

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

ITANAGAR BENCH

Crl. Rev. Pet. 17 (AP) 2011

Shri Chow Tumang Namchoom

S/O Late C.T. Gohain,
Superintending Engineer (Elect),
Mio Electrical Circle, Miao,
District: Changlang, Arunachal Pradesh

.....Petitioner

Advocates for the Petitioner:

Mr. Tony Pertin
Mr. A.K. Singh
Mr. L. Tenzing
Mr. D. Pangkam

-Versus-

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, Govt of Arunachal Pradesh, Power Department, Itanagar, A.P,
4. The Under Secretary, Govt. of Arunachal Pradesh, Power Department, Itanagar, A.P.

.....Respondents.

Advocates for the Respondents:

Mr. Kholie Tado, Public Prosecutor, A.P.
Mr. Abhijit Bhattacharya, Special P.P. for 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. Kholie Tado, for State Respondents and 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 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 framed u/s. 120 (B) IPC *read with* sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, in the 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[hereinafter called 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 FIR, the respondent CBI initiated their investigation and after investigation, they prepared 4(four) different charge-sheets for different allegations viz. Allegation 1(A), allegation 1(B), allegation 2(A) and allegation 2(B). In the charge-sheet dated 24.10.2008, for allegation 2(A), 8 accused were named and the present petitioner Sri Chaw Tumang Namchoom was made as and the same was filed before the Special Judge at Yupia. The accused preferred

petition under Section 227 of the Cr.P.C. praying for discharge but the same was rejected by the trial Court and framed charge against them vide order mentioned above, hence, the petitioner before this Court only allegation against the petitioner is that he passed the bills and released the payment to contractors in conspiracy with the accused Chief Engineer, Darshan Singh.

4. The petitioner has contended that the Investigating Agency without pinpointing to any overt or covert act by the petitioner, reflected his name at Paragraph No. 27 of the Charge-Sheet for allegation 2(A).

5. Further 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 the petition which was filed by the petitioner u/s. 227 of the Code of Criminal Procedure, 1973, for his discharge, while passing the impugned order 08.08.2011.

6. As regards the allegation 2(A), Paragraph No. 27; the contention of the petitioner is that the allegation made by the Investigating Agency that he being the supervisor of work at that relevant period of time, he had accepted the supply of materials prior to erection or any towers, is not at all in conformity with the provisions of the construction programme as agreed upon by the Department concerned and the Contractor, in the form of BAR CHART. In fact, the construction programme enumerated in the Bar Chart permitted the contractor to supply the line materials, in question, even before commencement of the work of erection of towers and the petitioner was contractually bound to accept the stated materials and release the payments as per Clause 5.27 of the Terms of Payment of the Contract Agreement. The petitioner, as an Executive Engineer(E) at Tawang, in fact, made a payment of Rs. 220 lakhs being mobilisation advance as per the official written instruction dated 28.02.1995 of the Chief Engineer against the specific Letter of Credit(LOC).

7. It is reiterated by the learned counsel for the petitioner that the petitioner was not a party to the said Agreement and the NIQ, in question, was not initiated by the Executive Engineer(E), Tawang, nor the requisition was placed by the said Executive Engineer for payment of Rs. 220 lakhs. According to the petitioner, a mere compliance of an order originating from a superior authority cannot constitute an offence punishable u/s. 120(B) IPC, as he had complied in accordance with Rule 3(2)(ii) of the CCS(Conduct) Rules, 1964 of General Financial Rule, 1963, and Paragraph No. 66 of CPWD Manual. The Scheme, in question, was also approved in the AOP for the year 1994-95 of Power Department. While making payment of the aforesaid amount, the Superintending Engineer(E)/competent authority also advised him to make payment as mobilization advance, as they were also the aware of the said scheme being placed under the AOP for 1994-95. Thereafter, the petitioner released the said amount and intimated about the same to the Chief Engineer(P), Itanagar, vide letter dated 07.03.1995, with a copy of the same endorsed to the Superintending Engineer(E).

8. It has also been contended by the learned counsel for the petitioner that subsequent payments, thereafter, were made/ released by the successors of the petitioner but the Investigating Agency never made the said successors as accused or otherwise.

9. 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. Herein this case, neither the First Information Report(FIR) nor the factual matrix in the Charge-Sheet lends an iota of support that there could be a charge against the Petitioner. 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, because of lack of such material particulars, as to the time and place of the alleged offence, etc., then the Court shall discharge the accused. and the person(if any) against whom, or the thing in respect of which, it was committed as required u/s 212 Code of Criminal Procedure, 1973 and there is not an iota of material on record to suggest that there is a *prima facie* case against the petitioner entitling the court concerned to

frame a charge against him and on this ground alone, the present petition be allowed by this Hon'ble Court.

10. It has been submitted by the learned counsel for the petitioner that the appropriate authority under the Govt. of Arunachal Pradesh, has already accorded sanction both under section 197 of the Code of Criminal Procedure, 1973, and 19(10)(b) of the P.C. Act, 1988, for prosecution of the petitioner for the offence mentioned in the Sanction Order. The copy of the Sanction Order furnished to the petitioner, shows that the sanction was accorded in March, 2005, whereas the charge sheet was submitted on 24.10.2008 which goes to show that more than 3 years prior to the framing of the charge sheet by an organization like the CBI, the sanction was obtained. As the charge sheet was not finalised and filed before the said according of sanction, there was no chance for the sanctioning authority to see what might be there against the petitioner to constitute an offence punishable under the relevant sections of the appropriate statute and neither there were any supportive documents to suggest that the petitioner was ever a party or privy to anything done regarding the supply of items to the Department.

