

**IN THE GAUHATI HIGH COURT  
[THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND  
ARUNACHAL PRADESH]**

**1. Crl. Petn. 15(AP)2011**

**Sri Partha Pratim Palit**

S/o Sri Paresh Chandra Palit  
45/1 Rafi Ahmed Kidwai Road  
Opposite Park Street, Jaiswal Mansion  
2<sup>nd</sup> Floor, Kolkata - 16.

.....**Petitioner**

By Advocates:

Mr. P. B. Dhar

Mr. R. C. Paul

**-vs-**

Central Bureau of Investigation.

By Advocate:

Mr. Abhijit Bhattacharya, Special P.P.(CBI).

.....**Respondent**

**2. Crl. Petn. 16(AP)2011**

**Sri S. P. Sharma**

45/1 Rafi Ahmed Kidwai Road  
Opposite Park Street, Jaiswal Mansion  
2<sup>nd</sup> Floor, Kolkata - 16.

.....**Petitioner**

By Advocates:

Mr. P. B. Dhar

Mr. R. C. Paul

**-vs-**

Central Bureau of Investigation.

By Advocate:

Mr. Abhijit Bhattacharya, learned Special P.P.(CBI).

.....**Respondent**

**3. Crl. Petn. 01(AP)2012**

**Sri Dipankar Choudhury**

Son of Late Digendra Chandra Choudhury  
59B Lake Town, Kolkata - 16.

.....**Petitioner**

By Advocates:

Mr. P. B. Dhar

Mr. R. C. Paul

**-vs-**

Central Bureau of Investigation.

By Advocate:

Mr. Abhijit Bhattacharya, learned Special P.P.(CBI).

*.....Respondent*

**B E F O R E**  
**HON'BLE JUSTICE (MRS.) RUMI KUMARI PHUKAN**

Date of hearing : **11.08.2015**

Date of Judgment & Order : **11.09.2015**

**JUDGMENT & ORDER [CAV]**

Heard Mr. Abhijit Bhattacharya, learned Special P.P., on behalf of the respondent Central Bureau of Investigation(CBI) but none has appeared on behalf of other respondents as well as the petitioners, in these 3(three) criminal petitions. However, these matters are taken-up for hearing and disposal, as it pertains to the year 2011.

**2.** These 3(three) petitions, being identical and similar, are taken-up together, for final disposal, by this common judgment & order.

**3.** Above three petitioners, namely, Sri Dipankar Choudhury; Sri S.P. Sharma; and Sri Partha Pratim Palit are the permanent residents of 59B, Lake Town, Kolkata-89, District 24 Parganas, West Bengal and were serving under the Government of Arunachal Pradesh from 1980 to 1998. They have contended that a Public Interest Litigation(PIL) vide Civil Rule No. 4331 of 1996 was filed by one Sri Kipa Babu against the State of Arunachal Pradesh & 7 others, before this Court, praying, amongst others, a direction to the respondent Central Bureau of Investigation(CBI) to probe into the power scam and the matter is still pending before the Court because of split verdict given by the Division Bench and the same has been referred to the 3<sup>rd</sup> Judge for final order. After registration of the case, the

CBI investigated into the matter, witnesses were examined, documents pertaining to the matter were seized and after completion of the investigation, the I.O., Central Bureau of Investigation(CBI), has submitted Charge-Sheet No. 6 of 2008, on 24.10.2008, wherein the petitioners were made as accused alongwith other accused persons. On the basis of the charge sheet so submitted by the CBI, the Court of Special Judge-cum-District & Sessions Judge, West Sessions Division, Yupia, Arunachal Pradesh, issued summons to the accused petitioners for their appearance and on their appearance, the learned Trial Court allowed them to go on bail. Copies of the statements of the witnesses revealed that few statements were hand-written and illegible to read and as such, the accused petitioners prayed before the learned trial Court for furnishing, either, legible copies or typed copies of the same but without considering their prayer, the matter was fixed for consideration of charges on 16.05.2011, 22.06.2011, 23.06.2011 and 24.06.2011.

**4.** The further contention of the petitioners is that after perusal of the statements of the witnesses and other relevant records, the petitioners made a prayer to the learned District and Sessions Judge, West Sessions Division, Yupia, for discharging them from the charges levelled against them and the said Court, vide Order dated 08.08.2011, rejected the prayer and framed charge under section 120 B of the IPC *read with* Section 13(1)(d) *read with* Section 13 (2) of Prevention of Corruption Act, 1988, against all the accused persons by a common order, the copy of which could be obtained by them only on 17.10.2011. They have further stated that the learned trial Court without going through the materials on record, most mechanically, passed the impugned order dated 08.08.2011 against the petitioners although the evidence of witnesses relied upon by the prosecution was totally silent regarding commission of any offence by them.

