

(2024) 03 GAU CK 0060
In the Gauhati High Court
Case No : Criminal Petition No.101 Of 2024

Indrajit Bora

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 18-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Criminal Procedure, 1973 — Section 197, 482
Indian Penal Code, 1860 — Section
Prevention of Corruption Act, 1988 — Section 7(a), 13(1)(b), 13(2), 17A, 17A(a),
17A(b), 17A(c)

Citation : (2024) 03 GAU CK 0060

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : G. Sahu, M. Phukan

Final Decision : Dismissed

Judgement

1. Heard Heard Mr. G. Sahu, learned counsel for the petitioner and also heard Mr. Makhan Phukan, learned Public Prosecutor, Assam, appearing for the State respondent.

2. This petition, under Section 482 of the Code of Criminal Procedure, read with Article 227 of the Constitution of India and Section 17(A) of the Prevention of Corruption Act, is preferred by the petitioner, namely, Indrajit Bora, for quashing the FIR of A.C.B. P.S. Case No.69/2023.

3. The factual background of filing of the present petition is briefly stated as under:-

"On 15.09.2023, Shri Sangkha Swargiary, Dy. S.P. of Police Directorate of Vigilance and Anti-Corruption, Assam lodged on FIR with the O/C A.C.B. Police Station to the effect that during investigation of A.C.B. P.S. Case No.17/2023, u/s 7(a) of the Prevention of Corruption Act, a trap was laid at the official Chamber of Indrajit Bora, the then Chief Engineer, Gauhati Municipality Corporation and he

was arrested on a trap operation in connection with the said case for demanding and accepting illegal gratification of Rs.6000/- from the informant namely, Shri Ajit Borah. Subsequently, rented Flat of Shri Indrajit Bora was searched and during search a sum of Rs.6,93,600/- was recovered and seized in connection with the said case. Shri Indrajit Bora has failed to satisfactorily account for the aforementioned sum, and it appears that he has accumulated such through dishonest and fraudulent means and had intentionally enriched himself illicitly during the period of his tenure. Also it has been found that he has maintained 17 accounts in his name in addition to his salary account in State Bank of India. And during search of his residential premises it has been found that his wife own one Innova Car and one Audi make luxury car. Besides, it has been found that his family members have various moveable and immovable assets which need to be verified. And therefore it is suspected that he has accumulated assets, disproportionate to his known source of income using the colour of his office in order to enrich himself during the period of his office."

4. Upon the said FIR, the Officer-in-Charge of A.C.B. Police Station had registered a case, being A.C.B. P.S. Case No.69/2023, under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act and endorsed Smti Olindita Gogoi, Superintendent of Police, to investigate the same.

5. Before the case came to be registered on 15.09.2023, the Superintendent of Police, Directorate of Vigilance and Anti Corruption, vide letter dated 11.04.2023, Memo No.DGVA/RI/2023/2402, sought approval for registering a regular case, under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, against the present petitioner, who was arrested in connection with A.C.B. P.S. Case No.17/2023, u/s 7(a) of the Prevention of Corruption Act, from the Government of Assam. And accordingly, vide letter dated 05.09.2023, Memo No.PLA(V)112/2023/8, the Government of Assam had accorded approval for registering a regular case, under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, against the present petitioner.

6. Being aggrieved, the petitioner has approached this court for quashing the said FIR on the following grounds:-

(i) Section 17(A) of the Prevention of Corruption Act put a bar that - no police officers shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval of the concerned Government. But, in the case in hand investigation was conducted without approval of the Government in ACB P.S. Case No.17/2023, u/s 7(a) of the Prevention of Corruption Act.

(ii) That, the investigating agency, vide letter dated 11.04.2023, Memo No.DGVA/RI/2023/2402, sought approval for registering a regular case, under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, against the

present petitioner, who was arrested in connection with A.C.B. P.S. Case No.17/2023, u/s 7(a) of the Prevention of Corruption Act, from the Government of Assam and accordingly, vide letter dated 05.09.2023, Memo No.PLA(V)112/2023/8, the Government of Assam had accorded approval for registering a regular case, under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, against the present petitioner after 147 days, in clear violation of the mandate of the section 17(A) as approval was accorded beyond 3 months.

