

**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &  
ARUNACHAL PRADESH)**

**ITANAGAR BENCH**

**Crl. Rev. Pet. 18(AP)2011**

**Sri Juntum Tato,  
Chief Engineer(Elect.),  
Government of Arunachal Pradesh, Itanagar.**

**.....Petitioner**

**Advocates for the Petitioner:**

Mr. Tony Pertin

Mr. A.K. Singh

Mr. K. Saxena

Mr. U. Bori

**-Vs-**

1. The State of Arunachal Pradesh through the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. The Central Bureau of Investigation(CBI) through the Deputy Inspector General, Head of Zone, Shillong, For ACU – V, New Delhi.
3. The Secretary, Government of Arunachal Pradesh, Power Department, Arunachal Pradesh.
4. The Under Secretary, Government of Arunachal Pradesh, Power Department, Itanagar, Arunachal Pradesh.

**.....Respondents.**

**Advocates for the Respondents:**

Mr. Kholie Tado, learned P.P.

Mr. Abhijit Bhattacharya, Spl. P.P., CBI

**BEFORE****HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

Date of hearing : **13.07.2015 & 11.08.2015**

Date of Judgment & Order : **11.09.2015**

**JUDGMENT & ORDER (CAV)**

Heard Mr. Tony Pertin, learned counsel appearing for the petitioner. Also heard Mr. A. Bhattacharya, learned Spl. P.P., CBI, for Respondent No. 2.

**2.** The petitioner by filing this criminal revision petition under sections 397/401 of the Code of Criminal Procedure, 1973, *read with* section 482 of the said Code, has challenged the order dated 08.08.2011, passed by the Special Judge (P.C. Act)-cum-District & Sessions Judge, West Sessions Division, Yupia (A.P.), whereby charges have been framed u/s. 211 of the Code of Criminal Procedure, 1973, u/s. 120(B) IPC *read with* sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, in C.B.I. P.C. Act Case No. 14/10(YPA) arising out of Regular Criminal No. R.C. 1(A)/2001/CBI/ACU-VI/ New Delhi.

**3.** The case of the petitioner is that on 31.05.2001, one Sri K. Riram, Under Secretary to the Govt. of Arunachal Pradesh, Power Department, Itanagar, lodged an elaborate written FIR before the appropriate authority in Central Bureau of Investigation [in short, CBI] against one Sri Darshan Singh, the then Chief Engineer(Power), Govt. of Arunachal Pradesh; and others, requesting the CBI to make investigation into the allegation of irregularities committed by the said CE(P) and others in the Power Department. On the basis of the said FIR, the respondent CBI initiated their investigation taking the matter to be an occurrence of criminal offence and after investigation, they prepared 4(four) different charge-sheets for different allegations viz. allegation1(A), allegation 1(B),

allegation 2(A) and allegation 2(B). In the charge-sheet dated 24.10.2008, for allegation 2(B), 8 accused were named including the present petitioner and the same was filed before the Special Judge at Yupia. The allegation 2(B) is with regard to undue favour shown to M/s Horizon Hi-tech Engicon Pvt. Ltd. In the matter of award of contract relating to supply, installation, testing and commissioning of 132 KV S/C Transmission Line from Deomali to Namsai and it is alleged that the accused petitioner made payment of Rs. 1 crore as advance mobilization amount. The accused has prayed for discharge u/s. 227 of the Code of Criminal Procedure, 1973, before the Trial Court which was rejected and charges were framed as aforesaid, hence, the petition before us.

4. It is further contended that the Investigation Agency could not pinpoint any overt or covert act on the part of the petitioner for which any sort of presumption could be drawn that the petitioner could be charged for any offence either under section 120B IPC or Prevention of Corruption Act, 1988, and the name of the present petitioner was reflected only at Paragraph No. 26 of the charge-sheet for allegation 2(B). From a perusal of the charges, it is seen that petitioner has made payment of Rs. 1 crore as the advance mobilization.

5. The accused petitioner has contended that the amount of Rs. 80,000/- which was paid as mobilization amount on 28.02.1995, was never paid by him and it was in fact paid by one Sri T. Mara, on 06.03.1995, from the Electrical Division, Miao. The fact is that the petitioner was posted as an Executive Engineer(Planning) in the office of the Superintending Engineer(E), Pasighat, and was transferred out of Pasighat vide order dated 08.01.1996.

