J. Tsering Kee, the learned Counsel for the petitioner. Also heard Mr O. Pada, the Learned Special Public Prosecutor, Anti-Corruption Bureau (ACB) for the respondents.

3) The case of the petitioner as projected in the application is that, the applicant on 24.08.2026 had submitted a written complaint addressed to the Superintendent of Police, Anti-Corruption Bureau (ACB), Itanagar, seeking registration of an FIR and investigation into a misappropriation of Government funds amounting to ₹ 3 Crore in connection with the Eco-Tourism Project at Balemu, West Kameng District, Arunachal Pradesh. The said complaint was duly received by the Anti-Corruption Bureau (ACB) through the Officer in Charge, vide Receipt No. 88 dated 24.08.2026 and the same was also duly received in the Office of the Superintendent of

Police, ACB, vide Diary No.68 dated 24.08.2026.

4) Despite the aforesaid complaint dated 24.08.2026 having been duly received by the ACB as well as by the Office of the Superintendent of Police, ACB, and despite the material facts and documents being placed on record, no FIR was registered. The applicant therefore, submitted another representation dated 31.08.2026 before the Superintendent of Police, ACB, Itanagar, bringing to his notice the non-registration of the FIR and requesting appropriate action in accordance with law, including registration of the FIR and investigation into the allegations. However, the said representation dated 31.08.2026 had also not been considered and no appropriate action has been taken by the respondents.

5) Being left with no other option, an account of the failure of the ACB to take appropriate action on the complaint and representation, the applicant approached the Court of learned Special Judge, PC Act, Yupia, Papum Pare, by filing an application under Section 175(3) of the BNSS, accompanied by the required affidavit seeking registration of an FIR and investigation into the allegations. However, the said application was rejected by the learned Special Judge vide impugned order dated 22.09.2026 passed in C.R. Case No. 03/2026, only on the ground that the application was premature in view of the requirement of approval under Section 17A of the Prevention of Corruption Act, 1988 (PC Act).

6) Being aggrieved, the petitioner is before this Court assailing the impugned order dated 22.09.2026 passed in C.R. Case No. 03/2026 on the ground that when the information furnished to the police, discloses *ex facie* the commission of a cognizable offence, registration of an FIR is mandatory and the police cannot ordinarily refuse to register the same.

7) It is submitted by the learned counsel that Section 173(1) of the BNSS casts a statutory duty upon the Officer in Charge of the Police Station to record the information relating to the commission of a cognizable offence. The Constitution Bench of the Supreme Court in ***Lalita Kumari Vs. Government of Uttar Pradesh, 2014 2 SCC 1*** has held that registration of an FIR is mandatory where the information discloses the commission of a cognizable offence and that the question whether the information is ultimately true, credible or capable of being proved is a matter for investigation and not a ground for refusing registration at the threshold.

8) The learned counsel submits that despite relevant information and supporting documents clearly disclosing a cognizable offence, no FIR was registered by the Officer in Charge, ACB. The applicant also submitted a representation dated 28.08.2026, before the Superintendent of Police, ACB, bringing to his notice the failure to register the FIR, nevertheless no effective action has been taken till date.

9) The Learned counsel further submits that having no alternative, the petitioner had approached the learned Court of learned Special Judge, P.C. Act, seeking appropriate directions for registration of the FIR. However, the learned Special Judge, vide the impugned order dated 22.09.2026, has rejected the petitioner's application.

10) The Learned counsel for the petitioner, by relying on the case of ***Centre for Public Interest Litigation Vs. Union of India, 2026 INSC 55***, submits that under Section 17A of the P.C. Act, the protection is extended only to those public servants who have the responsibility to make any recommendation or take any decision while discharging their

official duties in connection with the affairs of the Union or the State.

