GAHC010162192018

2026:GAU-AS:16434

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

Case No. : Crl.Pet./709/2018

DIPANKAR DAS AND ANR.
S/O ARABINDA NATH DAS,
R/O C-12, SAMANAY, SBI STAFF QUARTER, RUKMINIGAON, GUWAHATI-22,
UNDER P.S. DISPUR, DIST. KAMRUP (M), ASSAM

2: SRI JYOTI PRAKASH MAHANTA
S/O SRI NARAYAN MAHANTA
R/O BOKO
UTTAR BARPETA
PIN - 781123

UNDER P.S. BOKO

DIST. KAMRUP
ASSA

VERSUS

STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM

2:DR. ILA DAS
REGIONAL DIRECTOR IGNOU
REGIONAL CENTER GUWAHATI
GMCH ROAD
CHRISTIAN BASTI

GUWAHATI- 781005
DIST. KAMRUP (METRO)
ASSAM

Advocate for the Petitioner : MR. D K KOTHARI, MR R K MOUR,MR. B DEKA,MR P DAS

Advocate for the Respondent : PP, ASSAM, MS P SARMA,MS P SARMA(R-2),MS. P P DAS(R-

2),MR. P P DUTTA(R-2),MR. A BORUA,MR T GOGOI

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

03/11/2026

Heard Mr. Y Kothari, learned counsel for the petitioners. Also heard Mr. B Sarma, learned Additional Public Prosecutor, Assam for the respondent No. 1 and Mr. A Boruah, learned counsel appearing on behalf of Mr. P P Dutta, learned counsel for the respondent No. 2.

2. The present criminal petition under Section 482 of the Code of Criminal Procedure, 1973, has been instituted praying for quashing of the proceedings in G.R. Case No. 6707/2014 under Sections 465/467/468/471 IPC against the petitioners, herein and presently, pending in the Court of the learned Additional Chief Judicial Magistrate, Kamrup (Metro), Guwahati. The petitioners have also assailed an order dated 08.01.2016, passed by the learned Additional Chief Judicial Magistrate, Kamrup (Metro), Guwahati in G.R. Case No. 6707/2014, rejecting the application filed by the petitioners, herein, for discharging them from the charges framed against them in the said case. The petitioners have also challenged an order dated 27.04.2018, passed by the learned Additional Sessions Judge No. 4, FTC, Kamrup (Metro), Guwahati, dismissing a revision petition, being Criminal Revision No. 28/2016.

3. The facts in brief requisite for adjudication of the issue arising in the present criminal petition is noticed as under.

The petitioners were working as Assistant Executive (Data Processing) in Indira Gandhi National Open University (IGNOU), Guwahati Regional Center.

An FIR came to be lodged by the Regional Director, IGNOU, Regional Center, Guwahati on 19.06.2014 against the petitioners, inter-alia, alleging, therein that the petitioners were found to have manipulated the original mark-sheets and Provisional Certificates of two undeserving students, who had appeared in their Master of Arts Education Examination held in July, 2010.

On receipt of the said FIR, the same was registered as Dispur P.S. Case No. 1273/2014 under Sections 465/467/468/471 IPC. On conclusion of the investigation, police submitted a charge-sheet against the petitioners, herein, on 20.12.2014 under Sections 465/467/468/471 of the IPC.

The said case, being G.R. Case No. 6707/2014 was made over to the Court of the learned Additional Chief Judicial Magistrate, Kamrup (Metro), Guwahati and the learned Trial Court, on receipt of the case, took cognizance against the accused persons and they were issued with summons to appear before the learned Trial Court. On appearance of the petitioners, the charges were explained to them and the petitioners pleaded not guilty and claimed to be tried. Accordingly, the case was posted for evidence.

The petitioners, thereafter, on 19.09.2015, filed a petition, praying for their discharge on the ground that mandatory sanction for prosecuting them was not received in terms of the provisions of Section 197 of the Cr.P.C.