6. Another contention of the petitioner that there was a contract agreement between the Department of Power and the Contractor, for execution of the work, in question, and Clause No. 5.21 illustrates that "***within a week from the date of receipt of firm order/date of signing of the contract agreement, the contractor shall submit a construction programme in the form of Bar Chart to the Engineer-in-charge of the work indicating the time period for starting and completion of the various activities in order to complete the entire work***

***within the stipulated completion time. Similarly, monthly requirement of materials within the scope of supply the Department shall be intimated so that these can be arranged well in time."***

7. In fact, the construction programme enumerated in the Bar Chart permitted that the supply works of line materials were required to begin 6 months ahead of the start of erection works of towers and were required to be completed 9 months prior to completion of erection works of the towers. Therefore, the allegation made by the Investigating Agency that being the supervisor of the work at that time, petitioner has accepted the supply of materials prior to erection of towers, is not at all in conformity with the provisions of construction programme agreed upon by the Department and the contractor and incorporated in the Bar Chart which forms an integral part of the contract agreement. The law relating to the framing of Charge unequivocally suggest that in the absence of any ingredients of the alleged offence, there shall be no Charge against the person concerned. Sections 239/240 of the Code of Criminal Procedure, 1973, clearly postulates that if the Court considers the charge against the accused to be groundless, then the Court shall discharge the accused. In the instant case, the learned Court below did not insist for supply of necessary materials for its legal presumption and without going into the matter in its entirety and applying its judicial mind, the court below, simply on the basis of grounds assigned by the CBI, opined that there is a prima-facie case against the petitioner and accordingly framed the charges, illegally, which is not sustainable in revision, making the same liable to be cancelled by way of the present proceeding alone. In the instant case, the Court neither ventured into whether the charges could be framed against the petitioner under with Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, nor, embarked upon to interpret the legal dictum of the charge-sheet dated 24.10.2008. In fact, it is an abuse of the process of the Court and the framing of charges is beyond the jurisdiction and competence of the Court below and therefore, it is required to be quashed by the Court in exercise of powers under Section 482 of the Code of Criminal Procedure, 1973. Since the petitioner was neither a privy nor a direct partner in the decision making process, he cannot be termed a conspirator, liable

to be punished under the criminal law. Hence, the framing of charge against him is a misconceived one, illegal and *non-est* in the eye of law. Therefore, in view of the clear irregularities committed by the learned Court below, the learned counsel for the petitioner has prayed that the charge-sheet, in question, be quashed as well as the order dated 08.08.2011 in order to secure the ends of justice.

**8.** An affidavit in opposition has been filed by the respondent Central Bureau of Investigation(CBI), wherein they have categorically submitted that Central Bureau of Investigation, New Delhi, filed a charge sheet on 24.10.2008 upon the allegation that the accused Sh. Darshan Singh, while working as the then Chief Engineer(Power) in Arunachal Pradesh, in conspiracy with M/s Horizon Hi-tech Engicon Pvt. Ltd., Kolkata, showed undue favour to the Firm in the award of contract relating to supply, installation, testing and commissioning of 132 KV S/C Transmission line from Deomali to Namsai. It is also alleged by the respondent that though the original quotation of the party was at the rate of Rs.28,53,76,306/- but the said amount was enhanced and contract was given to the party for a sum of Rs. 45,59,00,000/- thereby causing a huge financial loss to the State Government.

**9.** The stand of the respondent CBI is that they have raised objection upon the maintainability of the same, on the ground that framing of charges by the trial Court is principally based upon the prima-facie allegations against the petitioner in the charge sheet and the trial court is not required to go in details of the evidence.

**10.** The further stand of the respondent CBI is that the instant petition has been filed against the established statutory provisions of law i.e. section 19, sub-section 3 (c) of the prevention of Corruption Act, 1988 which postulates that "***No court shall stay the proceedings under this act on any other ground and no court shall exercise the powers of Revision in Relation to any interlocutory order passed in any inquiry, trial appeal or other proceedings***". The petitioner would be given ample opportunity for his defence during the course of trial.

**11.** The further contention of the respondent Central Bureau of Investigation(CBI) is that the learned Court below had framed the charges after due application of mind and after careful perusal of all material evidence and after being satisfied that the petitioner has played the following specific role to the extent that he was the Executive Engineer of Miao Division during the year 1995-96 and he had cleared the bills of M/s Horizon Hi-Tech Engincon Pvt. Ltd., for Deomali to Namsai Transmission Line. The bill was certified by Sri R. S. Singh, Junior Engineer(E) Kharsang and was authenticated by Sri N. Ngomu, the then Assistant Engineer(E) Miao. The petitioner had accepted all the materials even though they were required in the final phase of the work and passed the bills. Being Executive Engineer(E), Officer-in-Charge of the work shall be responsible for quality control and supervision of the work and accordingly, the learned Court below framed the charges against him. The petitioner though tried to mislead the Court by portraying his criminal act as a Departmental irregularity but the evidence available on record clearly establish the guilt of petitioner and therefore for the ends of justice, a fair trial is necessary to establish the guilt of the petitioner beyond reasonable doubt.