11) It was held by the Supreme Court in the cited case that:

> "*the object of Section 17A is to inquire or investigate into the actions of public servants relatable to any recommendation made or decision taken and the same cannot be related to public servants who function at the level merely scrutinizing the papers and making file notings for the consideration of the public servants who are at a higher level in the hierarchy. Though apparently, the protection of prior approval is extended to all classes of public servants in substance, it extends only to those public servants who take decisions and make recommendations in the discharge of their official duties. Such protection is therefore extended to the higher officers only. Hence, the provision is once again narrowly tailored, "in order to protect a select class of public servants in respect of whom prior approval has to be taken before a Police Officer seeks to make an inquiry, enquiry or investigation. This in my view, is in violation of Article 14 of the Constitution, as it creates a classification having no nexus to the object sought to be achieved and is therefore not permissible. In other words, those public servants who are not entrusted with the task of making a recommendation or take a decision taken in a matter can be proceeded without any prior approval. Thus, there is in substance a classification within the class of public servants, which does not satisfy the twin test under Article 14 of the Constitution of India".*

12) The learned counsel for the petitioner has also relied on a judgment of the Kerala High Court in the case of ***Shankara Bhat Vs. State of Kerala, 2021 Supreme (Ker) 645.*** In this cited case, the Kerala High Court held that:

> "*the case of offences like misappropriation of funds, fraud, falsification of accounts, criminal breach of trust, conspiracy, etc. cannot be covered by the protection under Section 17A. Definitely, they do not involve any decision or recommendation at all. Such acts cannot be considered as one done in*

discharge of his official functions and duties as contemplated under Section 17A. Hence, it cannot, by any stretch of imagination, be held that investigation into any of the offences as mentioned above also needs prior approval under Section 17A. Such an interpretation alone can be in consonance with the section as interpreted by the various decisions. In other words, the scope of Section 17A is only confined to investigation, inquiry or enquiry into any offence which is relatable to any decision taken or recommendation made by the authority."

13) The petitioner further relies on the case of ***State of Karnataka Vs. T. N. Sudhakar Reddy, 2025, INSC 229.*** In this cited case, the Supreme Court held that:

"a. The High Court erred in coming to the conclusion that the order dated 4th December, 2023, passed by the Superintendent of Police, was directly passed under Section 17 of the PC Act, thereby violating the mandatory provisions of the PC Act.

b. The preliminary inquiry is not mandatory in every case under the PC Act. If a superior officer is in seisin of a source information report which is both detailed and well-reasoned, and such that any reasonable person would be of the view that it prima facie discloses the commission of a cognizable offence, the preliminary inquiry may be avoided.

c. Section 17 of the PC Act relates specifically to the investigation process, and not the initial act of registering the FIR, for which it relies on the provisions of the Cr.P.C. Hence, it places limitations only on the investigation; it does not impede the fundamental duty of the law enforcement agency to record and register an FIR for cognizable offences.

d. On a harmonious reading of the provisions of the PC Act and the Cr.P.C, it is manifest that the Superintendent of Police is competent to direct the registration of an FIR if he has information about the commission of a cognizable offence punishable under the PC Act. The former is also competent

to simultaneously direct the Deputy Superintendent of Police to register an FIR for the offences under the PC Act, with the understanding that the subsequent investigation will be subject to the restrictions outlined in Section 17 of the PC Act. A composite order to register the FIR and conduct investigation aligns with the statutory framework of the Cr.P.C and the PC Act."

14) The learned counsel for the petitioner has further placed reliance on three decisions of Coordinate Benches of this Court:

i) **Indrajit Bora Vs. State of Assam, 2024 Supreme (Gau), 241;**
ii) **Rounak Ali Hazarika, Vs. State of Assam and Anr, 2024 4 GLT 397;**
iii) **Shri Imkongkumzuk Vs. State of Nagaland and Ors, 2024 Supreme (Gau) 360.**

