

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

**ITANAGAR BENCH**

**Crl. Pet. 20 (AP) 2012**

**Shri Rajendra Kumar Jain**

Authorised representative and constituted attorney of M/S.  
M.R. Power Project, 18, Mahabir Bhavan, A.T. Road,  
Guwahati, Assam.

**.....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.

**.....Respondents.**

**Advocates for the Respondents:**

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 counsel appearing 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 impugned 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 has been framed u/s. 120 (B) IPC *read with* sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

**3.** The case of the petitioner is that on 02.02.2001, one Sri K. Riram, Under Secretary to the Govt. of Arunachal Pradesh, Power Department, Itanagar, lodged a complaint before the Central Bureau of Investigation[in short, CBI] against one Sri Darshan Singh, the then Chief Engineer(Power), Govt. of Arunachal Pradesh[for short, CE(P) 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 complaint, the CBI registered a case on 31.05.2001 and after completion of the investigation, submitted charge sheet u/s. 120(B) r/w Section 13(1) 13(2) of the Prevention of Corruption Act, 1988, against several accused persons including the petitioner.

**4.** The accused petitioner entered his appearance before the learned Court below and filed a petition u/s. 227 of the Code of Criminal Procedure, 1973,

praying for discharge, which, however, was rejected by the Court and framed charges vide impugned order dated 08.08.2011, which is now been challenged in this petition.

**5.** It is the contention of the petitioner that the learned Court below without applying its judicial mind, in a routine manner, framed charges against the petitioner for trial u/s. 120(B) IPC *read with* Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, vide impugned order dated 08.08.2011. The said Court did not consider or dispose of the petition which was filed by the petitioner u/s. 227 of the Code of Criminal Procedure, 1973, while passing the impugned order 08.08.2011.

**6.** It has been further contended that Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, is applicable to a government/public servant only. Since the petitioner is a private person, as such, Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, are not at all attracted against him. Thus, the question of application of Section 120(B) IPC does not arise at all as the major/main offence accused of, is not attracted against the petitioner.

**7.** The accused petitioner has also contended that a bare perusal of the reading of the First Information Report(FIR), clearly indicates that the entire activities, in question, did not continue after 1995-96. Situated thus, it is the contention of the petitioner that the learned Court below took cognizance of the case after a lapse of so many years from the date of occurrence of the alleged offence in total violation of the statutory period provided u/s. 468 of the Code of Criminal Procedure, 1973, which makes the proceeding, in question, incurably vitiated.

**8.** 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. 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.

**9.** With regard to the allegation of benefiting crores of rupees from the Government of Arunachal Pradesh, by means of criminal conspiracy, the petitioner has contended that as per the agreement with the State Government, the petitioner's Firm was to supply the Hydel sets, in question, but due to repeated failure on the part of the State Government, the said Hydel Sets could not be installed at the project sites. In this regard, the petitioner communicated to the State Government since 1994 regarding the site for storing the imported sets and it was only in 1996 that the said equipments were instructed to stored at Charduar Store of the Power Department. In view of the above, the petitioner and his Firm neither could be held responsible for such delay nor could be labelled as committing fraud in any manner to the public or to anyone. That apart, the Investigation Agency could not pinpoint any overt or covert act on the part of the petitioner for which, he could be held liable, criminally for the alleged offence.

**10.** Mr. Pertin, learned counsel for the petitioner, while arguing the matter, comprehensively, has drawn the attention of this Court, to the fact that had there been any criminal conspiracy by the petitioner or his Firm, the Arbitrator could not have awarded the ARB. Case No. 1/7/99 of 2001 in favour of the said Firm, vide order dated 02.12.2002, which award/decision was upheld by this Court vide Arbitration Appeal No. 8/2004 vide order dated 06.11.2008.

**11.** The learned counsel for the petitioner has further contended that being aggrieved by the framing of charges against them, the other co-accused persons had preferred several criminal revision petitions before this Court and the Court

was pleased to stay/suspend the further proceedings of the PC Act Cases No. 14, 15, 16 and 17/2010(YPA).