(iii) That, the investigating agency has flouted the mandate of section 17(A) of the Prevention of Corruption Act as it has conducted investigation without approval of the Government while the alleged offence relatable to any recommendation made or decision taken by such public servant in discharge of official function.

(iv) That, the present case is an abuse of the authority by the investigating agency.

7. Mr. G. Sahu, learned counsel for the petitioner submits that registration of the present FIR against the petitioner is a clear abuse of the process of law. Referring to section 17(A) of the Prevention of Corruption Act, Mr. Sahu submits that it put a bar that - no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval of the concerned Government and in the instant case the investigation was conducted without approval of the Government in ACB P.S. Case No.17/2023, u/s 7(a) of the Prevention of Corruption Act. Further, Mr. Sahu submits that the Government of Assam had accorded approval for registering a regular case, under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, against the present petitioner after 147 days, in clear violation of the mandate of the section 17(A) as approval was accorded beyond 3 months and therefore, Mr. Sahu contended to allow this petition.

8. On the other hand, Mr. M. Phukan, the learned Public Prosecutor, Assam, submits that section 17(A) is not attracted herein this case as it is related to acquiring money, moveable and immoveable assets disproportionate to his known source of income, and it is not relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties. Further, Mr. Phukan, submits that the provision is not mandatory though the word shall be used in the same. Mr. Phukan has referred following two case laws in support of his submission:-

(i) Shankaran Bhat vs. State of Kerela, reported in 2021 SCC Online Ker 16357.

(ii) Dhandapani vs. The Vigilance Commissioner, in W.P.(M.D.) No. 5417 of 2021.

9. In view of the rival submissions of learned Advocates of both sides, the issues, to be answered by this court are formulated as under:-

(i) Whether accumulation of assets disproportionate to the known source of income of the petitioner is relatable to any recommendation made or decision taken by the petitioner in discharge of his official functions or duties and whether section 17(A) of the Prevention of Corruption Act is attracted herein this case?

(ii) Whether the second proviso to section 17(A) of the Prevention of Corruption Act is mandatory or directory in view of the word 'shall' used in the same and what would be the consequence of non compliance or delayed compliance of the same?

10. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary, so produced by the learned P.P.

11. Before a discussion is directed to the issues, so raised in this petition, this court deemed it appropriate to understand the relevant provision of law, i.e. section 17(A) of the Prevention of Corruption Act which read as under:-

Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval -

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

12. Thus, from a bare perusal of the provision of section 17(A) of the Act indicates that approval of the concerned Government is required to conduct any enquiry or inquiry or investigation into any offence, which allegedly to have been committed by a public servant under the Prevention of Corruption Act, where said offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties.

13. In the case in hand, it appears from the documents placed on record that during investigation of ACB P.S. Case No.17/2023, u/s 7(a) of the Prevention of Corruption Act, search was conducted in the rented Flat of the petitioner and then a sum of Rs.6,93,600/ was recovered and seized and the petitioner, Shri Indrajit Bora, has failed to satisfactorily account for the aforementioned sum. It has also been found that he has maintained as many as 17 accounts in his name in different banks, in addition to his salary account in State Bank of India. And during search of his residential premises, moveable and immoveable assets, disproportionate to his known source of income, were detected. His wife own one Innova Car and one Audi make luxury car. Besides, it has been found that his family members have various moveable and immovable assets and it is suspected that he has accumulated assets, disproportionate to his known source of income using the colour of his office through dishonest and fraudulent means and he had intentionally enriched himself illegally during the period of his tenure.

14. This being the factual position, can it be said that accumulation of assets disproportionate to known source of income of the petitioner relatable to any recommendation made or decision taken by him in discharge of his official functions or duties. The answer is emphatic no. By no stretch of imagination it can be said that accumulation of assets disproportionate to known source of income of the petitioner relatable to any recommendation made or decision taken by him in discharge of his official functions or duties. Mr. Phukan, the learned Public Prosecutor has rightly pointed this out during hearing and the ratios laid down in the decisions, referred by him, also strengthened his submission.

