

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

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

CRIMINAL PETITION NO.19 AP OF 2012

Shri Iken Tao,
Son of Sri Kari Tao,
Presently resident of Likabali,
West Siang District,
Arunachal Pradesh.

..... Petitioner.

By Advocates:

For the petitioner: Mr. R. Saikia,
Mr. T. Zirdo,
Mr. M. Bagra,
Mr. K. Lollen,
Mr. L. Nochi,
Mr. C. D. Thongchi,

-VERSUS-

The State of Arunachal Pradesh,
represented by the Public prosecutor,
Arunachal Pradesh.

..... Respondent.

For the respondent:

Mr. K. Tado, Public Prosecutor,
Arunachal Pradesh.

:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : **10.01.2018.**

Date of Judgment : **10.01.2018.**

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Saikia, learned counsel appearing for the petitioner and Mr. K. Tado, learned Public Prosecutor, Arunachal Pradesh.

Perused the relevant records and the case law cited by the petitioners' side.

2. By this petition, filed under Section 482 CrPC, the petitioner has prayed for quashing the proceeding of GR Case No.141/2009, under Sections 387/506/34 IPC, pending in the Court of learned Judicial Magistrate, First Class, Capital Complex, Yupia (corresponding to Itanagar PS Case No.73/2009).

3. The contentions of the petitioner is that based on an FIR, dated 27.04.2009, Itanagar PS Case No.73/2009, under Sections 387/506/34 IPC was registered. The investigating officer, after completion of investigation, submitted the charge sheet No.58/2012, dated 02.04.2012, wherein the offence was alleged to have been committed by self styled Commander-in-Chief of a militant outfield called 'National Liberation Council of Tani Land' (for short, 'NLCT') at Itanagar, within the territorial jurisdiction of the Court of learned Chief Judicial Magistrate, Capital Complex, Yupia. In the aforesaid charge sheet, the petitioner has been arrayed as an accused alleging that the petitioner was once a member of the said NLCT and collected some amount of money at Likabali area of West Siang District of Arunachal Pradesh.

4. According to the petitioner, even if the entire *prima facie* allegations and materials collected during investigation are taken to be true in their face value, the same does not constitute and make out any case against the petitioner, inasmuch as, even if, for a moment the petitioner is assumed to be a member of NLCT, the same does not *ipso facto* make the petitioner liable for any criminal offence committed by any member and members of the organization, unless there is any material to show the involvement of the petitioner in the case and more so, the said NLCT is not a notified banned organization. The

petitioner has further contended that if admitted that he has collected some amount of money at Likabali area of West Siang District of Arunachal Pradesh, then also, the learned Judicial Magistrate, First Class, Capital Complex, Yupia has no territorial jurisdiction to take cognizance of the offences and try the case.

5. Mr. R. Saikia, learned counsel for the petitioner submits that there is no material, oral and documentary, to even connect the petitioner remotely with the alleged offences, under Sections 387/506/34 IPC, as charge sheeted whereupon, GR Case No.141/2009, has been initiated and there is no territorial jurisdiction of the Court at Capital Complex, Yupia to try the petitioner. According to Mr. Saikia, no reasonable man, properly instructed in law can *prima facie* come to a finding, on the basis of the materials available on the record that there are grounds for presuming that the petitioner has committed the aforesaid offences and be adequately punished. However, the learned trial Court failed to properly appreciate the legal possession as emerged on *prima facie* materials collected by police during investigation and taken cognizance of the same against the petitioner.

6. Mr. K. Tado, learned Public Prosecutor, Arunachal Pradesh submits that the petitioner has based his contentions on the *prima facie* evidence collected by the investigating officer during investigation and relevant laws thereto, which the learned Court below is yet to consider and arrive at a decision, as the case has not yet been taken up for hearing, on consideration of charges. Mr. Tado further submits that the accused petitioner has been charge-sheeted under Sections 387/506(b)/212/34 IPC read with Section 25 (1) (a) of the Arms Act along with 24(twenty four) others, which offences are being *prima facie* of very serious nature need to be considered in the context of evidence, oral and documentary, collected by the investigating officer of the case and as such, the matter needs to be remanded back to the learned Court below for consideration and in case, the petitioner is

aggrieved by the decision of the learned Court below, the petitioner may seek redressal of his grievances in the proper forum of law.

7. In ***Naresh Kavarchand Khatri Vs. State of Gujarat & Anr.***, reported in ***(2008) 8 SCC 300***, the Apex Court held as herein below quoted-

"8.... Whether an officer in charge of a police station has requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Sections 177, 178 and 181 of the Code of Criminal Procedure. In a case where trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the officer in charge of the police station concerned which has jurisdiction to investigate in relation thereto. Sub-section (4) of Section 181 of the Code of Criminal Procedure would also be relevant therefore. We need not dilate more on analyses of the aforementioned provisions as the said question has been gone into by this Court on more than one occasion."

8. Section 177 lays down the general rule as to the territorial jurisdiction for criminal enquiries and trial. The provision provides that the area within which the offence is committed is relevant to determine the territorial jurisdiction of the Court. The rule of Section 177 CrPC has to be read subject to the succeeding provisions provided in Sections 178 to 186 and 188 CrPC. The provisions of Sections 219 to 223 CrPC also provide exceptions to Section 177 CrPC. The Magistrate within whose jurisdiction the crime was allegedly committed, has the jurisdiction to try the offence, which rule is, of course, subjected to exceptions contained in the subsequent sections. It is pertinent to be mentioned that Section 462 CrPC says that no trial or other proceeding

shall be liable to be set aside for absence of local jurisdiction, unless it is clearly established that it has occasioned a failure of justice. Therefore, the objection regarding lack of territorial jurisdiction has to be taken at the initial stage of the proceeding, because a lack of territorial jurisdiction does not render the trial to nullity.

9. Apart from the above, at the stage of framing of the charges instituted on a police report, the Court must confine itself to documents referred to in Section 173 CrPC and all that is required at this stage is to see whether a *prima facie* case has been made out or not. At this stage, the Court cannot consider the case of the defense.

10. In the instant case, the petitioner has raised mixed questions of facts and laws which have not yet been agitated before the learned Court below. Therefore, the objections regarding lack of territorial jurisdiction and want of *prima facie* material to frame charges against the petitioner cannot be taken for the first time before this Court. It is further noticed that the other charge sheeted accused persons have not been impleaded in the instant petition so as to enable this Court to give them opportunity of being heard in the matter.

11. Consequently, the petition stands dismissed with direction to the petitioner to raise his grievances before the learned Court below.

Return the LCR along with a copy of this judgment and order.

JUDGE

Cha Gang