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

Case No. : Crl.Pet./644/2025

BOLENDRA NATH BRAHMA AND 2 ORS.

S/O - SRI NARENDRA NATH BRAHMA R/O - VILL - ASHRABARI, RUNIKHATA
P.O - RUNIKHATA, P.S - RUNIKHATA, DISTRICT - KOKRAJHAR, STATE -
ASSAM, PIN 783375

2: BARHAN KAZI

S/O - LATE MULTAF KAZI R/O - VILL - BANGLABARI
BHUMKA P.O - BHUMKA
P.S - GOSSAIGAON
DISTRICT - KOKRAJHAR
STATE - ASSAM
PIN - 783337.

3: JITEN CH BARMAN

S/O - LATE DHIREN BARMAN R/O - VILL - BADLAGAON KARTIMARI P.O -
KARTIMARI
P.S - GOSSAIGAON
DISTRICT - KOKRAJHAR
STATE - ASSAM
PIN - 78336

VERSUS

THE STATE OF ASSAM

REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, ASSAM

For the Petitioners : Mr. P. Jain, Advocate.

For the Respondent : Mr. D.P. Goswami, Addl. P.P., Assam.

**BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA**

Date of hearing : **01.12.2025.**

Date on which the judgment is reserved : **01.12.2025.**

Date of pronouncement of judgment : **09.01.2026.**

Whether the pronouncement is of the
operative part of the judgment : N/A.

Whether the full judgment has been
Pronounced : Yes.

JUDGMENT & ORDER (CAV)

By way of this application under Section 528 of the BNSS, 2023, the petitioners are seeking quashment of the Kokrajhar P.S. Charge Sheet No.218/2024 dated 30.11.2024 originating from the F.I.R. No.0120/2018 dated 22.03.2018 registered at Kokrajhar Police Station and the entire proceedings in Special Case No.22/2025 pending in the Court of Special Judge, Assam at Guwahati for offences punishable under Sections 7 & 13 of the Prevention of Corruption Act, 1988.

2. The factual background leading to the present Criminal Petition as projected may be set out as hereunder. On 20.03.2018, two individuals, namely, Rehu Narzary and Shahadat Hussain submitted a complaint to the Director General of Civil Defence & Commandant General of Homeguards, Assam at Guwahati representing

themselves as the President and the Secretary of a non-existent and fake association in the name and style "B.T.C. Home Guard Association" alleging that the petitioners had collected money in the name of Callout and recruitment from the Home Guard Volunteers. On 22.03.2018, the complaint was forwarded by the District Commandant, Home Guards, Dhubri to the Officer-in-Charge of Kokrajhar P.S. and on the basis of the said complaint an F.I.R. was registered against the petitioners. Upon completion of the investigation, the Investigating Officer submitted Charge-Sheet No.218/2024 dated 30.11.2024 against all the petitioners for offences punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988. The Charge-Sheet was accompanied by enclosures including three (3) Seizure Lists, two (2) Prosecution Sanction Orders and one CFSL Report.

3. On 01.02.2025 the learned Special Judge, Assam at Guwahati took cognizance of the offence based on the Charge-sheet and the Special Case bearing No.22/2025 was registered for the offences punishable under Sections 7 and 13 of the P.C. Act against the petitioners and the learned Special Judge issued summons to the petitioners. Situated thus, the present Criminal Petition has been moved before this Court seeking quashment of the entire proceedings against the petitioners.

4. I have heard Mr. P. Jain, learned counsel for the accused/petitioners and Mr. D. P. Goswami, learned Additional Public Prosecutor, Assam for the State respondent.

5. It is submitted that the petitioner Nos.2 and 3 are Homeguards and are governed by the provisions of the Assam Home Guard Act and Rules, 1947

(hereinafter "the Act and Rules"). As per Section 15 thereof, a Homeguard acting in discharge of his functions under the said Act shall be deemed to be a public servant within the meaning of Section 21 of the IPC.