The learned Trial Court on consideration of the said petition, vide order dated 08.01.2016, proceeded to hold that the petitioners were not public servants as defined under Clause Twelfth of Section 21 of the IPC.

Being aggrieved, the petitioners assailed the said order dated 08.01.2016 before the Court of learned Additional Sessions Judge No. 4, FTC, Kamrup (Metro), Guwahati by way of instituting Crl. Rev. No. 28/2016.

The learned Additional Sessions Judge No. 4, FTC, Kamrup (Metro), Guwahati, upon considering the issues arising in the said revision petition, proceeded vide judgment & order dated 27.04.2018 to hold that the petitioners being employees of IGNOU, are employees defined under the provisions of Section 2(f) of the IGNOU Act. It further proceeded to hold that for removal of the petitioners, no previous sanction was required from the Government and accordingly, drew a conclusion that the petitioners were not entitled to get the protection under Section 197 of the Cr.P.C. However, noticing that the charges were yet to be framed against the petitioners, the criminal revision came to be disposed of, directing the learned Trial Court to frame charges in accordance with law and to proceed with the case accordingly.

Being aggrieved, the petitioners have instituted the present criminal petition.

4. Mr. Y Kothari, learned counsel for the petitioners, after taking this Court through the materials available on record, has contended that the petitioners being employees defined under Section 2(f) of the IGNOU Act, they are to be construed as Public Servants for all intent and purpose and accordingly, for prosecuting them, prior sanction under Section 197 Cr.P.C. was mandated to be received.

4.1 It is submitted that in absence of a prior sanction being obtained by the Investigating Agency under Section 197 of the Code from the competent

authority, the prosecution of the petitioners was not permissible and accordingly, the impugned orders as well as the proceedings pending in G.R. Case No. 6707/2014 would mandate to be interfered with by this Court.

5. Per contra, Mr. B Sarma, learned Additional Public Prosecutor, Assam and Mr. A Boruah, learned counsel appearing on behalf of Mr. P P Dutta, learned counsel for the respondent No. 2 have submitted that even if, the petitioners are to be deemed to be Public Servants by virtue of their employment in IGNOU, the service rules governing their respective services not requiring an approval from the appropriate Government for their removal from services, the provisions of Section 197 Cr.P.C. would not stand attracted in their cases and no prior sanction would be mandated to be so received prior to prosecuting the petitioners, herein. Accordingly, it is submitted that the issue raised by the petitioners in the present criminal petition for interference with the proceedings pending against them in G.R. Case No. 6707/2014 would not mandate an acceptance from this Court.

6. I have heard the learned counsel for the parties and also perused the materials available on record.

7. Section 2(f) of the IGNOU Act, 1985 defines an employee to make any person appointed by the University and includes teachers and other academic staff of the University. Accordingly, under Section 21 of the Indian Penal Code, officers and employees of Universities established by a Central or State Act, are generally considered Public Servants because the University is a public/statutory body discharging a public duty. However, what is relevant to be noticed is that only on account of deemed an employment of a statutory/autonomous institution, whether the provisions of Section 197 of the Code of Criminal

Procedure would also stand attracted in respect of such category of employees appointed in statutory/autonomous bodies.

8. Provisions of Section 197 Cr.P.C., being relevant, is extracted hereinbelow:

"***197. Prosecution of Judges and public servants***.*-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-*

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation. For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section

375, section 376, 3[section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]

(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.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.]

[(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to

an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

9. A perusal of the provisions of Section 197 Cr.P.C. would go to reveal that a public servant, who is not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the competent authority.

10. The position with regard to the requirement of a previous sanction in respect of employees appointed in statutory organizations in whose case removal from service is not mandated to be so affected only after receiving an approval from the Government concerned, is no longer *res integra.*

11. The Hon'ble Supreme Court in the case of ***Mohd. Hadi Raja Vs. State of Bihar and Another***, reported in ***(1998) 5 SCC 91,*** had held that even if the employees of a Government Corporation or instrumentality of the State perform public function and are thus, public servant under Section 21 of the Indian Penal Code, however, their actions in the course of performance of their

duty, cannot be held to be an action taken by or on behalf of the Government, as such, within the meaning of Section 197 Cr.P.C.

