

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

**ITANAGAR BENCH**

**Criminal Petition 18(AP)2015**

**Sri Hari Pado Biswas**

S/o Late Ratan Biswas  
President of National Youth Project  
Arunachal Pradesh, Itanagar  
First Floor Taba Building  
Opposite Civil Secretariat  
E-Sector, Itanagar, Arunachal Pradesh.

*..... Petitioner*

**-Versus-**

1. The State of Arunachal Pradesh,  
Represented by the Chief Secretary  
Govt. of Arunachal Pradesh, Itanagar.
2. The Commissioner, Home,  
Govt. of Arunachal Pradesh, Itanagar.
3. Central Bureau of Investigation(CBI)  
A.C.B., Guwahati, Assam.
4. Sri N. Gogoi, IPS, the Head of Branch,  
A.C.B., Guwahati, Assam.

*..... Respondents*

For the petitioner : Mr. C.W. Mantaw  
Mr. H. Chada  
Mr. C. T. Manpoong

For the respondents : Mr. K. Tado, P.P., Arunachal Pradesh  
Ms. M. Kumari, CBI

**:::BEFORE:::**

**HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

Date of hearing : **12.10.2015**

Date of Judgment : **16.10.2015**

## **JUDGMENT & ORDER (CAV)**

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing and setting aside of the impugned investigation in respect of accused Sri Hari Pado Biswas, President of National Youth Project, Arunachal Pradesh, being conducted by the Central Bureau of Investigation(CBI), ACB, Guwahati Branch, in connection with RC 0172015A0005 dated 22.06.2015 u/ss. 13(2)/13(1)(d) of Prevention of Corruption Act, 1988, *read with* Sections 120B/420/467/468/471 IPC, alleging violation of mandatory provisions of Sections 5 and 6 of Delhi Special Police Establishment Act, 1946, whereby exercising the powers and jurisdiction of investigation by the CBI in the State of Arunachal Pradesh without approval of the State Government in respect of the petitioner's Society.

2. The brief facts of the case, is that the Central Bureau of Investigation (CBI), Guwahati, has *suo motu* registered a case bearing registration No. RC 0172015A0005 dated 22.06.2015 u/ss. 13(2)/13(1)(d) of Prevention of Corruption Act, 1988, *read with* Sections 120B/420/467/468/471 IPC, against five central government employees of Khadi and Village Industries Commission(KVIC, for short), H Sector, Itanagar, namely (1). Sri Amit Pura Chobin, (2). Sri Ajaz Asghar, the then Development Officer, KVIC, H-Sector, Itanagar, (3). Sri Dhanraj Lama, the then Assistant Development Officer, KVIC, H-Sector, Itanagar, (4) Sri Jitendra Prasad Singha, the then Superintendent, KVIC, H-Sector, Itanagar, and (5). Sri Jyothish Chandra Deka, the then Supervisor, KVIC, H-Sector, Itanagar. The petitioner, herein, has also been arrayed as accused No. 6 in the case allegedly for having preparing forged bills/cash memos in connivance with the aforesaid central government employees. As per the First Information Report(FIR) dated 22.06.2015 of the CBI, the involvement of the petitioner/NGO has been found subsequently. Though the respondent is not required to obtain prior approval/consent of the Central Government in order to register and investigate an offence against the employees of the Central Government, however, the CBI is required to obtain prior approval/consent of the State Government if it intends to exercise the powers and jurisdiction of their investigation in a State as mandated under Section 6 of the Delhi Special Police Establishment Act, 1946. The Central Bureau of Investigation(CBI) cannot assume the jurisdiction without the consent of the State

Government by bye-passing the mandatory provision of Section 6 of the said Act. In other words, according to the Learned counsel for the petitioner, the respondent CBI cannot *suo motu* enter into the State jurisdiction in a casual manner at its own free will. The said act of the CBI is highly illegal.

**3.** The petitioner while denying the entire allegations as made in the First Information Report(FIR) in question, has submitted that provisions of Section 13 of the Prevention of Corruption Act, 1988, does not attract to a non-public servant. It can be charged only against a public servant which is defined under Section 21 of the IPC. The petitioner being a non-public servant, cannot be charged under Section 13 of the said Prevention of Corruption Act, 1988. As such, according to the petitioner, the Anti-Corruption Court would also lack its jurisdiction in trying the offence at the event of the case being filed into charge sheet. It is the mandate of Section 4 of the said Act of 1988 that in order to try a case under the Prevention of Corruption Act, 1988, the accused has to be charged under the said Act. However, other substantive real penal sections could be tried provided the accused is charged under the provisions of the said Act of 1988.