6. Referring to the F.I.R., it is pointed out by the learned counsel for the petitioners that the names of the petitioner Nos.2 and 3 viz., Barhan Kazi and Jiten Ch. Barman, do not at all feature in the F.I.R. and it is only at the time of filing of the Charge-Sheet that they have been made accused in the instant case. Furthermore, a perusal of the Charge-sheet does not reveal any specific role of the petitioner Nos.2 and 3. However, two documents in the form of receipts issued by the All Assam Home Guards Association of which the petitioners are the President and the Secretary, respectively, have been submitted along with the Charge-sheet. It is submitted that a perusal of the said documents would show the collection of Rs.100/- as membership fees of the said Association. As per rules and regulations of the Association which shows that in order to be eligible for financial assistance the Homeguard Jawan must be a registered member by paying Rs.100/- donation during Callout which is contained in a resolution of the said Association dated 19.03.2017 annexed as Annexure-F to the present petition. It is further submitted that the aforesaid activity has nothing to do with the discharge of the official duties of Homeguards and therefore, for the present purpose, they cannot be said to be public servants under Section 15 of the aforesaid Act and Rules. Therefore, the provisions of Sections 7 and 13 of the Prevention of Corruption Act cannot be said to be attracted in their case.

7. With regard to the petitioner No.1, admittedly, he is a public servant being

Platoon Commander, Urban Wing, Home Guards office, Kokrajhar at the relevant time. The allegation against the petitioner No.1 is that he was accepting bribes in lieu of giving suitable postings to the Home Guards. But there is no material, whatsoever, to establish the aforesaid allegations as would be evident from the Trial Court records. Therefore, it is a fit case for quashing the proceedings which are nothing but an abuse of the process of the Court, submits learned counsel.

8. The learned Additional Public Prosecutor on behalf of the prosecution has submitted, upon perusal of the record, that there is statement of one witness who alleged that the petitioner No.1 used to accept bribe from him for posting.

9. Section 7 of the Prevention of Corruption Act provides as follows :-

“7. Offence relating to public servant being bribed. - Any public servant who,-

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
- (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*
- (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years*

but which may extend to seven years and shall also be liable to fine."

10. Section 13 of the Prevention of Corruption Act provides as follows :-

"13. Criminal misconduct by a public servant.— (1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.— A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

*Explanation 2.—*The expression "known sources of income" means income received from any lawful sources.]

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 2 [four years] but which may extend to 3 [ten years] and shall also be liable to fine."

11. The Hon'ble Supreme Court in **Neeraj Dutta Vs. State (NCT of Delhi)** reported in **(2023) 4 SCC 731** held as follows :-

"88. What emerges from the aforesaid discussion is summarised as under:

88.1.(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2.(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3.(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4.(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5.(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof.”

12. In **Dileepbhai Nanubhai Sanghani Vs. State of Gujarat and another** reported in **2025 SCC OnLine SC 441** the Apex Court has held as follows :-

“12. It has been categorically held by the Constitution Bench that the proof of demand (or an offer) and acceptance of illegal gratification by a public servant is a fact in issue in the criminal proceeding and is a sine qua non to establish the guilt of the accused public servant under Sections 7 and 13 of the Act. Unless proof is offered to the satisfaction of the Court that there is a demand and acceptance of illegal gratification, the presumption would not arise. The presumption under Section 20 of the Act cannot arise on the mere allegation of a demand and acceptance of illegal gratification as rightly pointed out by the appellant. ...”

13. In the instant case, as pointed out by the learned Additional Public Prosecutor from the materials on record, there is available the statements of two witnesses that the petitioner No.1 demanded and accepted bribe from them for a suitable posting and there also exists video footage showing acceptance of bribe by the said petitioner. As held by the Hon'ble Supreme Court in **Neeraj Dutta (supra)**, the fact in issue can be proved by oral as well as circumstantial evidence. Therefore, in the presence of the aforesaid material, the present cannot be regarded as a case of no evidence, as regards the petitioner No.1. The same is the case with regard to the petitioner No.3, Jiten Ch. Barman.

14. As regards the petitioner No.2, I find sufficient force in the submissions of the learned counsel that there is no allegation against him, other than hearsay material, having nexus to his official duties and therefore, he cannot be deemed to have acted as a public servant as defined in Section 15 of the Assam Home Guard Act and Rules, 1947.

15. In view of the aforesaid discussions, the petition stands partly allowed.

16. The proceedings in Special Case No.22/2025 pending in the Court of Special Judge, Assam at Guwahati for offences punishable under Sections 7 & 13 of the Prevention of Corruption Act, 1988 as against the petitioner No.2 are hereby quashed.

Interim order, if any, stands vacated.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant