

(2020) 05 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Petition No. 470 Of 2019

Bidhan Saikia

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 14-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 409, 420
Prevention Of Corruption Act, 1988 — Section 7, 8, 9, 11, 12, 13, 13(1), 13(1)(c),
13(1)(c)d), 13(1)(d), 13(2), 26, 30(2)
General Clauses Act, 1897 — Section 3, 6, 6(b)
Constitution Of India, 1950 — Article 20, 227

Citation : (2020) 05 GAU CK 0011

Hon'ble Judges : Ajit Borthakur, J

Bench : Single Bench

Advocate : R Chakravorty

Final Decision : Disposed Off

Judgement

1. Heard Mr. R. Chakraborty, learned counsel for the petitioner and Mr. D. Das, learned Addl. Public Prosecutor appearing for the State respondent Nos. 1 and 2.

2. This petition, under Section 482 Cr.P.C., is filed seeking setting aside/quashing of the order, dated 11.12.2018, passed by the learned Special Judge, Assam, Guwahati in Special Case No.06/2018 framing charges under Sections 120B/420 of the IPC read with Section 13(1) (d)/13(2) of the Prevention of Corruption Act, 1988 (for short 'P.C.Act') and Section 409 of the IPC read with Section 13(1) (c)/13(2) of the PC Act.

3. The petitioner's contention is that one Indrajit Chakraborty, Inspector of Police, C.M's Special Vigilance Cell, Assam lodged an FIR, on 03.03.2016, with the Officer-in-Charge of the said Vigilance Cell alleging, inter-alia, that in course of enquiry in connection with SVC RE No.06/2007, it was revealed that one Rashid Ahmed Chowdhury, the then Chairman, Guwahati Wholesale Consumers

Co-operative Society Ltd. ('G.W.C.C.S. Ltd' for short) in collusion with his subordinate officials, namely, (1) Bidhan Saikia, the then Executive Officer (the petitioner herein), (2) Rajdeep Nath, the then Executive Officer (the petitioner in Criminal Petition No.346/2019) and 3. Uttam Deka, the then Superintendent, GWCCS Ltd. misusing their official position misappropriated an amount of Rs.12,36,500/- during the period 2005-07 out of the fund of the GWCCS Ltd. Thus, they committed offences of criminal conspiracy, criminal breach of trust and criminal mis-conduct in discharge of their official duty.

4. Based on the above FIR, SVC P.S. Case No.01/2016 under Sections 120B/409/420 of the IPC read with Section 13(1)(c)(d)/13 (2) of the P.C.Act, 1988 was registered and after completion of investigation, the charge-sheet was laid on 05.02.2018 under the provisions of law aforementioned against the petitioner and 2(two) others, one of whom namely, Rashid Ahmed Chowdhury was shown expired on 04.08.2015. The said case was registered as Special Case No.06/2018 in the Court of learned Special Judge, Assam. Upon examination of the case diary and hearing of both sides, the learned Special Judge, Assam by the impugned order, dated 11.12.2018, framed charges under Sections 120B/420//409 of the IPC read with Section 13(1)(c)/13(1)(d)/13(2) of the P.C. Act against the petitioner and another, namely, Rajdeep Nath @ Rajdip Nath (the petitioner in Criminal Petition No.346/2019).

5. Mr. R Chakraborty, learned counsel for the petitioner, submitted, inter-alia, that the petitioner, who was Senior Inspector of Co-operative Societies was deputed to the GWCCS w.e.f. 08.03.2005 to 10.07.2007 and during his tenure, he was not involved in the commission of the alleged offences, directly or indirectly, but he has been made scape goat of the financial irregularities committed by the co-accused persons aforementioned as he had duly reported those irregularities to the Registrar of Co-operative Societies, Assam and he, as the Executive Officer, discharged his duties as per instructions of the Chairman, who was also the Chairman of the Board of Directors ('BOD ' for short). Besides drawing attention to the disputed facts of the case, Mr. Chakraborty further submitted that Section 13 of the P.C., Act, 2018 has been amended/ substituted w.e.f. 26.07.2018 and accordingly, in terms of Section 6 of the General Clauses Act, 1897 the substituted provision of Section 13 of the Act is apparently an indication of completely doing away with the old provision and as such, on the date of framing of the aforementioned charges under the PC Act on 11.12.2018, had no legal force. Mr. Chakraborty submitted that the learned trial court has failed to take note of the fact that the petitioner had no relation to the payment made to one Nil Narzary, who was not known to him, but to co-accused Rajdeep Nath. Mr. Chakraborty relied on the ratio of the judgment rendered by the Hon'ble Supreme Court in Union of India-vs- Sukumar Pyne, reported in AIR 1966 SC 1206.