11. Learned counsel for the petitioner has submitted that it is a settled law that a sanction is not a mere formality as the sanctioning Authority also has the onerous duty to apply its mind to each and every piece of material that is needed to hold an opinion that the person concerned is liable to be prosecuted before a court of law. The sanction order, in this question, is barren of necessary particulars and therefore, no court is bound to act upon the same, however, the learned Court below did not find it necessary to look into the same when it took cognizance of the offence and hence, the framing of charge against the petitioner is not sustainable in revision, making the same liable to be cancelled by way of the present proceeding alone. 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.

12. It is to be reiterated that the petitioner was not associated with the decision making process in the office of the Chief Engineer and since he 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.

13. An affidavit-in-opposition has been filed by the respondent Central Bureau of Investigation(CBI) wherein it has been contended that the Charge sheet, in question, was filed on 24.10.2008 upon the allegation that Sh. Darshan Singh, the then Chief Engineer(Power), Itanagar, A.P., in conspiracy with M/s Horizon Hi-tech Engicon Private Limited, Kolkata showed undue favour to the firm in the award of contract relating to the supply, installation, testing and commissioning of 132 KV S/C Transmission line from Tenga to Jang and 132/33 KV Sub-Station at Jang. It was also alleged that though the original quotation of the said Firm was at the rate of Rs. 28,39,55,881/- but the amount was enhanced and contract was given to the party for a sum of Rs 39,54,21,000/- thereby causing a financial loss to the Government.

14. The respondent Central Bureau of Investigation(CBI) has raised objection upon the maintainability of the petition, 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 into the details of the evidence.

15. 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.

16. 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)***

(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.***

17. It is the categorical submission of the learned counsel for the respondent Central Bureau of Investigation(CBI) that during investigation, it was found that during the year 1994-96, the instant petitioner passed the bills for transmission lines from Tenga to Jang, which were prepared by S.N. Manoomder, Assistant Engineer(Electrical), Jang, who subsequently took volunteer retirement. It was also revealed during investigation that the ACSR conductors were required only at the last stage for execution and completion of the transmission lines, only after erecting and testing of the towers but the same were supplied initially. The petitioner being Supervisor of the transmission line work from Tenga to Jang, did not object to such unwanted supply and had intentionally passed the bills wrongfully and released the payments to the Firm, in order to obtain pecuniary gain, by abusing his official position. Therefore, there is sufficient ground for framing of charge against the petitioner and the learned Court below had rightly framed the charges against the instant petitioner after perusal of the relevant materials placed on record and with proper application of mind. It is also evident from the statement u/s. 161 of the Code of Criminal Procedure, 1973, of PW-17 Sri Pulak Deb, SSW(E), in the office of Chief Engineer(P), Itanagar, that there was no justification for supply of ACSR Conductors initially and were to be used as the last items for implementation of the contract. The said witness also stated that there was no justification for release of payments for such unused and junk items/Conductors. According to the said witness, the instant petitioner was responsible for passing the bills, abovementioned, thereby causing huge loss to the Government Exchequer and corresponding gain to the private Firm. Similar statement was also adduced by another PW-39 Sri Lipi Ete, SSW(Civil) in the office of the Chief Engineer(P), Itanagar.

18. During investigation, it was found that the petitioner, hereinbefore, was the person responsible for approval of payment to the Contractor and such an act of his, cannot be compared with the successors to his post. According to the respondent Central Bureau of Investigation(CBI), the charges against the petitioner has been slapped correctly as there is a clear-cut prima facie case against him. Thus, the petition preferred by him, before the Court, is not tenable in the eye of law and the same may be dismissed.

19. I have considered the rival submissions of the contesting parties and their argument is the repetition of the same as has been pleaded in the pleadings. The submission of the petitioner that he released the mobilization advance of Rs. 220 lakhs as per the official instruction only without having any criminal intent behind to as to infer complicity with the prime accused Sri Darshan Singh, Chief Engineer, perhaps cannot be accepted as because the petitioner at the relevant point of time, as has been pointed out by the learned standing counsel of respondent CBI that the petitioner was the person responsible for transmission of line from Tenga to Jang, at the relevant period and being an officer, he has to check all the relevant bills and status of the works, etc., but without verifying all the matters that the said ACSR conductors was not required at the relevant period but at the last stage of execution only and on completion of the transmission lines, only, he passed the bills without any objection which indicate that he knowingly did not object to such unwanted supply of conductors, in question, and wrongly passed the bills and released payment and caused undue favour to the contractor of the said transmission line, by casual approach, which indicates, otherwise. There is a statement of witnesses who have stated that there is no justification of supply of the conductors and no requirement of release of payment and those conductors which were supplied much earlier were unnecessarily kept for so many years and became unusable thereby causing huge pecuniary loss of the Government Exchequer and causing wrongful gain to the firm. All such conduct of the petitioner cannot be treated as simple as he has asserted that there is nothing illegal while complying with the direction of the superior authority. So the plea taken by the petitioner is not maintainable in view of the prima facie allegation so supported by the statement of the witnesses.

20. 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.

21. 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.*, 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 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 to discharge the accused petitioners as prayed for u/s. 227 of the Code of Criminal Procedure, 1973, and has framed the charges.

22. 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.

23. 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.

24. 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 guidelines 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.

25. 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.

26. 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.

27. The contention of the petitioner challenging the filing of the charge sheet cannot be a ground to resist the case as because obtaining of sanction prior to investigation is a condition precedent on the part of the investigating agency and how much time is required to complete and investigation cannot be attributed to the lacuna on the part of the prosecution. Situated thus, filing of Charge-Sheet at the point of delay is no good ground to defeat the case. Accordingly, I find no merit in such submissions.

28. In the instant case, 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.

29. 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.

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

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JUDGE