**4.** The respondent Central Bureau of Investigation(CBI) has filed the counter affidavit. In the said counter affidavit, it has been stated that the instant case pertains to misappropriation of government funds allotted to KVIC under the Government of India's approved introduction of a new credit linked subsidy program called Prime Minister's Employment Generation Programme(PMEGP, for short), for generation of employment opportunities through establishments of micro enterprises in rural areas and urban areas. The said scheme is to be implemented by KVIC, a statutory organization under the administrative control of the Ministry of MSME as the single nodal agency at the national level and KVIC Directorates, State Khadi and Village Industries Boards(KVIBs) and District Industries Centres(DICs) and Banks, at the State level.

**5.** It is contended by the Central Bureau of Investigation(CBI) that the scheme implemented during the financial year 2011-14 through State KVIC, Directorates, Khadi and Village Industries, Itanagar, amounting to a sum of Rs. 51,73,823/- has been misappropriated by the KVIC officials in connivance with the instant petitioner. According to the respondent CBI, about 119 different activities and

programmes had been shown organized/conducted at different locations and the bills against such activities/programmes, were claimed and passed subsequently, although the cash memos submitted to claim the bills were fake and fabricated. Such misappropriation of the government funds were committed by the petitioner in connivance with 5(five) others, namely 1). Sri Amit Pura Chobin, (2). Sri Ajaz Asghar, the then Development Officer, KVIC, H-Sector, Itanagar, (3). Sri Dhanraj Lama, the then Assistant Development Officer, KVIC, H-Sector, Itanagar, (4) Sri Jitendra Prasad Sinha, the then Superintendent, KVIC, H-Sector, Itanagar, and (5). Sri Jyothish Chandra Deka, the then Supervisor, KVIC, H-Sector, Itanagar. The respondent Central Bureau of Investigation(CBI) in the counter affidavit has contended that the instant petitioner has been found involved in the said case for criminal conspiracy, cheating, forgery of valuable security using forged documents, as genuine and claimed the bills during the financial year 2011 to 2014. Accordingly, searches were conducted at various suspected locations and residence of accused petitioner on the strength of search warrant issued by the Court of Special Judge(PC Act), Yupia, and during search operation, certain incriminating documents found in the possession of the accused petitioner, were seized. The official corresponding documents pertaining to the content were also collected in original from the Office of the State Director, KVIC, Itanagar, and further scrutiny, analysis and obtaining of an expert opinion are in the process to corroborate and substantiate the allegations against the petitioner.

6. Regarding jurisdictional authority, the respondent Central Bureau of Investigation (CBI) has annexed the Notification dated 25.07.2013, issued by the State Government, which reads as under:

***"The Governor of Arunachal Pradesh is pleased to withdraw Notification No. VIG-23/87/526 dated 12<sup>th</sup> November, 2007, issued under the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946(25 of 1946).***

***Further, the Governor hereby accords general consent of Government of Arunachal Pradesh under Section 6 of the Delhi Special Police Establishment Act, 1946(25 of 1946 to conduct investigation/inquiry against Central Government/Public Sector Undertaking(PSU) Officers/Officials within the State of Arunachal Pradesh.***

***By order and in the name of the Governor of Arunachal Pradesh"***

***Annexure-'A' is the copy of the Notification No. PSV-20/2012-13 dated 25<sup>th</sup> July, 2013***

***Annexure-'B' is the copy of the Delhi Special Police Establishment Act, 1946."***

7. It is the further contention of the respondent Central Bureau of Investigation(CBI) that the instant case is pertaining to Central Government employees along with the present petitioner, a private person; and the investigation is being carried out to ascertain the siphoning off central government funds allocated under various centrally sponsored projects by the accused petitioner through his NGO at Itanagar, in criminal conspiracy with the accused government employees of KVIC which is a central government entity.

8. The petitioner filed an affidavit-in-reply to the objection filed by the respondents No. 3 and 4, denying all the allegations and has specifically stated that the petitioner is a registered NGO under the State of Arunachal Pradesh as per the Societies Registration Act bearing Reg. No. SR/ITA/5241. The Notification referred to by the respondent No. 3 and 4 issued by the Government of Arunachal Pradesh is not concerned with any other persons like the petitioner or even to the State Government employees. The petitioner who is an NGO registered with the Government of Arunachal Pradesh will not come within the purview of the said Notification and the respondent Central Bureau of Investigation(CBI) is not empowered to conduct investigation as against the petitioner. The CBI is required to obtain a fresh Notification from the State Government to conduct investigation in respect of the petitioner.