6. Mr. D. Das, learned Addl. Public Prosecutor appearing for the State respondents, submitted that in the instant case, the Investigating Officer, on

completion of investigation into the F.I.R., dated 03.03.2016, laid the charge-sheet on 05.02.2018 against the petitioner and another, namely Rajdeep Nath (petitioner in Crl. Pet. No. 346/2019). Mr. Das submitted that the allegation of corruption, as noted in the charge-sheet, related to his tenure as Senior Inspector of Co-operative Societies deputed as Executive Officer to the GWCCS w.e.f. 08.03.2005 to 10.07.2007. Mr. Das further submitted that the new prospective amended provisions in Section 13 of the P.C. Act came into force w.e.f. 26.07.2018, that is, during the intervening period of filing the charge-sheet on 05.02.2018 and framing of charges on 11.12.2018 and therefore, the old provisions of the P.C. Act are applicable to the alleged misconduct of the petitioner, who is a public servant. Mr. Das emphatically submitted that the repeal of Section 13 of the P.C. Act does not affect the previous operation of the said Act so far it relates to the misconduct of the petitioner committed earlier to the amendment of the provisions as per Section 6(b) of the General Clauses Act, 1897. According to Mr. Das, learned Addl. Public Prosecutor, the learned Special Judge, Assam appointed under Section 3 of the Act is competent to exercise jurisdiction over the alleged misconduct of the petitioner in view of Section 30(2) read with Section 26 of the Act, 1988 and as such, the interference in the impugned order may not be warranted.

7. I have considered the above arguments advanced by the learned counsels of both sides and perused records.

8. A perusal of the impugned order, dated 11.12.2018, shows that the learned trial Court, on hearing the learned counsel of both sides and perusal of the material on the case diary and further, the documents relied on by the prosecution, having found sufficient prima facie ground to proceed framed the charges under Section 409 of the IPC read with Sections 13(1)(c)/13(2) of the P.C. Act, 1988 against the petitioner and another jointly with co-accused Shri Rajdeep Nath (petitioner in Crl. Pet. No. 436/2019) under Sections 120B/420 of the IPC read with Sections 13(1)(d)/13(2) of the P.C. Act, 1988. As indicated above, one of the moot questions that falls for consideration in this petition is the petitioner's contention that on the date of framing of the charges, that is, on 11.12.2018, the provisions of Section 13 of the P.C. Act, 1988 were non-existent as the aforesaid Sub-Section (1) stood substituted with effect from 26.07.2018 the charges were invalid and as such, trial of the petitioner by the learned Special Judge, Assam under the aforesaid repealed provisions of the P.C. Act is without jurisdiction.

9. It is noticed that Sub-Section (1) of Section 13 of the P.C. Act, 1988, before its substitution, stood as under-

"13. Criminal misconduct by a public servant.-

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than

legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

10. The substituted Sub-Section (1) that has come into force w.e.f. 26.07.2018 reads as under-

"(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.
Explanation 1.-A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.-The expression "known sources of income" means income received from any lawful sources."

Now, let us examine the effect of the substitution of the provisions of Section 13 (1) of the PC Act.

11. Section 6 of the General Clauses Act reads as hereinbelow extracted-

6. Effect of repeal. - Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect;

or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

12. Section 6 of the General Clauses Act, 1897, saves, inter-alia, rights, privileges, obligations or liabilities acquired or incurred under any enactment/provisions so repealed or substituted and even the penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment/provisions so repealed. In Sukumar Pyne (supra), it has been held that the new amendment does not apply to contravention which took place before the Act came into force. The Supreme Court, while deciding a similar question under the Foreign Exchange Regulation Act held in the aforesaid case in paragraph 19 which is extracted herein below:

"19. The effect of these provisions is that after the amendment of 1957, adjudication proceedings or criminal proceedings could be taken up in respect of a contravention mentioned in s. 23(1) while before the amendment only criminal proceedings before a Court could be instituted to punish the offender. The High Court, as already observed, held that the new amendment did not apply -to contravention which took place before the Act came into force."

13. The repealed clauses, that are clauses (a), (b), (c), (d) and (e) of Sub-Section (1) of Section 13 defined the different categories of criminal misconduct by public servants enlarging the scope of Sections 7, 8, 9, 11 and 12. The

substituted new Section 13 simplified the earlier repealed clauses virtually retaining, of course, clause (c) as clause (a) in the substituted provision deleting clauses (a), (b) (d) and (e) implicitly reincorporating the requirement of mens rea as a necessary ingredient for punishment to combat the menace of corruption.