15. It is to be noted here that in the case of Shankara Bhat (supra) Kerela High Court, relying upon a decision Delhi High Court in Devendra Kumar vs. CBI & others (W.P.(Criminal) No. 3247/2018 and connected matters), has held as under:-

"24. The legal principles involved has been correctly appreciated by the Delhi High Court. It was reiterated that the scope of section 17A was that an approval under section 17A for conducting any enquiry, inquiry or investigation was warranted only when the act done by the accused, which he was charged of, was relatable to a decision taken or recommendation made. If the offence was not relatable to any such decision or recommendation, prior approval under section 17A was not required. Hence, any commission of offence or allegation of acts of public servant which is ex facie criminal or constitute an offence or even demanding illegal consideration or receiving of it either to routinely move the file or to keep the file pending, without any decision being taken therein, will not fall

within the scope of section 17A. Hence prior approval under section 17A is not warranted in such cases.

25. The reasonable conclusion that can be arrived at regarding the scope of section 17A is that prior approval under section 17A for conducting any enquiry, inquiry or investigation is required only when the offence alleged is relatable to a decision taken or recommendation made by the public authority and it involves a debatable or suspicious or doubtful recommendation made or decision taken by the authority. Acts, which are *ex facie* criminal or constitute an offence do not require approval under section 17A of P.C. Act. This legal proposition, seems to be clear from the statute and is in consonance with the spirit of the Prevention of Corruption Act and also in consonance with the legal principles laid down in relation to section 197 Cr.P.C.”

16. It is to be mentioned here that single Judge of Delhi High Court in Devendra Kumar (*supra*), also deliberated on the scope of section 17A PC Act. In the said case, the complainant alleged that he was being harassed by the investigating officer and that the investigation officer demanded huge amount from him for not charging a case against him. On the question whether the prosecution of the police officer required sanction, and then it was held that the alleged promise to the complainant to ultimately give him relief cannot be said to be one done in discharge of the official function or duties of the public servant. Then it was held that the bar to enquiry or inquiry or investigation under section 17A of the PC Act is *apropos* such alleged offence as may be relatable to any recommendation made or decision taken by a public servant in discharge of his official function or duties, as there was no recommendation or decision on record by public servant in discharge of his official functions. It was only such acts done in discharge of the official functions that would have become the subject matter for seeking approval of the employer. It was also held that a public servant cannot possibly be left to be under constant apprehension that *bona fide* decisions taken by him would be open to enquiry, inquiry or investigation on the complaint of a stranger. Section 17A, as it reads, and the legislative intent can only be to protect a public servant in the *bona fide* discharge of official functions or duties. However, when the act of a public servant is *ex-facie* criminal or constitutes an offence, prior approval of the Government would not be necessary.

17. The Madurai Bench of Madras High Court while dealing with similar issue in *Dandapani vs. The Vigilance Commissioner, Tamil Nadu Vigilance Commission, Secretariat, Saint George Fort, Chennai and two others*, in W.P.(MD) No. 5417, has specifically held that Section 17(A) of Prevention of Corruption Act cannot be made applicable to those cases where the act of the public servant that amounts to an offence, appears on the face of it lacking in good faith. Considering the above provision and the above decision, it is clear that Section 17 (A) has been inserted only to give protection to the honest officers, but when the act of a public servant amounts to or constitutes an offence by itself, prior sanction or approval from the Government would not be necessary. Viewing from this angle

also, I hold that Section 17 (A) of Prevention of Corruption Act has no application to the case on hand. As already pointed out, since FIR has already been registered and is pending investigation, the relief sought for by the petitioner has become infructuous.

18. Thereafter, the petitioner had preferred a writ appeal before the Division Bench, being W.A.(MD) No.903 of 2021 (Dandapani vs. The Vigilance Commissioner, Tamil Nadu Vigilance Commission, Secretariat, Saint George Fort, Chennai and two others) wherein, it has been held as under:-

"11. In the case of Ranjib Ranjan vs. R. Vijayakumar, reported in 2015(1)SSC 513, the Apex Court held that in paragraph No.18, "while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges criminal misconduct such misdemeanour on his part is not to be treated as an act in discharging of his official duties".