15) In these cited cases, it was also held that when it is contended that Section 17A of the PC Act debars a Police Officer from conducting any inquiry or investigation without obtaining the approval of the Union Government or the State Government or the person competent to remove a public servant, as the case may be; such approval cannot be extended to all offences under the PC Act and it will only be limited to the offences made by a public servant in discharge of his official duty or function. It was also held that a reasonable conclusion that can be arrived at regarding the scope of section 17A of the PC Act is that prior approval under section 17A for conducting any inquiry, enquiry or investigation is required only when the offence alleged is relatable to a decision taken or recommendation made by the public authority and it involves a debatable or suspicious or doubtful recommendation made or decision taken by the authority. However, acts which are ex facie criminal or constitute an offence do not require approval under section 17A of the PC Act. The

Coordinate Bench in the case of *Indrajeet Bora (supra)* held that this legal proposition is in consonance with the spirit of the Prevention of Corruption Act and also in consonance with the legal principles laid down in relation to Section 197 Cr.P.C.

16) *Per Contra,* the learned Special Public Prosecutor, ACB would argue that Section 17A acts as a statutory gate at the investigation threshold. It legally bars a Police Officer or an Anti-Corruption Agency from initiating a preliminary inquiry or registering a regular FIR on their own accord if the allegation relates to an official recommendation or decision. It is a mandate for the Police Officer that, they must obtain prior administrative approval from the Competent Government Authority before investigating the case.

17) The learned Special Public Prosecutor has taken this Court to the judgment of the Supreme Court in the case of ***Anil Kumar and Others Vs. M.K. Aiyappa and another, reported in 2013 10 SCC 705***. In this cited case, the Supreme Court was of the view that once it is noticed that there was no previous sanction, the magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) of the Cr.P.C. The Supreme Court held that a Special Judge/Magistrate cannot refer a private complaint for police investigation under Section 156(3) of the Cr.P.C against the public servant in respect of an alleged offence under the PC Act without production of a valid sanction under Section 19 of the PC Act. It was further, held that the requirement of sanction is a pre-condition even at the pre-cognizance stage. The learned Special Public Prosecutor, therefore, submits that the Special Judge in the instant case could not have directed for registration of the

FIR and investigation in the absence of sanction.

18) Further, the learned Special Public Prosecutor, has also submitted that, in the case of ***Manju Surana Vs. Sunil Arora and Others, 2018 5 SCC 557*** , the Supreme Court revisited the principle laid down in *Anil Kumar (Supra*). The principal question before the Supreme Court was whether prior sanction under Section 19 of the PC Act was mandatory even before a Magistrate directs investigation under Section 156(3) Cr.P.C against a public servant. The Supreme Court in the case of *Manju Surana (supra)* reiterated that even while exercising powers under Section 156(3) Cr.P.C, the Magistrate must apply his mind. However, the Supreme Court considered the requirement of sanction under Section 19 of the PC Act after taking cognizance and whether the said requirement of sanction could be extended to an investigation directed under Section 156(3) Cr.P.C and referred the matter to a larger bench because of the complexity and divergence of the judicial opinion and the matter is pending disposal.

19) The learned Special Public Prosecutor therefore, submits that the matter has been referred to a larger bench due to the divergence of judicial opinion on this issue and the same is pending disposal. And accordingly contended that the ratio laid down in *Anil Kumar(supra)* holds the field as on today and therefore, there is no infirmity in the impugned order dated 22.09.2026.

20) I have duly considered the submissions made by the learned counsel for the parties and examined the judgments relied upon.

21) This Court has also examined the impugned order dated 22.09.2026. During the hearing of the C.R. Case No. 03/2026, the learned Special

Public Prosecutor, ACB, had submitted before the Court that necessary steps are already being taken by the authorities for obtaining required sanction in order to initiate the investigation. On the basis of the said submissions, the learned Court below came to a conclusion that, the petition was premature as there is a requirement of approval from the concerned authority as provided under Section 17A of the PC Act. Upon arriving at such finding, the said C.R. Case No. 03/2026 was rejected vide the impugned order dated 22.09.2026.

