

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

**ITANAGAR BENCH**

**CRIMINAL REVISION PETITION NO.08 (AP) OF 2011.**

Sri Lipe Ete,  
Son of Late Maril Ete,  
Resident of Gumin Nagar,  
Aalo, Dist. West Siang,  
Arunachal Pradesh.

**... PETITIONER**

-Versus-

Sri Lomkar Ete,  
Son of Late Mellom Ete,  
Resident of Pobdi Village,  
West Siang District,  
Arunachal Pradesh.

**... RESPONDENT**

**P R E S E N T**

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

For the petitioner	:	Mr. S. Shyam, Mr. A. Borah, Mr. A. Dhar, Mr. R..B. Deka, Mr. K.K. Das, Mr. Domo Padu, Advocates.
For the Respondent	:	Mr. H. Tangu, Mr. R. Millo, Mr.L. Tashi, Mr. G. Lollen, Advocates
Date of hearing and Judgment & order	:	<b>15.11.2011.</b>

**JUDGMENT AND ORDER (ORAL)**

This revision petition under Section 482 CrPC is directed against the judgment and order dated 02.05.2011 passed in Criminal Revision No.08/2011 (YPA) by the learned District & Sessions Judge, West Sessions Division, Yupia, Arunachal Pradesh, whereby the order dated 9.2.2011 passed by the learned Judicial Magistrate, First Class, Naharlagun in C.R. No.28/2010 was set aside and quashed.

2. I have heard Mr. S. Shyam, learned counsel appearing for the petitioner and Mr. H. Tangu, learned counsel appearing for the sole respondent.

3. The brief fact of the case is that the petitioner as complainant filed a complaint case against the respondent in the Court of Judicial Magistrate, 1<sup>st</sup> Class, Itanagar Capital Complex, Naharlagun alleging commission of offence under Section 499/500 of the Indian Penal Code, for circulating letters containing false and fabricated allegations with certain baseless, defamatory and scandalous materials against the petitioner.

4. The learned trial Court, registered the complaint, examined the complainant and his two witnesses and accordingly, issued process for appearance of the respondent-accused. On 9.2.2011, the respondent filed an application for dispensation of personal

appearance of the respondent and on being allowed by the learned trial Court, the accused-respondent appeared before the learned Court below through his counsel. Accordingly, the learned J.M.F.C. on 9.2.2011 explained the substance of accusation to the accused-respondent through his counsel, who was authorized for the purpose. When the learned trial Court explained the substance of accusation in terms of the complaint made by the petitioner, the learned counsel appearing for and on behalf of the accused, pleaded not guilty and claimed to be tried. Consequently, next date was fixed for personal appearance of the accused and recording evidence of the witnesses of the parties. Against the said order dated 9.2.2011, the respondent accused preferred criminal revision before the learned Sessions Judge, Yupia praying for discharge from the case.

5. Learned Sessions Judge, upon hearing the learned counsel for the parties, quashed and set aside the order dated 9.2.2011 passed by the Judicial Magistrate, 1<sup>st</sup> Class, Naharlagun in C.R. Case No.28/2010. The operative portion of the order passed by the learned Sessions Judge reads as follows :-

***"....I am of the view that the learned magistrate had done wrong by not recording any reason or materials fact while charging the accused, and also by not recording the submission made by the learned counsel for the accused/revision petitioner, as required under the law. I am also of the view that there is no cause of action or premature to charge the accused/revision petitioner to book under section 500 of IPC for***

***trial, in view of the fact that the allegation alleged to have been labeled against the respondent/complainant is yet to be disposed of by His Excellency. Therefore, I am of the view that the impugned order passed by the learned magistrate is bad in law as well as in fact, which is liable to be quashed and set aside.***

***In the result the objection raised by the respondent is rejected, and the revision petition succeeds. Accordingly, the impugned order dated 09.02.2011 passed by the learned Judicial Magistrate, First Class, Naharlagun in C.R. No.28/2010 is hereby quashed and set aside. The revision petition is allowed and disposed of. No order as to the cost."***

6. Learned counsel for the petitioner submitted that the impugned order passed by the learned Sessions Judge, exonerating and discharging the respondent accused from the complaint case in exercise of jurisdiction under Section 397 of the Code of Criminal Procedure, 1973 is illegal and without jurisdiction and hence, it is liable to be set aside.