**12.** An affidavit-in-opposition has been filed by the respondent Central Bureau of Investigation(CBI), wherein they have categorically submitted that the Central Bureau of Investigation, New Delhi, filed a charge sheet on 24.10.2008 upon the allegation that the accused Darshan Singh, while working as the then Chief Engineer(Power) in Arunachal Pradesh during 1993-1996 entered into criminal conspiracy with M/s M.R. Power Projects and awarded the award of contract work relating to supply of 30 Portable Micro Hydel Projects imported from Czechoslovakia to the said Firm without observing any formalities and moreso, the quotation of M/s M.R. Power Projects, was not the lowest and the petitioner being the proprietor of the Firm, indulged in all such irregularities to get benefit of the transaction.

**13.** 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. In support of his case, the learned counsel for 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)***

**14.** The further stand of the respondent CBI is that the learned Court below had rightly and judiciously framed the charges 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 through wrong interpretation of legal provisions. It is

true that the Prevention of Corruption Act, 1988, is applicable to the Government servants but is also equally true that when a private person in connivance with public servants, commits offence with Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, then he can be prosecuted u/s. 120-B *r/w* 13(2) *r/w* 13(1)(d) of P.C. Act, 1988.

**15.** It is the contention of the respondent Central Bureau of Investigation (CBI) that there is ample evidence to prove the role of the petitioner during trial and the learned Court below had rightly and judiciously framed the charges against him, after being satisfied with the materials available on record which goes to indicate that there is a clear-cut prima facie case against the petitioner.

**16.** According to the respondent Central Bureau of Investigation(CBI), there is also no bar in criminal law for the authorities concerned in taking cognizance of an offence which had committed earlier. In the instant case, the offence, in question, was committed in the year 1992-93 and First Information Report(FIR) was lodged on 31.05.2001 and the learned Court below had taken cognizance of the same when the charge-sheet was filed in the learned Court below after completion of the investigation. There is no illegality by taking cognizance. Accordingly, in light of all above, the respondent Central Bureau of Investigation(CBI) has prayed that the instant petition which has been filed by the petitioner being devoid of merit, the same may be dismissed.

**17.** I have considered the submissions of the rival parties. The first contention that the accused being a private person cannot be dealt with an offence under the Prevention of Corruption Act, 1988, cannot be accepted in view of the proposition of law that the special judge can also try the case of private person under the provision of IPC read with relevant provision of Prevention of Corruption Act, 1988. The other contention of the learned counsel for the accused petitioner is that there is no material on record or in the charge sheet for proceeding against the accused petitioner. It has been submitted that no case is made-out against the accused petitioner and as such, the proceeding

and the charge can be quashed. Relying upon the case law ***State of Haryana v. Bhajan Lal & ors. 1992 suppl. (1) SCC 335***, it has been urged that as there is no materials on record, the Court can set aside and quash the First Information Report(FIR) in criminal proceeding u/s. 482 of the Code of Criminal Procedure, 1973. On the point of consideration of prima facie case, case law reported in ***State of T.N. Tr. Inspector of Police v. N. Sureshjanjan 2014 11 SCC 709***, it has been urged that the learned trial Court cannot merely act as a mouth piece of the prosecution but has to consider the broad probabilities of the case and total effect of the evidence and documents so produced before the Court. On the similar point, following case law has been relied upon:

- 1). *State of Orissa v. Devendra Nath Padhir (2005) 1 SCC 568***
- 2). *CBI v. K. Narayana Rao (2012) 9 SCC 512***
- 3). *T. Vijayan v. State of Kerala (2010) 2 SCC 398***
- 4). *Sajjan Kumar v. CBI (2010) 9 SCC 368***

**18.** On the other hand, it has also been contended that there is no conspiracy on the part of the petitioner to commit the offence. The learned trial Court has framed the charge irrespective of the fact that the petitioner was not named in the First Information Report(FIR) but he has been made an accused just he happened to be the co-owner of the firm concerned and there is no specific role of the accused petitioner.