**5.** Being aggrieved, the petitioners have preferred these criminal petitions challenging the impugned order dated 08.08.2011 as passed by the learned Special Judge-cum-District & Sessions Judge, West Sessions Division, Yupia, in connection with P.C. Act Case No. 16 of 2010, for the below cited reasons:

(i) The learned Special Judge-cum-District and Sessions Judge, West Sessions Division, Yupia, Arunachal Pradesh, erred in law as well as in fact,

and had exercised his jurisdiction wrongly and illegally in passing the impugned order dated 08.08.2011 and as such the order is liable to be set aside and quashed.

(ii) There was no sanction obtained by the prosecution as required the provisions of section 6 of the Delhi Special Police Act thereby rendering the purported First Information Report (FIR), malicious and bad in law.

(iii) It has been contended that the Hon'ble Apex Court held that "if on existing material, there is no ground for presuming them to be guilty then there can hardly be any point in framing charges and going through the formality of a trial and then acquitting them. Such a course would merely result in unnecessary harassment to the applicants without serving the cause of justice". So there being no ground for proceeding, accused should have been discharged.

**6.** Petitioners have referred to the case of **1972(3) SCC 280; Century Spinning & Manufacturing Co. Ltd. V. State of Maharashtra[3 Judge Bench]** wherein in Paragraph No. 16, the Hon'ble Apex Court held that **"if on this material, the Court comes to the conclusion that there is no ground for presuming that the accused has committed an offence, then it can appropriately consider the charge to be groundless and discharge the accused. The argument that the court at that stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognized principles of law. The order framing charges does substantially affect the person's liberty and it is not possible to countenance the view that the court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing charge is that of the court and it has to judicially consider the question of doing so without fully advertent to the material on record it must not blindly adopt the decision of the prosecution.**

**7.** The petitioners have contended that a bare reading of the impugned order, framing charge against the petitioners, shall testify that without following the provisions of section 211 of the Code of Criminal Procedure, 1973, the trial Court mechanically framed the charges against them, and the statements of the witnesses and the documents relied by the prosecution to establish charge against the petitioners on the face of it, do not attract any of the ingredients for commission of the offences under IPC or under Prevention of Corruption Act, 1988, but the learned trial court, mechanically, without considering the provisions of laid down law and going through the witnesses of the prosecution, arbitrarily, passed the impugned judgment & order dated 08.08.2011, and as such, the said impugned judgment & order be set aside and quashed.

**8.** Per contra, the respondent Central Bureau of Investigation(CBI), through their affidavit-in-opposition, have contended that the Charge-Sheets, in question, was filed on 24.10.2008, upon the allegation that Sri Darshan Singh, the then Chief Engineer(P), Itanagar, in conspiracy with the petitioners, showed undue favour to the Firm M/s Horizon Hi-Tech Engicon Pvt. Ltd., Kolkata, in awarding the contract relating to: supply, installation, testing and commissioning of 132KV, S/C Transmission Line from Tenga to Jang; and 132/33 KV Sub-station at Jang. It is also alleged by the respondent that though the original quotation of the party was at the rate of Rs.28,39,55,881/- but the said amount was enhanced and contract was given to the party for a sum of Rs.39,54,21,000/- thereby causing a huge financial loss to the State Government. The contention of the respondent CBI is that the trial Court had framed the charges against all the accused persons vide order dated 08.08.2011 under Section 120B *read with* 13(2) *read with* Section 13(1)(d) of Prevention of Corruption Act, 1988.

**9.** However, the main contention of the respondent CBI is that these petitions are not maintainable in law and facts, and hence, devoid of merit and is liable to be dismissed at this stage. That apart, the framing of charges by trial Court is principally based upon the prima-facie allegations against the petitioners in the Charge-Sheet. The respondent CBI has contended that is not the duty of the said

Court to go into the details of the evidence as the same is the subject-matter of trial; therefore, these petitions are liable to be dismissed summarily.

**10.** The respondent has further contended that these criminal petitions have 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 reads, as under:-

***"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"***

**11.** The respondent CBI has relied upon the case 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)***

**12.** It has been further contended by the respondents that the declaration regarding residence of 2(two) of the petitioners are misleading as the same address is reflected for the petitioners viz. Sri Deepankar Chaudhary[CrI. P. 01(AP)2012] and Sri S.P. Sharma[CrI. P. 16(AP)2011] as 45/1, Rafi Ahmed Kidwal Road, Opp. Park Street, Jaiswal Mansion, 2<sup>nd</sup> Floor, Kolkatta-16. Furthermore, the petitioner Sri Partha Pratim Palit of CrI. P. 15(AP)2011 had never served the Government of Arunachal Pradesh during 1980-1998 and he was in fact the Director of M/s Horizon Hi-Tech Engicon P. Ltd..