7. Learned counsel for the petitioner pointed out that the impugned order had virtually quashed the complaint case mainly on the ground that the allegation made against the respondent accused is yet to be disposed of by His Excellency, the Governor of the State of Arunachal Pradesh.

8. Mr. S. Shyam, learned counsel for the petitioner submitted that the complaint case filed against the accused respondent, alleging commission of offence under Section 499/500 I.P.C. could not have been quashed by the learned Sessions Judge, in the exercise of his power under Section 497 CrPC, since the law did not prohibit the complainant from lodging a complaint, only because of the reason that some representation has been filed by the accused before His Excellency, the Governor of the State of Arunachal Pradesh relating to the matter in issue.

9. However, Mr. H. Tangu, learned counsel for the respondent accused submitted that since the representation before the Governor of the State was pending in the matter in issue, the complaint filed by the petitioner was pre-mature. However, the learned counsel for the accused respondent could not show any provision of law prohibiting the complainant petitioner from lodging a criminal complaint under Section 499/500 I.P.C. against the accused in a judicial forum, for making defamatory remarks, only because of the reason that some representation and/or application has been filed by the accused, before the Governor of the State. Learned counsel for the petitioner submitted that the facts mentioned in the alleged defamatory letters are based on truth, therefore, the impugned order passed by the learned Sessions Judge does not call for interference by this Court.

10. On perusal of the Impugned order passed by the learned Sessions Judge, it appears that the learned Sessions Judge discussed the powers and ambit of the Sessions Court, in exercising his power

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under Section 397 (2) CrPC and held that the order taking cognizance of offence under Section 499/500 I.P.C. in terms of the complaint filed, by the Judicial Magistrate, 1<sup>st</sup> Class, being not an interlocutory order is amenable to the jurisdiction of the Sessions Court and accordingly, quashed the proceeding by emphasizing on the fact of pendency of the representation/application filed by the accused-respondent before the Governor of the State. Learned Sessions Judge neither did discuss as to whether ingredients of offence under Section 499/500 IPC is available against the accused nor pointed out any prohibition under the law. It may not be lost sight of that Section 199(6) of the Code of Criminal Procedure, 1973 relating to prosecution for defamation clearly spells out that nothing in this Section shall effect the right of the person against whom the offence of defamation is alleged to have committed, to make a complaint in respect of the offence before the Magistrate having jurisdiction or power to take cognizance of the offence upon such complaint.

11. In view of the above discussion, I am of the considered view that the decision of the learned Sessions Judge to discharge the accused and thus, quash the proceeding pending before the Court of J.M.F.C. Naharlagun on the ground that a representation in respect of the allegation in complaint case is yet to be disposed of by His Excellency, the Governor of the State of Arunachal Pradesh, is not tenable in law.

12. Accordingly, the impugned order dated 2.5.2011 passed by the learned Sessions Judge, West Session Division, Yupia is hereby set

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aside and the complaint case in C.R. No.28/2010 is directed to be remitted back to the Court of the learned Judicial Magistrate, 1<sup>st</sup> Class, Naharlagun for trial in accordance with law.

13. In the facts and circumstances of the case, I do not propose to discuss other issues raised by the learned counsel for the parties in this case.

14. With the above observation and direction, this revision petition stands disposed of. Send back the lower Court records immediately with a copy of this order.

15. In order to avoid delay in disposal of the criminal proceeding pending before the trial Court, both the parties are directed to appear in the Court of the learned Judicial Magistrate, 1<sup>st</sup> Class, Naharlagun on **19<sup>th</sup> December, 2011.**

**JUDGE**

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