
(2020) 05 GAU CK 0012
In the Gauhati High Court
Case No : Criminal Petition No. 346 Of 2019

Rajdeep Nath @ Rajdip Nath	Vs	APPELLANT
State Of Assam And Anr		RESPONDENT

Date of Decision : 14-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 216, 482
Indian Penal Code, 1860 — Section 120B, 409, 420
Prevention Of Corruption Act, 1988 — Section 4(3), 7, 8, 9, 11, 12, 13, 13(1), 13(1)(a), 13(1)(b), 13(1)(c), 13(1)(c)(d), 13(1)(d), 13(2), 26, 30(2)
General Clauses Act, 1897 — Section 3, 6, 6(b)

Citation : (2020) 05 GAU CK 0012

Hon'ble Judges : Ajit Borthakur, J

Bench : Single Bench

Advocate : N Dutta, D. Das

Final Decision : Disposed Off

Judgement

1. Heard Mr. N. Dutta, learned Sr. counsel, assisted by Mr. R. Chakraborty and Mr. H. Das, learned counsel for the petitioner. Also heard Mr. D. Das., learned Addl. Public Prosecutor appearing for the State respondent No. 1 and respondent No. 2.

2. This petition, under Section 482 Cr.P.C. and Article 227 of the Constitution of India, is filed seeking setting aside/quashing of the order, dated 11.12.2018, passed by the learned Special Judge, Assam at Guwahati in Special Case No. 6/2018, framing charges against the petitioner under Section 409 of the IPC read with Section 13(1)(c)/13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' for short).

3. The petitioner has contended that one Indrajeet Chakraborty, Inspector of Police, C.M.'s Spl. Vigilance Cell, Assam lodged an F.I.R., on 03.03.2016, with the Officer-in-Charge of the said Vigilance Cell, inter-alia, alleging that in course of enquiry in connection with SVC RE Case 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, Bidhan Saikia (petitioner in CrI. Pet. No. 470/2019), the then Executive Officer, Rajdeep Nath (the petitioner herein), the then Executive Officer and Uttam Deka, Superintendent made many official irregularities and by misusing their official powers misappropriated an amount of Rs. 12,36,500/- during the period of 2005-07 from the fund of the G.W.C.C.S. Ltd. Thus, they committed offences of criminal conspiracy, criminal breach of trust and criminal misconduct in discharge of their official duty.

4. Based on the above F.I.R., 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 under which the case was registered against the petitioner and 2 (two) others, one of whom namely, Rashid Ahmed Choudhury 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/409/420 of the IPC read with Section 13(1)(c)(d)/13(2) of the P.C. Act against the petitioner and another, namely, Bidhan Saikia (the petitioner in CrI. Pet. No. 470/2019).

5. Mr. N. Dutta, learned Sr. counsel appearing for the petitioner, submitted that neither the petitioner was involved in commission of the alleged offences nor he had directly or indirectly committed anything wrong in his tenure of service in G.W.C.C.S. Ltd. and he has sufficient number of documents for his defence. According to Mr. Dutta, by discharging Uttam Dutta in the charge-sheet, who was also authorised signatory as Superintendent along with Bidhan Saikia, Executive Officer for all financial transactions of the G.W.C.C.S. Ltd., the Investigating Officer has committed a serious legal lapse and without proper application of mind arbitrarily laid the charge-sheet against the petitioner, which material fact the learned Special Judge also failed to appreciate while considering the evidence collected by the Investigating Officer for framing charges. Mr. Dutta vehemently submitted that vital witness one Nil Narzary, who was responsible for receiving the cheque issued in his favour under the signature of the petitioner was not examined under Section 161 Cr.P.C. Mr. Dutta further submitted, drawing this Court's attention to old Section 13 of the P.C. Act, 1988 that the said Section was substantially amended/substituted by Act of 2018 which came into force on 26.07.2018 diluting Section 13(1)(c) and 13(2), and therefore, framing of charges against the petitioner under non-existent provisions was illegal rendering the same and the charge-sheet invalid and unsustainable. Mr. N. Dutta, learned Sr. counsel for the petitioner, also submitted that in general, the Court of Special Judge has jurisdiction to try commission of or abetment of commission of any offence punishable, specified in Section 3(1)(a) and (b) and the Court of Special Judge appointed for an area, within whose jurisdiction the alleged offences have

been committed would have jurisdiction to try the aforesaid offences along with other offences as is specifically stated in Section 4(3) of the P.C. Act. It was, therefore, emphatically contended by Mr. Dutta that the learned Special Judge, Assam has no jurisdiction to try the case if the alleged offence under the old Section 13(1)(c)/13(2) of the P.C. Act, 1988 is set aside and quashed and in such an event, the learned Special Judge has to invoke its power to alter the charges suitably under Section 216 Cr.P.C. and if no offence is prima facie made out within the scope of Section 3(1)(a) and (b) of the P.C. Act, the petitioner is entitled to be discharged for want of jurisdiction to try the alleged offences. Concluding the argument Mr. Dutta submitted that besides the aforesaid legal lapses, even on facts of the case, the substituted offences are not attracted against the petitioner.