**12.** It is the further contention of the respondent CBI that during investigation, as per the statement of Sri Pulak Deb, the Executive Engineer of Deomali was in-charge for the execution of transmission line from Deomali to Namsai during 1996 and till creation of Namsai during 1997, Miao and Deomali Electrical Divisions were under the control of Superintending Engineer(E) Pasighat. Therefore, the learned Spl. P.P., Central Bureau of Investigation(CBI), has contended that the petitioner had intentionally, cleared and passed the bill of Rs. 1 crore to the Firm, in question, wrongfully and he cannot shift the burden of responsibility towards the Chief Engineer and be treated in the matter, as an innocent person.

**13.** According to the respondent Central Bureau of Investigation(CBI), the learned Court below had rightly and judiciously framed the chares against the petitioner after being satisfied that there is a *prima facie* case against the

petitioner and he is now trying to mislead the Court by trying to shift his responsibility towards his senior officer. The petitioner would be afforded ample opportunity to cross-examine the sanctioning authority and other witnesses during trial. Considered in the light of all above, the respondent Central Bureau of Investigation(CBI) has prayed that the instant petition filed by the petitioner is devoid of merit and the same may be dismissed.

**14.** In support of his case, the learned counsel for the respondent CBI has relied upon the cases, as mentioned below:

(i) ***AIR 2001 SC 2856 (Narayan Sharma v. State of Rajasthan)***

(ii) ***(2000) 3 SCC 57 (G. P. Srivastava v. R. K. Raizada & ors.)***

(iii) ***NEJ 2011 3 706 (Sushi Kumar Gupta v. Union of India)***

(iv) ***2013 10 SCC 591 Umesh Kumar v. State of Andhra Pradesh***

(v) ***2014 12 SCC 556 Homi Rajbans v. State of M.P. & ors.***

**15.** I have heard the arguments of the rival parties who have repeated the same arguments as has been pleaded in their pleadings.

**16.** So let us appreciate the submissions of the learned counsels having regard to the matters on record. Admittedly, the petitioner, herein, was the Executive Engineer in the year 1995-96 and he was responsible for clearing the bills for M/s Horizon Hi-tech Engicon Pvt. Ltd. for Deomali to Namsai Transmission Lines. As per the statement of the witness so recorded by the I.O., the petitioner passed the bills in favour of the contractors, knowing fully well that the project, in question, was not completed and he has released the bill of Rs. 1 crore as mobilization advance for the items which were actually required in the final phase of the work. The ACSR conductor was required at the time of completion of the transmission line and after testing of towers but the same was supplied initially without erecting any power lines. Being a responsible officer to supervise the work, aforesaid, the approach shown by the petitioner is not at all desirable to the post he held. The passing of huge bill amounts to Rs. 1 crore

without verifying the execution of the works are the requirement, as such, is indicative of wrong and foul play on the part of the public servant and the same can be stated to have conducted for wrongful gain. Such matters cannot be simply flouted by an evasive denial. For such conduct, the State has to incur heavy loss from the public exchequer.

**17.** Regarding the contention of the petitioner that charge-sheet has been filed without any case against him and the charge as well as charge-sheet is liable to be quashed u/s. 482 of the Code of Criminal Procedure, 1973; the same is required to be addressed.

**18.** The learned trial Court at the time of framing charge, will consider the available documents and evidence before the Court and charge can be framed on the satisfaction of existence of a prima facie case. In the *State of Maharashtra & anr. v. Som Nath Thapa & anr. 1996 4 SCC 659* it has been held that test of existence of prima facie can be made if there is ground of presuming that the accused has committed the offence. Even if the Court thinks that the accused might have committed the offence, it can frame the charges. Probative value of material on record cannot be gone into. In a case of *Bharat Parikh v. Central Bureau of Investigation(CBI) & anr. (2008) 10 SCC 109*, it has been held that at the stage of framing charge, roving and fishing enquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing charge, the submission of the accused has to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the documents subsequently produced by the prosecution. The case to determine a prima facie case, depends upon the facts of each case.

**19.** As regards the contention of the petitioner, that prayer of discharge made by the accused petitioner was rejected by the learned Court below illegally and framed the charge u/s. 228 of the Code of Criminal Procedure, 1973, is bad in law, a case law can be cited, reported in *2007 (2) KLJ 644, P. Vijayan v. State of Kerala & anr.*, wherein it has been held that unlike 227 of the Code of

Criminal Procedure, 1973, section 228 does not oblige the Court to give reasons while framing charge. Obviously, the insistence on the duty to give reasons while discharging the accused under section 227 of the Code of Criminal Procedure, 1973, because of premature termination of the proceedings by the Court. But if the Court instead of discharging the accused under Section 227 of Cr.PC, proceed under 228 of the Code of Criminal Procedure, 1973, subsequent stage of framing charge, the Court is not prematurely closing the proceedings. That explains why no reasons need be given while framing charge. Where the materials placed before the Court displays *grave suspicion* and not some suspicion against the accused and which has not been properly explained, the Court will be fully justified in framing a charge and proceed with the trial. In the given case, it is to be noted that the learned Special Judge has fully evaluated the materials produced by the prosecution and after considering the broad probabilities of the case and various documents and the evidence of large nos. of witnesses, was satisfied about the existence of a prima facie case against the petitioners and hence, refused to discharge the accused petitioners as prayed for u/s. 227 and framed the charges.