14. It may pertinently be pointed out that under Article 20 of the Constitution of India, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the alleged act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is well settled that where a new law makes punishable an act, which is already punishable under an existing law and there is nothing in the latter Act, which either expressly or by implication excludes the operation of the earlier law, the accused may be prosecuted and punished under either.

15. Therefore, launching of prosecution under the repealed Section 13(1) of the P.C. Act, 1988 is legally permissible, of course, in respect of the offences, which might have been committed by the petitioner or investigation was undertaken during continuation or while in force of the aforesaid old Section. Therefore, under Section 30(2) read with Section 26 of the P.C. Act, the Special Judge, Assam at Guwahati is competent to exercise jurisdiction under the old Section 13(1) of the P.C. Act. As there appears no different intention, the aforesaid repealed Section would not affect 'anything duly done or suffered thereunder', provided in clause (b) of Section 6 of the General Clauses Act. The Hon'ble Supreme Court in *Nar Bahadur Bhandari Vs. State of Sikkim & Ors*, reported in (1988) 5 SCC 39 and *M.C. Gupta Vs. C.B.I.*, reported in (2012) 8 SCC 669 held that normally Section 6 of the General Clauses Act would come into play and enable the continuation of the proceedings including investigation as if the repealing Act had not been passed. The position will be as if the repealed provision of Section 13 of the Act continues to be in force for the purpose of trying the offences.

16. With regard to the prayers for setting aside/quashing the order, dated 11.12.2018, in Spl. Case No. 06/2018 passed by the learned Special Judge, Assam framing charges against the petitioner and the aforementioned proceeding in Spl. Case No. 06/2018, it is noticed that there are 2(two) charges, firstly, he is charged along with co-accused Rajdeep Nath (petitioner in Crl. Pet. No. 436/2019) under Sections 120B/420 of the IPC and 13(1) (d)/13(2) of the P.C. Act and secondly, under Section 409 of the IPC read with Section 13(1) (c)/13(2) of the P.C. Act. As per the aforesaid impugned order, dated 11.12.2018, there are sufficient prima facie materials on record to frame charges under the aforesaid penal provisions against them. As held above, the charges framed on 11.12.2018 under the repealed Section 13 of the P.C. Act are sustainable in law for the alleged offences were committed before substitution/ amendment of the provisions of Section 13 of the P.C. Act was brought into force

and the case was registered and investigated and further, commission of the alleged offences fell within the jurisdiction of the Special Judge, Assam although those provisions were substituted and brought into force from 26.07.2018.

17. It is the settled position of law that exercise of inherent power under Section 482 Cr.P.C. is not the rule, but an exception, in the event of grave miscarriage of justice due to subjecting a person to criminal trial, without there being prima facie ground to proceed. Therefore, the Section 482 Cr.P.C. can be invoked by the High Court either to prevent the abuse of the process of Court or otherwise to secure the ends of justice. Similarly, the power of superintendence under Article 227 of the Constitution of India is to be exercised sparingly and only in appropriate cases to keep the subordinate Courts and tribunals as custodian of all justice by doing correction of errors apparent on the face of record.

18. In the instant case, on perusal of the case record including the charge-sheet and the impugned charge framing order, it is prima facie revealed, inter-alia, that the petitioner, a public servant being the Senior Inspector of Co-operative Societies, was deputed to the GWCCS w.e.f. 08.03.2005 to 10.07.2007 allegedly misappropriated the society's fund in connivance with the co-accused persons. The learned Special Judge, Assam accordingly having found prima facie material to proceed against the petitioner framed the impugned charges. In such a backdrop of the case, this Court is of the opinion that the relief to the petitioner, who is a public servant, by way of quashing the corruption case launched against him can't be granted.

19. At the present initial stage of trial of the case, the question of defective order of sanction for prosecution by the sanctioning authority by reason of the authority's non-application of mind and the petitioner's grounds of defence in the case can't be considered in the instant petition being those disputed questions resting on facts and merits of the case, because while exercising powers under Section 482 Cr.P.C., the High Court does not function as a Court of appeal or revision. It is not a case, where the allegations of corruption are not supported by any prima facie evidence on record. The grounds of defence are to be established through cross-examination of the prosecution witnesses or by leading some defence evidence. The non-examination or non-prosecution of any person, in view of the defence, involved in the commission of the alleged offences is a question of fact to be determined during trial of the case. Therefore, in absence of fair and reasonable grounds, it can't be inferred that the impugned proceeding is an abuse of the process of Court and the charge framing order requiring any interference of this court under Section 482 Cr.P.C..

20. Accordingly, the present petition being devoid of any merits, the same stands dismissed.

21. The criminal petition is disposed of.

The scanned copy of the case record be retained.