

**IN THE GAUHATI HIGH COURT**  
 (THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &  
 ARUNACHAL PRADESH)  
**ITANAGAR BENCH.**

**Criminal Petition No. 04 (AP) 2013**

1. **Inspector, Mohan Kaye,**  
SIC (Vig.) (U/S)  
S/o Shri Rajbongshi Yaken Kaye,  
Age about 55 years,  
PHQ, Itanagar.  
Arunachal Pradesh.
  2. **Constable, Shri Virendra Kumar, (U/S)**  
1<sup>st</sup> APP Bn. BHQ, Chimpu,  
S/o. Late Deepa Ram,  
Aged about 40 years,  
Arunachal Pradesh.
- (Common cause)

.....**Petitioners.**

**By Advocates:**  
**Mr. C.W. Mantaw.**  
**Mr. H. Lampu,**  
**Mr. H. Chada,**  
**Mr. CT Manpong,**  
**Mr. CN Pangyok.**

**-Versus-**

1. **State of Arunachal Pradesh to be Represented  
by Inspector General of Police,**  
Crime Branch, (SIT),  
PHQ, Itanagar,  
Arunachal Pradesh.
2. **Officer-in-Charge,**  
Crime Branch (SIT),  
PHQ, Itanagar,  
Arunachal Pradesh.
3. **The CBI, represented through Standing Counsel,  
Mr. M. Pertin.**

.....**Respondents.**

**By Advocate:**  
**Mr. K. Tado, P.P.**

**BEFORE**  
**THE HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH**

Date of hearing : 16-12-2013

Date of Judgment & Order : 20-12-2013

**JUDGMENT & ORDER (CAV)**

The petitioners, herein, have been arrayed as accused in a case registered as Bhalukpong P.S. Case No. 17/2012 under Sections 365/109/182/193/203/120(B) read with 34 IPC.

**2].** By filing this application under Section 482 Cr.P.C. they have sought for quashing the investigation of the aforesaid case. The petitioner No. 1, is an Inspector, SIC (Vig.) at Itanagar and petitioner No.2 is a Constable working under 1<sup>st</sup> Bn. BHQ, Chimpu at Itanagar.

**3].** On 16.10.2012, the petitioner No.1 lodged a missing report with the Officer-in-Charge of Bhalukpong Police Station in which he stated that Shri M.S. Chauhan, IPS, Superintendent of Police (SIC) (Vig.) while proceeding towards Tawang along with petitioner Nos. 1 and 2 is missing from a place called Tipi. Again on 17.10.2012, the petitioner No.1 lodged a written ejahar in continuation of the earlier missing report wherein he stated that the Superintendent of Police, Mr. Chauhan could not be traced out even after lapse of 18/19 hours. He informed in the ejahar that Superintendent of Police, Mr. Chauhan was head of the team of SIC under whose guidance the multi-crore PDS scam case and many other high profiles sensitive cases were under investigation and as such the probability of his abduction for any reason could not be ruled out.

**4].** On receipt of this complaint/ejahaar, Bhalukpong P.S. Case No. 17/2012 under Section 365/34 IPC was registered. During the investigation, Sections 109/182/203/120(B) read with 34 IPC were added. The case was transferred from Bhalukpong Police Station to Crime Branch PS(SIT), Itanagar.

**5].** During investigation, the petitioners were taken into custody of the Crime Branch. They were interrogated and on 19-10-2012 they were produced before the Judicial Magistrate, First Class, Itanagar and their statements were recorded under Section 164 Cr.P.C. They, during their investigation as well as in their statements recorded under Section 164 Cr.P.C., disclosed that on 16-10-2012, Shri M.S. Chauhan made a conspiracy with them for staging a abduction drama of Shri M.S. Chauhan from Tipi under Bhalukpong Police Station and consequent thereof the said conspiracy, the petitioners dropped M.S. Chauhan at Tezpur in his official vehicle and they came to Bhalukpong.

**6].** As a part of conspiracy, the petitioner No.1 lodged an FIR at Bhalukpong P.S. regarding the probable abduction of Mr. Chauhan prior to that he had also submitted a missing report of M. S. Chauhan. The truth of the statement of the accused persons under Section 164 Cr.P.C. was also confirmed from the mobile phone record ('CDR' in short) of the accused persons as well as M.S. Chauhan. It was also pointed out that the location of Mr. M.S. Chauhan at his New Delhi residence on 21-10-2012 also ascertained, which was again confirmed by Mr. A.S. Chauhan, younger brother of M.S. Chauhan.