**20.** In another case reported in *(2014) 12 SCC 556, Homi Rajhans v. State of Maharashtra*, the Hon'ble Apex Court has held that there is no need to traverse all the factual details at the time of framing charge and the Court is not to scrutinize the allegations for the purpose of deciding whether such allegations are likely to upheld in the trial. In the present case, the learned Special Judge has given due consideration to all the materials produced before the Court and it cannot be expected to write each and every factual aspects in detail in such cases which is based on large nos. of documents and he has recorded in prima facie satisfaction upon scrutiny of all the documents and thereby holding that there is prima facie case to frame the charge against the accused persons.

**21.** Coming to the case in hand, there are as many as 36 prosecution witnesses with bundle of documents in support of the allegation in the charge sheet and the learned Court below has recorded his satisfaction that after going

through all these documents, sufficient material is found against the accused petitioner which indicates a prima facie case for framing charge against the accused petitioner. In view of all above discussions and findings, there is no illegality in framing charge against the accused petitioner.

**22.** Law relating to invoking of power conferred u/s. 482 of the Code of Criminal Procedure, 1973, upon the High Court, is well settled. In landmark judgment of **Bhajan Lal**(supra), the Hon'ble Apex Court has laid down certain parameters wherein the High Court can exercise the powers conferred upon it, under Section 482 of the Code of Criminal Procedure, 1973. The above guideline is reproduced below:

**(1). Where the allegations made in the First Information Report (FIR), or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.**

**(2). Where the allegations in the First Information Report(FIR) and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s. 156(1) of the Code except under order of the Magistrate within the purview of Sec. 155(2) of the Code.**

**(3). Where the uncontroverted allegations made in the First Information Report(FIR) or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.**

**(4). Where the allegations in the FIR do not constitute a cognizable offence but constitute a non-cognizable offence and no investigation is permitted by a police officer without an order from a Magistrate as contemplated under sec. 155 (2) of the Code.**

**(5). Where the allegations made in the FIR or complaint, are so absurd and inherently improbable on the basis of which no prudent**

*person can reach such a conclusion is just conclusion that there is sufficient material for proceeding.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act to the institution and continuance of the proceeding at or where there is specific provision, the Code or Act providing efficacious redress or the grievances for the aggrieved party.*

*(7) Where the criminal proceeding is manifestly attended with mala fide or where the proceeding is maliciously restituted with an ulterior motive or wreaking vengeance on the accused with a view to spite him due to private and personal grudge.*

**23.** In another case reported in **2013(10) SCC 591, Umesh Kumar v. Andhra Pradesh**, has also dealt with the scope of Section 482 of the Code of Criminal Procedure, 1973, in the following words:

The scope of section 482 of the Code of Criminal Procedure, 1973 is well defined and the inherent power could be exercised to prevent abuse of process of Court and to otherwise, to secure the ends of justice. However, in exercise of such power, it is not permissible to appreciate the evidence as it can only evaluate material documents on record to the extent of prima facie satisfaction of existence of sufficient grounds for proceeding against the accused and the Court cannot look into the materials, the acceptability of which will essentially be a matter of trial. Any document filed along with the petition levelled as evidence, without being tested and proved, cannot be examined.

**24.** Coming to the present case, at hand, it is found that Under Secretary, Power, Sri K. Riram, lodged a detailed First Information Report(FIR) showing all the illegalities committed by the accused petitioner in conspiracy with the other accused Sri Darshan Singh thereby causing huge pecuniary loss to the State Government, which discloses a cognizable offence, against the accused persons and as such, by invoking of jurisdiction under section 482 of the Code of Criminal

Procedure, 1973, the charges against the accused persons, can not be at all set aside. Further, the Hon'ble Apex Court while deciding the case of ***HMT Watches Ltd. V. M A Abida & anr.***, decided on 19.03.2015, in Criminal Appeal 472/2015, it has been held that the High Court while exercising power under section 482 of the Code of Criminal Procedure, 1973, should not express its view on disputed matters.

**25.** In view of all above discussions and findings, both these petitions are hereby dismissed with a direction to the petitioners to appear before the Court and within one month from today to face the trial and the learned Court below will make endeavour to dispose the case with utmost priority preferably within 6 months because of old pendency of the matter if necessary by taking day-to-day hearing.

**26.** Send a copy of this order to the learned trial Court accordingly.

**JUDGE**

*Bhask*