**19.** The learned standing counsel for the respondent Central Bureau of Investigation(CBI) has vehemently opposed the contentions of the petitioner and has urged before this Court to take note of the allegations so made in the First Information Report(FIR) and the charge sheet which is supported by the bundle of documents and evidence on record to show the complicity of the accused which is sufficient to frame a charge against the said accused petitioner.

**20.** In this context, it can be seen that during investigation, it has been brought on record that the petitioner is the proprietor of M/s M. R. Power Project

and all such unfair means were undertaken by the accused petitioner's firm to get the contract in his favour and the said Chief Engineer accused Darshan Singh awarded the work to the petitioner's firm without observing any formalities even when the quotation of the petitioner's firm was not the lowest. It was also found that M/s Biogen International Calcutta submitted the lowest rate for 20KW hydel set as compared to the offer given by the petitioner's firm but the petitioner's firm was made the L-1 by hatching conspiracy with the Chief Engineer, abovementioned. The Chief Engineer accused Darshan Singh suppressed the fact that the bid submitted by the M/s M. R. Power Project has specifically mentioned that it would charge separately for accessories of butterfly value for Rs. 1.44 lakhs etc. On the contrary, the M/s Biogen included the cost of butterfly valve. The NIQ which was published specifically required that bidders should submit separate costings for each of the items for hydel sets but M/s M. R. Power Project did not give such break-up though other bidders have done so. There was no condition in the NIT for installation of pre-fabricated power house but it was negotiated with M/s. M. R. Power Project that party should supply the power set at the destination point. However, no such negotiation was done with the other party including L-1 whereas such negotiation was conducted with the petitioner's firm. The evaluation bid was manipulative with dishonest intention to confer pecuniary advantage to the petitioner's firm. Further, the petitioner entered into an agreement with the Chief Engineer for Rs. 7.70 crores. That apart, the petitioner's firm entered into an agreement with owner of the other two firms Sri Pradip Kumar Jain through which he managed to secure the award of the work as well as release of the payment and the petitioner's firm also paid huge amount to the account of the aforesaid two companies of Pradip Kumar Jain, Director of said two companies. All these affairs speaks about certain complicity of the present petitioner with the offence alleged.

**21.** Coming to the point of framing charge, what is necessary for the learned trial Court has been discussed in the *Maharashtra & anr. v. Som Nath Thapa & anr. 1996 4 SCC 659* wherein 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.

**22.** In the context of 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. 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 of the Code of Criminal Procedure, 1973, 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.

**23.** 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 be 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 aspect 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.

**24.** On the point of conspiracy, the Apex Court in **(2007) 5 SCC 634 Suman Sood v. State of Rajasthan**, while dealing with such aspect, has categorically held that while there is no direct evidence to prove the factum of conspiracy, but, it is well settled that an inference of conspiracy can be drawn from the surrounding circumstances inasmuch as normally no direct evidence of conspiracy is available. Generally, conspiracy is hatched in a secrecy and it may be difficult to adduce direct evidence of the same. The privacy and secrecy are more characteristic of the conspiracy than of a loud discussion in an elevated place open to public view.

**25.** Coming to the case in hand, there are as many as 36 prosecutions witness 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.

**26.** 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 instituted with an ulterior motive or wreaking vengeance on the accused with a view to spite him due to private and personal grudge.***

27. 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.*

28. 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 who is the prime accused in this case. Though he is not named in the FIR but the name of his firm has been mentioned in this case.

29. In view of findings above and matters on record, it is not a fit case to invoke provisions of section 482 of the Code of Criminal Procedure, 1973, to set aside the charges against the accused persons. 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; has 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.

**30.** 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.

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

**JUDGE**

*Bhask*