**7].** The contention of the petitioners is that even if the petitioners are found to be guilty for giving false information to the police regarding missing and disappearance of M.S. Chauhan from Tipi, they may be guilty under Section 182 IPC and not for abduction under Section 365 IPC or under any other section of Indian Penal Code as the ingredient of Section 365 is missing in this case. The investigation conducted by the police for offence under Section 165/120(B)/203 IPC with help of 365 or any other cognizable offence not tenable. So far as the offence under Section 182 IPC is concerned, it is not a cognizable offence and therefore, the police could not have launched the investigation against the petitioners without an order of a Magistrate.

**8].** The respondents, in their affidavit-in-opposition, have averred that the petitioner No.1 himself lodged the FIR incorporating the ingredient of abduction of M.S. Chauhan and therefore the case was

registered under Section 365 read with Section 34 IPC, although, during the initial investigation, it was found that there was conspiracy to stage drama of abduction of Mr. Chauhan but it was not confirmed and at that juncture, the involvement of the petitioner Nos. 1 and 2 was not ruled out. Basing on their statements, Sections 109/120(B)/193/203 IPC were added. Therefore, the question of investigation of non-cognizable offence by police does not arise and the investigation continued within the purview of law. Moreover, during the investigation, the petitioner No.1 was also found involved in a case under Prevention of Corruption Act. As the investigation by the police reveals commission of illegality by the petitioner No.1, which attracts provisions of the Prevention of Corruption Act, the Government has decided to handover the case to CBI.

**9].** As per the provisions of Sections 154 and 156 of the Code of Criminal Procedure, 1908, the police have statutory powers to investigate into the circumstances of an alleged cognizable offence without authority from a Magistrate. These powers have been restricted by Section 155 of the Code of Criminal Procedure, which reads 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].** Therefore, the police is not at all debar from conducting an investigation in relation to a non-cognizable offence provided that a Competent Magistrate passes an order for investigation to that effect.

**11].** Sub-clause (4) of Section 155 Cr.P.C. provides that when a case relates to two or more offences of which at least one is cognizable case shall be deemed to be cognizable case so that no permission of Magistrate for investigation of the non-cognizable offence will be necessary in such cases.

**12].** Section 156 Cr.P.C. reads as under:-

*“Police Officer’s power to investigate cognizable case---*

*(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*

*(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*

*(3) Any Magistrate empowered under Section 190 may order such an investigation as above/mentioned.”*

**13].** It is apparent from sub-clause (2) of Section 156 that there may be an investigation taking the matter to be a cognizable offence although ultimately charges of non-cognizable offences are laid. Therefore, while investigating a cognizable offence, the police are not debarred from investigating any non-cognizable offence arising out of the same FIR.

**14].** Section 190 Cr.P. C makes it more clear and therefore, report of a police officer under Section 173 Cr.P.C. after investigation to the

effect that investigation took place of a cognizable as well as non cognizable offences and ultimately charges of one non-cognizable offence have been found, a Magistrate may take cognizance of the offence and treat the report as a complaint.

**15].** Therefore, when a Magistrate takes cognizance of any offence whether cognizable or non-cognizable on police report setting out of the fact constituting an offence, he takes cognizance under Section 190 of the Code of Criminal Procedure and the case become once instituted in the Magistrate's Court on a police report.

**16].** Petitioners, herein, had tried to blow both hot and cold simultaneously. In para 9 of their petition, they have alleged that they under threat and mental imbalance had to made their statements before the Judicial Magistrate, First Class, Itanagar as per the direction of the SIT team. They did never commit any offence as alleged against them in the case nor have they abducted M.S. Chauhan. They, at the same time, have alleged that it is a case under Section 182 IPC, which is non-cognizable as there was no abduction under Section 365 IPC. In the FIR lodged by one of the petitioners, there is clear averment which attracts Section 365 IPC.

**17].** Learned counsel for the petitioners has cited the case of **State of West Bengal Vs. Swapan Kumar Guha: Sanchaita Investments, 1982 AIR(SC) 949**, wherein the FIR was quashed on the ground that the First Information Report does not disclose any offence at all. In the cited case, the proceeding was against the firm and its partner and the FIR and other material did not disclose any offence under any Act and therefore, it was held that the proceeding was liable to be quashed.

**18].** The fact and circumstances of the cited case is entirely different to the present case. Herein, the FIR discloses commission of a cognizable offence and when offence is disclosed in the FIR, an investigation into the offence must necessarily follow in the interest of justice.

**19].** In view of the above and considering the material in the case diary, this Court finds that it is not a fit case to exercise inheritance powers when there is no reason to believe that the process of law is misused. Therefore, this Criminal Petition is devoid of merit and accordingly, it is dismissed.

**20].** Return the case diary along with a copy of this judgment and order.

**JUDGE**

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