

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MAGHALAYA,
MANIPUR, TRIPURAMIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH

CRL. REV. P. NO. 07 (AP) of 2009

Shri Tobing Borang,
Draughtsman,
O/o Deputy Director,
Department of Urban Development
& Housing, East Siang District,
Pasighat.

..... PETITIONER.

- Versus -

1. The State of Arunachal Pradesh
Represented by the Judicial Magistrate
Ist Class, Pasighat,
Arunachal Pradesh,

2. Shri Tapan Chandra Kar,
JE, PWD, Sub-Division Koyu,
District East Siang, Pasighat
Arunachal Pradesh,

..... RESPONDENTS.



BEFORE
THE HON'BLE MR JUSTICE A. C. UPADHYAY

Advocate for the petitioner : Mr. M. Pertin,

Advocate for the respondents : Mr. I. Basar,
Addl. P.P.,

Date of hearing &
delivery of judgment : 22.04.2010.

JUDGEMENT & ORDER (ORAL)

This revision is directed against the order passed on 07.07.2009 by the learned Judicial Magistrate Ist Class, Pasighat in P.S. Case No.02/09, in corresponding G.R. Case No. 02/09, under Sections 451/497 IPC, whereby the learned Magistrate discharged the accused purportedly in exercise of powers under section 239 of the Code of Criminal Procedure.

2. The facts, leading to the filing of the criminal revision, may be stated in brief, as follows: -

The petitioner lodged an Ejahar on 14.01.2009 stating therein that accused Shri Tapan Chandra Kar, JE, PWD, Pasighat, who was residing in an adjacent residential quarters, situated near Kalimandir, Pasighat, committed adultery/illicit sexual intercourse with his wife, namely, Smt. Minam Borang during his absence



from Pasighat. It was also stated in the Ejahar that accused Shri Tapan Chandra Kar confessed the commission of adultery/illicit sexual intercourse with the wife of the petitioner during the absence of the petitioner from Pasighat. The petitioner also stated in the Ejahar that his wife, Smt. Minam Borong, confessed before him that the accused Shri Tapan Chandra Kar took undue advantage of his physical incapacity.

3. On receipt of the Ejahar from the petitioner, a case was registered u/s 451/497 I.P.C. and an investigation was launched. On completion of the investigation, the Investigating Officer submitted charge sheet in the Court of Deputy Commissioner, East Siang District, Pasighat, against the accused Shri Tapan Chandra Kar, alleging commission of offence under Sections 451/497 IPC. Thereafter, the Deputy Commissioner, East Siang District, Pasighat transferred the case to the Court of learned Judicial Magistrate Ist Class, Pasighat for trial.

4. Section 239 of the Cr. P. C. empowers the Magistrate to discharge the accused, in the event the learned Magistrate considers the charge against the accused to be groundless. However in doing so the learned Magistrate has to record his reasons. In the instant case, in exercise of the power conferred by Section 239 of the Cr.P.C., the learned Magistrate discharged the accused of the offence u/s 451/497 I.P.C, alleged , by writing the following order:-

"O R D E R

7/7/09

Accused persons present in the court with bailor Shri Tamat Gamon, Pasighat today. Ld. P.P. Sri Iftekar Ahmed is also present. Heard the prosecution. Perused the case records. On perusal, it appears that both the alleged accused persons are fined by Kebang Authority of D.C.'s Office, Pasighat as per decision passed by



the Kebang on dated 23/6/09 for Rs.2500/- each and Rs.1500/- was imposed as fine on bailor. Further the Kebang authority opinioned that there was no commission or the offences by the accused persons.

In view of the above observation of Ld. Kebang authority and after careful examination of the case records, there is no materials to establish a charge under Section-451/497 IPC against the accused persons. Hence I hereby discharge the accd. Persons namely Shri Tapan Chandra Kar and Smt. Minam Borang(Gao) in pursuant to Section-239 of the Cr.P.C.

The bond and bail bond executed by the accused persons and bailor and Affidavit etc. are hereby discharged.

Seized articles if any in this case connection be disposed off with due process of law.

Pronounced in the open Court today under my signature and seal of the court.

Issue accordingly.

***Sd/- Mrs. N. Kumar
Judicial Magistrate First Class
Pasighat."***

5. Careful perusal of the conclusion recorded by the learned Court below, in the impugned order, discharging the



accused, reveals that no reason, whatsoever, has been recorded as to how the learned Court below has arrived at such findings. Section 239 of the Code specifically empowers the Magistrate to discharge the accused if in the opinion of the Magistrate the charges against the accused are groundless and he has to do so after recording reasons. The Lower Court record has been made available to this Court at the time of hearing of this petition. On perusal of the record and particularly the documents sent with it u/s 173 of the Cr. P. C., it appears that there is sufficient materials to frame charges against the accused person for commission of offences u/s 451/497 of the Indian Penal Code.

6. At the stage of framing charge, the prosecution evidence does not commence, therefore the Magistrate has to consider the framing of charge, on a general consideration of the materials placed before him by the investigating Police Officer. Therefore, at this stage the standard test of proof that is applied finally before recording a finding of guilt, or otherwise of the accused is not exactly to be applied. It is settled principle of law that at the stage of framing of charge, even a strong suspicion founded on materials would be enough to frame charge against the accused person

7. Mr. I. Basar learned Addl. Public Prosecutor pointed out that it is required to be ascertained whether there is bar under the Assam Frontier (Administration of Justice) Regulation 1945, in taking cognizance of the case against the accused, who was a non-tribal. Learned Addl. Public Prosecutor pointed out that in terms of the provision of Section 19 of the Assam Frontier (Administration of Justice) Regulation, 1945, the village authorities or a Kebang do not have jurisdiction to try the cases relating to adultery. The relevant provision of Section 19 of the Assam Frontier (Administration of Justice) Regulation, 1945,



which empowers a Village Authority/Kebang to try criminal cases may be reproduced below for the purpose of convenience :-

"19. The village authorities may try any case involving any of the under mentioned offences in which the person or persons accused is or are resident within their jurisdiction :-

Theft, including theft in a building,

Mischief, not being mischief by fire or any explosive substance,

Simple hurt,

Criminal trespass or house trespass,

Assault or using criminal force."

8. Apparently, in terms of Section 19 of the Assam Frontier (Administration of Justice) Regulation, 1945, as submitted by the learned counsel for the petitioner, the Village Authority/Kebang did not have any power to try and dispose of the cases relating to adultery. Besides, in terms of the above provision of Section 19 of the Act, the Village Authority /Kebang is an institution which can decide criminal offences relating to theft, including theft in a building, mischief, not being mischief by fire or any explosive substance, simple hurt, criminal trespass or house trespass, assault or using criminal force, if the person who is accused of such offence is a resident within the territorial jurisdiction of the Village Authority /Kebang. Therefore, it can be safely concluded that Village Authority /Kebang does not have jurisdiction to try and dispose of all those criminal offences not mentioned in Section 19 of the Assam Frontier (Administration of Justice) Regulation, 1945, irrespective of the Tribal status of the individual. In the instant case, in view of the restriction of



jurisdiction imposed by Section 19 of the Act, the Village Authority/Kebang could not have taken up, for trial, the offence of adultery allegedly committed by the accused. If such offence of Adultery was tried by the Kebang, it was beyond jurisdiction.

10. It has been alleged by the petitioner in the revision petition that after the discharge of the accused by the learned Judicial Magistrate, 1st Class the petitioner himself filed a complaint case in the same learned Court. However, the petitioner contended that the learned Judicial Magistrate, 1st Class, refused to entertain the complaint presented by the petitioner unless the order passed by the Court on 07.07.2009, discharging the accused under section 451/497 IPC, was set aside and quashed.

11. Learned counsel for the petitioner contended that the learned court below committed gross irregularity in discharging the accused person by holding that there is no materials on record to frame a charge under Sections 451/497 IPC.

12. On perusal of the impugned order aforesaid it clearly transpires that the learned Court below fully relied on the observations made by the Kebang authority while discharging the accused from the charge. On perusal of the decision of the Kebang in the instant case, it appears that the Kebang also did not refer or take up the offence of Adultery committed by the accused to impose any punishment. The Kebang did not hold accused guilty for offence under section 497/451 IPC, rather it imposed a fine upon the wife of the petitioner for having allowed the accused to sleep in her bed room. Therefore, the learned court below committed error in discharging the accused of criminal charges u/s 451/497 IPC, basing on the decision of a Kebang, while the Kebang did not to try the offence.

13. Now another question, which arises for consideration, is whether the learned Court below had the power to try a non-



cognizable offence (i.e. 497 IPC) investigated and charge sheeted by the police. It may be pointed out here at the cost of repetition that the investigating police officer submitted charge sheet under sections 451/497 IPC against the accused above named.

Obviously this is a case, which relates to two or more offences of which at least one is cognizable. In this context, Hon'ble Supreme Court in the **State of Orissa Vs. Sharat Chandra Sahu & Anr. : (1996) 6 SCC 435** held that while investigating a cognizable offence and presenting a charge-sheet for it, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and to include them in the charge-sheet, which reads as follows:

"9.....

It is provided in Section 155 as under:

"155. Information as to non-cognizable cases and investigation of such cases.—(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest



without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

10. Sub-section (4) of this section clearly provides that where the case relates to two offences of which one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offence or offences are non-cognizable.

11. Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising of cognizable and non-cognizable offences) is to be treated as cognizable, the police had no option but to investigate the whole of the case and to submit a charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.

12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the



leave of the Magistrate. The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in ⁴³⁹ sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable.

13. This Court in Pravin Chandra Mody v. State of A.P. (AIR 1965 SC 1185) has held that while investigating a cognizable offence and presenting a charge-sheet for it, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including them in the charge-sheet."

14. It is apparent from the decision of the Apex Court in **State of Orissa Vs. Sharat Chandra Sahu & Anr.(supra)** that if the fact reported to the police discloses both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences, as the legal fiction enacted in sub-section (4) of Section 155 of the Cr.P.C. provides that even a non-cognizable case shall, in that situation, be treated as cognizable.

15. I have carefully perused the materials on record and also the record of investigation made by the police in connection with this case. In fact, the allegations made by the complainant and the statement of the witness recorded in the case during investigation are taken into consideration, a strong prima facie



case is made out against the accused, Sri Tapan Chandra Kar under Section 451/497 IPC.

16. Accordingly, in view what has been discussed above, this Court is of considered opinion that the impugned order dated 07.07.2009 passed by the learned Judicial Magistrate 1st Class, Pasighat in G.R. Case No.02/2009, discharging accused Shri Tapan Kumar Kar is required to be set aside and quashed. Accordingly I do so. Consequently, the case is remanded back to the learned Judicial Magistrate 1st Class, Pasighat, for trial in accordance with law. However, it is made clear that complaint case filed in connection with the same subject matter by the petitioner against the accused, shall be taken up together with this case and treated as one case for the purpose of adjudication in accordance with law.

17. The learned Judicial Magistrate 1st Class, Pasighat is hereby directed to dispose of the pending case as expeditiously as possible preferably within a period of three months from the date of receipt of L.C.R. The Registry of this Court is directed to transmit the L.C.R. to the learned court below immediately.

18. With the above observations and directions, this revision petition stands disposed of.



JUDGE

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