6. Mr. H. Das, learned counsel for the petitioner, on the other hand, relied on the submission made by Mr. N. Dutta, learned Senior counsel and referred to Para 34 of the Judgment of the Apex Court in *R. Janakiraman Vs. State/CBI, SPE, Madras*, reported in (2006) 1 SCC 697.

7. Per contra, 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, registered under the provisions of the P.C. Act, 1988, laid the charge-sheet on 05.02.2018 against the petitioner and another, namely Bidhan Saikia (petitioner in Crl. Pet. No. 470/2019). Mr. Das submitted that the allegations of corruption, as noted in the charge-sheet, related to the petitioner's tenure as Chairman of the G.W.C.C.S. Ltd. w.e.f. 03.05.2005 to 24.02.2006 amounting to Rs. 1,32,000/-, on account of payment made to one Nil Narzary without any works, Rs. 20,000/- on account of his unrefunded loan and Rs. 54,696.41/- on account of illegally drawn fuel bills. Mr. Das further submitted that the new prospective amended provisions of Section 13 of the P.C. Act came into force on 26.07.2018, that is, in 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 was a public servant, committed during the years 2005 to 2007. Mr. Das emphatically submitted that the repeal of old Section 13 of the P.C. Act, 1988 does not affect its operation so far it related to the misconduct of the petitioner committed earlier to the substitution of the aforesaid provision, under 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 said 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.

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

9. 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 co-accused Shri Bidhan Saikia (petitioner in Crl. Pet. No. 470/2019) under Sections 120B/420 of the IPC read with Section 13(1)(d)/13(2) of the P.C. Act, 1988.

10. As indicated above, one of the moot questions that falls for consideration in the instant petition relates to the petitioner's contention that as on the date of framing the charges, that is, on 11.12.2018, the provisions of old Section 13(1) of the P.C. Act, 1988 were non-existent due to substitution that came into force on 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 said Act is without jurisdiction.

11. 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."

12. The substituted Sub-Section (1) of Section 13 that has come into force on 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."

13. In the above context, Section 6 of the General Clauses Act needs to be looked into as it relates to the effect of such repeal of an Act or provisions substituted therein. 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."

Section 6 of the General Clauses Act, 1897, thus, 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.

14. The repealed clauses, that are, clauses (a), (b), (c), (d) and (e) of Sub-Section (1) of Section 13 of the P.C. Act 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(1) simplified the earlier repealed clauses virtually retaining clause (c) as clause (a) 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.

15. It may pertinently be further mentioned 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.

16. In the instant case, launching of prosecution under the repealed Section 13(1) of the P.C. Act, 1988 is legally permissible in respect of the offences, which might have been committed by the petitioner and in respect of which an investigation was undertaken during continuation or while in force of the subsequently repealed provisions. Therefore, under Section 30(2) read with Section 26 of the P.C. Act, the Special Judge, Assam at Guwahati is competent to exercise his jurisdiction under the repealed Section 13(1) of the said Act. As there appears no different intention, the aforesaid repealed Section would not affect 'anything duly done or suffered thereunder', which is provided in clause (b) of Section 6 of the General Clauses Act. The Hon'ble Supreme Court in *Nar Bahadur Bhandari and Ors. Vs. State of Sikkim and Ors.* reported in (1998) 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/provision had not been passed. The position will be as if the repealed provision continues to be in force for the purpose of pending investigation and its consequent legal proceedings post substitution.

17. With regard to the prayer 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 Bidhan Saikia (petitioner in Crl. Pet. No. 470/2019) 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 as well as Section 13(1) (c)/13(2) of the P.C. Act. As per the aforesaid impugned order, dated 11.12.2018, there are sufficient 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 and within the jurisdiction of the Special Judge, Assam although the Section has been substituted and brought into force from 26.07.2018.

18. It may be pointed out 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 occasioned by exposing the accused to face unnecessary criminal prosecution, without there being prima facie ground to proceed so. In such an event, Section 482 Cr.P.C. can be invoked by the High Court either to prevent the abuse of the process of any 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 only in appropriate cases to keep the subordinate Courts and tribunals as the protector of all forms of justice by effecting correction of errors apparent on the face of record.

19. In the instant case, a 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, who is a public servant, working in the substantive post of Assistant Registrar of co-operative Societies and who was deputed as Chairman - cum- Executive Officer of G.W.C.C.S. Ltd. from 30.10.2005 to 30.07.2006 allegedly misappropriated its fund in connivance with the co-accused persons and also made illegal payments without any works being executed and further, drew fuel bills illegally without authority. The learned Special Judge, Assam accordingly having found prima facie material to proceed against the petitioner framed the impugned charges.

20. Further, at the present initial stage of trial of the case, the question of defective/vague sanction order for prosecution of the petitioner by the sanctioning authority by reason of nonapplication of mind and the petitioner's other grounds of defence can't be scrutinised in this petition, those being disputed questions resting on facts and merits of the entire case. While exercising powers under Section 482 Cr.P.C., the High Court does not function as a Court of appeal or revision. On the other hand, it is not even a case on the face of the record, where the allegations of corruption are not supported by any prima facie evidence. The grounds of defence, if any, are to be established by the defence either through cross-examination of the prosecution witnesses or by leading defence evidence. Therefore, it can't be inferred that the impugned proceeding and charge framing order are an abuse of the process of Court

requiring any interference.

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

The petition is disposed of.

The scanned copy of the case record be retained.