22) Strictly speaking, the judgment in *Anil Kumar* does place a legal embargo on the Special Judge, but it's absolute authority has been diluted; highly contested and differentiated by the judgments of several High Courts. In the *Anil Kumar case,* it was held that a Special Judge or Magistrate cannot refer a private complaint for investigation under Section 156(3) of the Cr.P.C against a public servant without a valid prior prosecution sanction under Section 19 of the PC Act. The Supreme Court also held that even though ordering an investigation under Section 156(3) Cr.P.C is a pre-cognizance step, it still requires the Judge to apply the judicial mind and therefore, the protection of a government sanction must extend even at this stage to protect public servants from malicious litigation. The Supreme Court in the case of *Manju Surana (supra)* has referred the issue to a larger Constitution Bench to permanently settle the matter.

23) It is pertinent to note that in spite of the *Anil Kumar judgment*, the High Courts such as the Kerala High Court and the Gauhati High Court have occasionally differentiated the case noting that a strict application of *Anil Kumar* creates a paradox demanding a government sanction even

before an investigation can gather the evidence required to apply for that sanction. Subsequent decisions of the Kerala High Court in the *Shankara Bhat Case* and the Supreme Court in the case of *T.N. Sudhakar Reddy,* has held that preliminary inquiry is not mandatory in every case under the PC Act.

24) This Court is in agreement with the opinion expressed by the *Kerala High Court in Shankara Bhat* that the provisions of Section 17A of the PC Act is not required when the offences alleged are misappropriation, falsification of accounts, cheating criminal breach of trust receiving bribes etc. This Court is also of the view that the protection under the embargo under Section 17A PC Act cannot be made applicable in all cases.

25) In the instant case, the issue involved is with regard to allegations of misappropriation of public funds and it is the view of this Court that misappropriation can never be considered as an official duty. The *Anil Kumar case* and the protection of Section 19 of the PC Act are only designed to protect the public servants from harassment while performing their legitimate official administrative duties. The illegal misappropriation of public money or government funds can never be construed as an act performed in the discharge of official duties. An order directing the police to register an FIR and investigate under Section 156(3) Cr.P.C/175(3) BNSS is purely a pre-cognizance administrative directive to gather evidence and it is not a judicial adjudication of guilt. A formal government sanction is a prerequisite only when the Court is ready to take formal judicial cognizance after the police submits their final Charge-sheet. Similarly, the prior approval requirement under Section 17A of the PC Act can only apply to inquiries into recommendations made or decisions taken

by the official in good faith. Because financial misappropriation is an act of corruption and criminal misconduct, it cannot qualify as an administrative decision or recommendation. Therefore, Section 17A will not act as a hurdle for the police or the Court in such circumstances.

26) This Court is also an agreement with the opinion expressed by the Coordinate Bench of this Court in the case of *Rounak Ali Hazarika (supra)* wherein, it was held that it is the general principle that the police is bound to register an FIR and to investigate, when commission of a cognizable offence is disclosed in the FIR/complaint. However, a protection in the shape of prior approval is given even when cognizable offences are made under the PC Act which is relatable to a decision taken or recommendation made.

27) In view of the above discussion, this Court arrives at the conclusion that Section 17A approval for conducting any inquiry, enquiry or investigation is required only when the offence alleged is relatable to a decision taken or recommendation made by the public authority. But when the offence concerned is ex facie criminal, it does not require any approval under section 17A of the PC Act. I am therefore of the considered opinion that in the case at hand which involves misappropriation of public funds, no prior approval under section 17A of the PC Act is required.

28) Resultantly, the instant application is allowed and the order dated 22.09.2026 passed by the Special Judge, PC Act, Yupia is quashed and set aside.

29) The Officer in Charge ACB, Itanagar is directed to register an FIR on the basis of the complaint filed by the petitioner dated 24.08.2026

forthwith and investigate the matter in accordance with law.

30) The Criminal Petition stands disposed of.

JUDGE

Checked & verified

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