12. In this connection, the Hon'ble Supreme Court had drawn the following conclusion;

> "*20. Although the instrumentality or agency with corporate veil, for all intents and purposes may be held to be a third arm of the Government and such instrumentality discharges the duties and functions which the State intends to do as indicated in Ajay Hasia case [(1981) 1 SCC 712: 1981 SCC (L&S) 258] such instrumentality or agency is none the less a juridical person having a separate legal entity. Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, such action cannot be construed, as of rule, an action of the Government by its employees or by an authority empowered by the Government. It may be indicated here that it is not necessary that persons falling under any of the descriptions given in various clauses under Section 21 of IPC need to be appointed by the Government. If such person falls under any of the descriptions as contained in various clauses of Section 21 of the Penal Code, 1860, such person must be held to be a public servant. Explanation 1 of Section 21 indicates that persons falling under any of the above descriptions are public servants whether appointed by the Government or not. Explanation 2 indicates that wherever the words "public servant" occur, they shall be understood of or who is in actual every person possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. Sub-clause (b) of clause twelve of Section*

21 expressly makes the officers of local authority and corporation established by under a Central, Provincial or State Act or a government-owned company as defined in Section 617 of the Companies Act, 1956, public servants. But protection under Section 197 CrPC is not available to a public servant unless other conditions indicated in that section are fulfilled.

21. It is to be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the Government as such within the meaning of Section 197 CrPC.

26. Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by court.

27. Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government. The appeals are disposed of accordingly. ……"

13. The Hon'ble Supreme Court in the case of ***Punjab State Warehousing Corporation Vs. Bhushan Chander and Anr..*** reported in ***2016 (13) SCC 44***, relying on and affirming its decision in the case of *Mohd. Hadi Raja* (supra)

had held as follows:

> *23."In Mohd. Hadi Raja v. State of Bihar [Mohd. Hadi Raja v. State of State of 1998 SCC Bihar, (1998) 5 SCC 91: (Cri) 1265 AIR 1998 SC 1945] the question arose whether Section 197 CrPC was applicable for prosecuting officers of the public sector undertakings or the government companies which can be treated as State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 CrPC, noted the submissions and eventually held that the protection by way of sanction under Section 197 CrPC is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government."*

14. The Hon'ble Supreme Court in the case of ***Jodhpur Discoms Vs. Lalit Soni & Anr***. [SLP (Crl.) No(s). 19405-19408/2025] had by relying and affirming its decisions in the case of *Mohd. Hadi Raja* (supra) as well as *Punjab State Warehousing Corporation* (supra) held as follows:

> *"13. It is, thus, fairly well settled that an employee of a Government instrumentality, does not ipso facto becomes a Government servant so as to be entitled for protection under Section 197 of Cr.P.C. merely because an employee is a public servant."*

15. In view of the above settled position of law coming on record, in view of the decisions of the Hon'ble Supreme Court relied, hereinabove, this Court is of the considered view that while the petitioners may be covered by the term "Public Servant", as defined in Section 21 of the Indian Penal Code, the provisions of Section 197 Cr.P.C. would not stand attracted in their respective cases and accordingly, no prior sanction would be required to be obtained from

the Government for their prosecution. Accordingly, the order dated 08.01.2016, passed by the learned Trial Court as well as the order passed by the Court of the learned Additional Sessions Judge No. 4, FTC, Kamrup (Metro), Guwahati in Crl. Rev. No. 28/2016 would not mandate any interference from this Court.

16. The learned Trial Court is now directed to proceed in the matter in accordance with the directions passed vide judgment & order dated 27.04.2018 in Crl. Rev. No. 28/2016 by the Court of learned Additional Sessions Judge No. 4, FTC, Kamrup (Metro), Guwahati.

17. With the above observations and directions, the present criminal petition stands dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant