

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

CRIMINAL PETITION No. 144 of 2018

Nabab Singh @ Nawab Singh
S/o- Late Cheddi Lal Singh
R/o- Tinsukia, Sector-3 of Bye-Lane No.1,
Chaliha Nagar, P.O. & District- Tinsukia,
Assam, PIN-786125.

Permanent Address:

House No. 52, Jaswant State Colony,
Deori Road, Akhra, Post Office-Taj Gang,
Police Station-Taj Gang, District- Agra, Dist-
Utter Pradesh, PIN 282001.

...PETITIONER

-Versus-

- 1.** The State of Arunachal Pradesh
Represented by the P.P. (A.P.)
- 2.** The Officer-In-Charge of Tezu Police
Station, at Tezu, District-Lohit (A.P), PIN-
792001

...RESPONDENTS

BY ADVOCATES:

For the petitioner : Shri N K Murry

For THE respondents : Shri J. Tsering

- B E F O R E -
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing and Judgment : **04.11.2019.**

JUDGMENT & ORDER (ORAL)

04.11.2018

Heard Shri N K Murry, learned counsel for the petitioner. Also heard J. Tsering, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. The power conferred by Section 482 of the Cr.P.C. 1973 *read with* Article 226/227 of the Constitution of India is sought to be invoked while challenging a Charge-Sheet No. 16/2015 under Section 473 IPC, dated 23.02.2015, arising out of Tezu P.S. Case No. 46/2013 under Section 473 IPC, dated 19.06.2013, pending before the Court of learned J.M.F.C-cum-EAC, Judicial, Tezu in the District of Lohit, Arunachal Pradesh.

3. The petitioner who is the constable in the Arunachal Pradesh Police is aggrieved by the culmination of the investigation into the impugned Charge-Sheet. Initially, on 12.06.2013, an FIR was lodged by the Government Quarter Allotment Officer of the Lohit District before the Superintendent of Police, Lohit District alleging *inter alia* that during the eviction process 15 numbers of counterfeit official seals/stamps of various officials and department and certain other material were found in the quarter of the petitioner which were seized by a competent police personnel by preparing seizure memo in presence of the witnesses. Based upon the same, Tezu P.S Case No. 46/13 under Section 473 IPC was registered and the investigation had started.

4. In the said investigation, statements of various witnesses were recorded and materials were collected leading to filing of Final Form in the shape of Charge-Sheet.

5. The Investigating Officer in the said Charge-Sheet had come to a finding that there were sufficient materials collected during the investigation which *prima facie* made out an offence under Section 473 of the IPC against the petitioner.

6. It is this action of the investigating authority and the contemplating proceeding which are put to challenge in the present petition.

7. Shri Murry, learned counsel for the petitioner has urged that the FIR itself was lodged after considerable delay which raises grave doubt on the authenticity of the investigation. Secondly, it is submitted that the procedure of search, as contemplated under Section 100 of the Cr.P.C. has not been followed and it was done admittedly in the absence of the petitioner for which grave prejudice has been caused to him.

8. Since the petitioner himself was admittedly absent, nobody was there to watch whether the safeguards were afforded and the procedure prescribed for making such search and seizure was followed.

9. The learned counsel further goes to the extent that in absence of independent witnesses, whether the scope of planting those incriminating material inside the quarter is fully ruled out as the personnel who has got inside the premises were not subjected to a search.

10. It is submitted that statements of only interested witnesses were recorded under Section 161 of the Cr.P.C. and not a single independent witness was examined. The learned counsel accordingly submits that the entire process of submitting the Charge-Sheet is mechanical one and without any application of mind.

11. Shri Murry, learned counsel apprehends that the conviction would be based on the statements made under Section 161 of the Cr.P.C. Such apprehension, in the opinion of this Court are absolutely unwarranted as it is an established principle of law that of statements under Section 161 of the Cr.P.C. do not have any evidentiary value and can only be used by the defence to confront a prosecution witness.

12. In support of his submission, the learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court reported in *(1996) 11 SCC 685 (Sahib Singh Vs State of Punjab)* wherein the requirements of following ingredients of Section 100 of the Cr.P.C. has been elaborately stated.

13. On the other hand, Shri J. Tsering, learned Additional Public Prosecutor representing the State respondents submits that the petition itself has been filed at a pre matured stage as the grounds taken in this petition may be valid grounds of defence in the contemplated trial. It further submits that the materials on the basis of which Final Form is prepared are of tentative nature and unless the same are proved beyond all reasonable doubts in the appropriate Court of law, no order of conviction can be passed against the accused petitioner. The submission regarding non compliance with the mandatory provisions regarding search and seizure are grounds which can be taken at the time of the trial and that stage has not arrived yet. The learned Additional Public Prosecutor submits that the present is not a fit case in interference by this Court.

14. Rejoining his submissions, Shri Murry, learned counsel submits that having look at the materials collected during the investigation, the chances of conviction is absolutely sparse and therefore, the ensuing process of a trial would be futile in which harassment to the petitioner would be caused.

15. The powers under Section 482 Cr.P.C are to be sparingly exercised and only in case of extraordinary circumstances, such powers may be invoked by this Court. Though the Constitutional Provisions of Article 226/227 has also been sought to be invoked, this Court is of serious doubt whether in one petition, powers under the Cr.P.C. as well as those under the Constitution of India can be invoked.

16. In any case, the powers under Article 226 of the Constitution of India are extraordinary powers and not to be exercised in a routine manner. In fact, writs under Article 226 of the Constitution of India are

prerogative writs and unless an exceptional circumstances are made out, such writs are not liable to be issued.

17. Be that as it may, after hearing the parties and on perusal of the materials on record that the grounds for filing this petition this Court is of the opinion that the grounds may very well be taken by the petitioner in the trial. Therefore, without expressing any opinion on the merits of the ground as it may cause prejudice in the defence of the petitioner, the instant petition is disposed of holding that the present is not a fit case for interference in exercise of powers under section 482 of the Cr.P.C. At this stage, one may gainfully refer to the case of *State of Haryana Vs. Bhajan Lal*, reported in *1992 Supp (1) SCC*, wherein, the following exceptional circumstances have been laid down for invocation of powers –

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report 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 and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the 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 only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 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 ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. This Court is of the view that none of the aforesaid exceptional circumstances have been able to be made out by the petitioner making out a case for interference by this Court.

19. In that view of the matter, the instant petition is dismissed.

20. At this stage, the learned counsel submits that the matter is pending since a very long time and the pendency of itself is a cause of harassment to the petitioner.

21. In view of the same, it is provided that the trial may be concluded in an expeditious manner and preferably within a period of 8(eight) months from today.

JUDGE

Meena