12. In the case on hand, the First Information Report was registered against the appellant for disproportionate assets and investigation is pending. Therefore, Section 17(A) of Prevention of Corruption Act, is not applicable to the appellant. The learned Single Judge of this Court has rightly observed this point. The appellant/writ petitioner has to face the criminal case. This Court has no valid reason to interfere with the findings of the Writ Court."

19. Though it is being argued by the learned counsel for the petitioner that the accumulation of assets were detected during investigation of ACB P.S. Case No.17/2023, which relates to demanding and accepting illegal gratification of Rs.6000/- from the informant namely, Shri Ajit Borah, in connection to releasing of security deposit of a contract work, and as such approval under section 17(A) is required, yet, said submission left this court unimpressed, in as much as in the said case there was demand and accepting of Rs.6,000/- only. Whereas, the sum recovered from his rented Flat was Rs.6,93,000/- which he could not satisfactorily accounted for by the petitioner. Therefore, it cannot be said that he had acquired the said amount and accumulate assets disproportionate to his known source of income was in discharge of his official duty. It is to be noted here that said case was registered under section 7(a) of the Prevention of Corruption Act, whereas, the present one is a distinct offence under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act.

20. This being the position, this court is of the considered opinion that section 17(A) of the Prevention of Corruption Act is not applicable herein this case as accumulation of assets disproportionate to known source of income cannot be said to be in discharge of his official duty. Therefore, this court is unable to record concurrence to the submission made by the learned counsel for the petitioner. Issue No.1 is answered accordingly.

21. In view of the decision in issue No.1, the second issue becomes is more or less academic. Be that as it may, it appears that having detected accumulation of assets disproportionate to known source of income of the petitioner, the

Superintendent of Police, Directorate of Vigilance and Anti-corruption, vide his letter, dated 11.04.2023, Memo No.DGVA/RI/2023/2402, sought approval for registering a regular case, under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, against the present petitioner, who was arrested in connection with A.C.B. P.S. Case No.17/2023, u/s 7(a) of the Prevention of Corruption Act, from the Government of Assam. And accordingly, vide letter dated 05.09.2023, Memo No.PLA(V)112/2023/8, the Government had accorded approval for registering a regular case, under sections 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, against the present petitioner. Further, it appears that the approval was accorded by the Government after 147 days which is beyond the prescribed period of 3 months and extended period of another one month.

22. Now, what left to be seen is the consequence of non compliance of the said provision. While dealing with this issue in the case of Nara Chandrababu Naidu vs. The State of Andhra Pradesh & Anr. in Special Leave Petition (Crl.) No. 12289 OF 2023, Hon'ble Supreme Court has delivered split verdict. Hon'ble Justice Aniruddha Bose has observed as under:-

"If an enquiry, inquiry or investigation is intended in respect of a public servant on the allegation of commission of offence under the 1988 Act after Section 17A thereof becomes operational, which is relatable to any recommendation made or decision taken, at least prima facie, in discharge of his official duty, previous approval of the authority postulated in sub-section (a) or (b) or (c) of Section 17A of the 1988 Act shall have to be obtained. In absence of such previous approval, the action initiated under the 1988 Act shall be held illegal."

23. But Hon'ble Justice Smti. Bela M. Trivedi has observed on the same issue as under:-

"Having considered the different contours of Section 17A, I am of the opinion that Section 17A would be applicable to the offences under the P.C. Act as amended by the Amendment Act, 2018, and not to the offences existing prior to the said amendment. Even otherwise, absence of an approval as contemplated in Section 17A for conducting enquiry, inquiry or investigation of the offences alleged to have been committed by a public servant in purported exercise of his official functions or duties, would neither vitiate the proceedings nor would be a ground to quash the proceedings or the FIR registered against such public servant."

24. Thereafter, the matter has been referred to a larger bench and verdict of larger bench is still awaited.

25. However, in view of the decision in issue No.1 and in view of the given facts and circumstances on the record, this Court is of the view that the present petition is devoid of merit and accordingly, the same stands dismissed. The parties have to bear their own costs.