9. Thus, the main thrust of argument of the learned counsel for the petitioner Mr. Mantaw, is that the petitioner being a private person, will not be covered by the said Notification issued by the Government of Arunachal Pradesh and fresh Notification is to be published in respect of private persons like the instant petitioner. It is equally submitted that investigation so carried-out by the respondent Central Bureau of Investigation(CBI) has no sanction in law and is required to be set aside and quashed.

**10.** Per contra, vehement objection has been raised by the learned standing counsel for CBI Ms. Kumari. The submissions of the learned counsel for the petitioner cannot at all be maintained as the investigation is a part of law and order duty and he cannot debar the investigation of a criminal offence wherein the name of the petitioner has been arrayed as an accused No. 6 for alleged misappropriation of government fund in connivance with the public servant. Referring to Section 3 of the Delhi Special Police Establishment Act, 1946, it has been urged that the respondent Central Bureau of Investigation(CBI) is very much empowered to conduct investigation of the offences which are published in the official gazette and all those criminal offences has been mentioned in the official gazette which includes various offences of IPC like 420, 468, 469, 471, etc., etc., which covers almost majority of offences under IPC. Certain other offences under central Acts as mentioned in the list vide Annexure-1C can also be investigated by the CBI.

**11.** Referring to the Notification so issued by the Government of Arunachal Pradesh(which is not disputed by the other side), it has been submitted that the Notification dated 25.07.2013, the Government of Arunachal Pradesh has accord general consent under Section 6 of the Delhi Special Police Establishment Act, 1946, to conduct investigation/inquiry against Central Government employees, public sector undertaking officers, officials, within the State of Arunachal Pradesh, which is enough to embrace the present petitioner. In the First Information Report(FIR) itself, it has been alleged that the petitioner in connivance with the other public servants/accused persons, has forged documents as genuine ones and claimed bills on the basis of such forged documents.

**12.** The petitioner in the garb of Section 6 of the Delhi Special Police Establishment Act, 1946, cannot challenge the aforesaid Notification when the investigation is carried out under Section 120B/420/467/471 IPC read with section 13(2)/13(c) of the Prevention of Corruption Act, 1988. There is also an enabling provision in the said Act of 1988 itself that the same Court can try the offences of the Prevention of Corruption Act, 1988, as well as other offences of the IPC. Obviously, there is no bar to try such cases and the petitioner cannot be eschewed as has been challenged herein.

**13.** There appears sufficient force in the submissions of the learned counsel for the respondent Central Bureau of Investigation(CBI). On the other hand, the submissions of Learned counsel for the petitioner that Section 6 is to be *read with* Section 6(A) of the Prevention of Corruption Act, 1988, and the said Section 6(A) is turned down by the Hon'ble Apex Court, appears to have no bearing in the matter, at hand. The section 6(A) of the Prevention of Corruption Act, 1988, relates to different aspect whereas present case is challenged only for violation of Section 6 of the Said Act of 1988.

**14.** On the next, let us examine of the prayer of the petitioner to quash the investigation so carried-out by the respondent Central Bureau of Investigation(CBI).

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

**16.** In exercising jurisdiction under Section 482, the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. ***State of Bihar v. Murad Ali Khan (1989) Cr. LJ 1005; AIR 1989 SC 1.***

**17.** While exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable apprehension of it accusation would not be sustained. That is the function of the trial Judge/Court; ***State of Andhra Pradesh v. Gourishetty Mahesh, JT 2010 (6) SC 588: (2010) 6 SCALE 767:2010 Cr. Lj 3844'***.

**18.** Inherent jurisdiction under section 482 has to be exercised sparingly, carefully and with care and caution and only when such exercise is justified by the tests specifically laid down in the section itself; ***Monica Kumar v. State of Uttar Pradesh, (2008) 8 SCC 781.***

**19.** In the given case, none of the above parameters is applicable to the case of the petitioner. He has been fully implicated in the First Information Report(FIR) with an allegation and certain incriminating materials has also been recovered and



seized from his possession and the genuineness and authenticity of the allegations cannot be tested at this stage, which can only be tested at the stage of trial or can be resisted at the time of framing of charge.

**20.** In view of the legal proposition, as discussed above, the prayer of the petitioner cannot be allowed. The instant petition stands rejected.

**21.** There shall be, however, no order as to costs.

**JUDGE**

*Bikash*