

GAHC040007552016



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

Case No. : Crl.Rev.P. 6/2016

1:SHRI TOMI DOKE
PERMANENT RESIDENT OF RAGI DOKE VILLAGE, PO. BASAR, P.S. TIRBIN,
DIST. WEST SIANG,A P

VERSUS

1:SHRI KIRDO LOYI
S/O SHRI GEKIR LOYI, PERMANENT RESIDENT OF KABU VILLAGE, PO/PS
AALO, DIST. WEST SIANG, AP

Advocate for the Petitioner : MsN Danggen

Advocate for the Respondent : MR.G Ngomdir

::BEFORE::

THE HON'BLE MR JUSTICE HITESH KUMAR SARMA

05.12.2019

JUDGMENT & ORDER (ORAL)

This is a Criminal Revision Petition under Section 401 of the Cr.P.C. seeking quashment of the orders dated 21.01.2016 and 12.02.2016 passed by the learned Chief Judicial Magistrate, West Siang District, Aalo in C.R. Case No. 01/2015.

- 2.** Heard Ms. N. Danggen, the learned counsel for the petitioner and Mr. J. Jini, learned counsel for the respondent.
- 3.** I have perused the petition and the annexures furnished therewith

including the copy of the orders impugned in this petition.

4. On perusal of the petition, it appears to this Court that quashment of the aforesaid 2 (two) orders has been sought for on the ground of illegality and incorrectness.

5. On perusal of the materials placed with the petition including the copy of the complaint, it appears that the complaint was filed against the petitioner alleging misappropriation of money earmarked for Schools under the SSA Rajya Mission Scheme. It has been alleged in the petition further that the funds earmarked for certain Schools were withdrawn from the State Bank of India amounting to Rs.**3,72,80, 040/- (Rupees Three Crores, Seventy Two Lakhs, Eighty Thousand and Forty)**. But, only Rs.86,000/- out of the said amount was disbursed. It has also been alleged that the remaining amount was misappropriated.

6. The complaint, being C.R. Case No. 01/2015, was taken up by the learned Chief Judicial Magistrate, West Siang District, Aalo. It was the duty of the said Court to resort to the provisions of Section 200 & 202 of the Cr.P.C. and to pass order after complying with the said provisions of law in respect of taking cognizance or otherwise.

7. On perusal of the impugned order dated 21.01.2016, it is found that the complainant was present in the Court on the day of filing of the complaint personally along with his learned counsel. In spite of that, the learned Court below did not record the statement of the complainant and has observed in the order as follows:-

“Without going into the depth of the allegation, I find prima-facie case of mis-utilization of public fund and thus, I take cognizance of the allegation made in this complaint.

In compliance of procedure laid down in Section 200 of the Cr.P.C. 1973 for proceeding of complaint case, the statement of the complaint and witnesses, if any is/ are to

be recorded on oath. Accordingly same shall be done on the next date which is fixed on 12.02.2016 at 1000 hrs”.

8. From the aforesaid paragraphs reproduced, it appears that the learned Court below had taken cognizance without satisfying itself about the existence of any ground to proceed. Admittedly, he did not record the statement of the complainant and other witnesses. On the other hand, although the cognizance was taken yet there is no mention as to for which offence cognizance was taken. But, in any case, the order is not legally valid as without compliance of Section 200 & 202 of the Cr.P.C., cognizance was taken and came to a finding that there was a prima-facie case for mis-utilisation of public fund. Such an order of taking cognizance in the aforesaid given circumstances is not permissible under the law. Without recording the statement of the complainant, on oath, cognizance of the complaint can be taken only when the complainant is a public servant. In the instant case, the complainant is not a public servant.

9. That apart, the other order, dated 12.02.2016, is also put to challenge in this petition. This order in respect of refusing the prayer of the accused petitioner to obtain prosecution sanction claiming that even if he had committed any offence, it is in discharge of his public duty.

10. This issue of requirement of sanction in this case against the petitioner is dependent on the materials that would come out on recording of the statement of the complainant and his witnesses under Sections 200 & 202 of the Cr.P.C. and in the subsequent stage of the proceeding. While the order dated 21.01.2016 taking cognizance does not have the legal backing the same needs to be set aside being illegal and improper. Consequently, the order dated 12.02.2016 also appears to have been passed on an erroneous view of the issue involved. On the other hand, since the order, dated 21.01.2016 is quashed, the order dated 12.02.2016 has automatically become redundant.

11. In view of the discussions, as indicated above, both the impugned orders, referred to above, are quashed and set aside. The learned Chief Judicial Magistrate, West Siang District, Aalo is directed to proceed from the stage of receipt of the complaint as per procedure laid down in the Cr.P.C. within a month from the date of receipt of the LCRs along with a copy of this Judgment.

Send down the LCR with a copy of this Judgment to the learned Chief Judicial Magistrate, West Siang District, Aalo.

This Criminal Revision Petition stands allowed accordingly.

JUDGE

Comparing Assistant