**13.** The further contention of the respondent is that the best available photocopies of all relied upon documents and statements of witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973, were furnished to the petitioners after filing of the Charge-Sheet, however, the petitioners made several attempts to linger the case by filing vague petitions to supply again few documents and there is sufficient evidence on record to establish the allegations levelled against the petitioners and the trial court had judiciously and after proper application of mind, framed the charges against the petitioners after being satisfied that there is a clear cut prima-facie case against them. There cannot be also any

dispute over the jurisdiction of the trial Court being Special Court established for conducting trial of Central Bureau of Investigation (CBI) cases.

**14.** The further contention of the respondent CBI is that sanction u/s. 6 of the PC Act, 1988, is required only for a public servant and not for the present petitioners who are private persons in these matters and Court can try the offences against private persons under any offence of I.P.C. along with offence under P.C. Act. Therefore, in view of the submissions as made above, the respondent has prayed that the present petitions lack any merit and the same be dismissed.

**15.** It may be mentioned herein that the petitioners, herein, did not turn-up at the time of hearing of argument since last about 1 year. So the arguments of the learned counsel for the respondent CBI is heard. It has been vehemently contended by the learned counsel for the CBI Mr. Bhattacharya, that the prayer of the petitioners to quash the order of charge on the allegation that the charge has been illegally framed, is without any foundation. Referring to the various aspects divulged in the charge-sheet as well as the various documents as well as nos. of witnesses, it has been argued that there is sufficient materials on record to show that during investigation, certain matters brought on record, like that the company by name Horizon Hi-Tech Engicon P. Ltd. came into existence on 30.06.1994 with 3 persons namely K.K. Saha, K. G. Sinha, P. P. Palit, Dipankar Choudhury. The said Dipankar Choudhury was an Executive Engineer working under the co-accused Darshan Singh, the then Chief Engineer, Power, who later resigned in the year 1998 and became one of the Directors of Horizon Hi-Tech Engicon P. Ltd which clearly shows his involvement in the Company even while he was in service in the Government of Arunachal Pradesh. The investigation further reveals that 4 tender papers were purchased in the name of 4 companies and quotation papers of above firms were prepared in Hotel Bomdila Itanagar in presence of Dipankar Choudhury, K. K. Saha and K. G. Sinha. It was decided to keep the quotations of other 3 firms a little higher than that of M/s Horizon Hi-tech. Investigation also reveals that the work which was commissioned to the said Company, in February, 1995, was required to be completed by February, 1998, remained incomplete despite

payment of 17.68 crores. The work order was issued in favour of Horizon Hi-Tech Engicon P. Ltd without following the due process and there is prima facie material to show that the Dipankar Choudhury was very much involved in getting such false documents. Investigation further reveals that 2/3<sup>rd</sup> profit from such transaction will be shared by K. K. Saha and P. P. Palit and in the affair, Dipankar Choudhury was given the responsibility for the work to be done. All the materials on the record is sufficient to prove the complicity of these 3 accused petitioners with the offence alleged. In view of such materials on record, as has been pointed-out, there appears no any substance on the contention so raised by the petitioner, herein.

**16.** 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 *State of Haryana v. Bhajan Lal* reported in **1992 suppl. (1) SCC 335**, 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. 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:

**17.** 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.

**18.** 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 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.

**18.** Turning to the point of framing of charge, law is well-settled that at the time of framing of charge, the trial Court shall not enter into a roving enquiry, all that it requires to be seen is to whether a prima facie case is made-out or not; and if any prima facie case is made out, the trial Court will be well within its ambit of power to frame charge against the accused persons, as has been held in **(2008)10 SCC 109, *Bharat Parikh v. CBI & anr.*** 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.

**19.** In this context, another case law can be cited reported in **2007 (2) KLJ 644, *P. Vijayan v. State of Kerala & anr.***, 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 granting the proceedings.

That explains while 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 the discharge the accused petitioners as prayed for u/s. 227 and has decided to frame charges and accordingly directed the accused petitioners to appear before the Court to answer the charge but they did not turn up before the Court and has moved the present petition which cannot be entertained as has been discussed above. There is no irregularity in charge so framed by the learned Court below and there is no justifiable ground to set aside the order dated 08.08.2011. That apart, also, the petitioners have lost the credibility of the case as they never turned up at the time to hearing and On the other hand, there is much substance in the argument of the learned counsel for the CBI who has diligently placed before the Court all the materials along with the referring to the appropriate legal provisions on the subject.

**21.** In view of all above discussions and findings, the 3 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.

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

**JUDGE**

*Bhask*