

(2024) 06 GAU CK 0001

In the Gauhati High Court

Case No : Criminal Revision Petition No. 7 Of 2024

Rounak Ali Hazarika

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 03-06-2024

Acts Referred:

Constitution Of India, 1950 — Article 311(1)
Prevention of Corruption Act, 1988 — Section 7, 7A, 8A, 9, 11, 13, 13 (1)(a), 13(1) (b), 13(2), 17A
Indian Penal Code, 1860 — Section 120B
Official Secrets Act, 1923 — Section 3(c), 4(1), 5
Code Of Criminal Procedure, 1973 — Section 197, 197(1)

Citation : (2024) 06 GAU CK 0001

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : K.N Choudhury, S Nawaz, S Das, M Phukan

Final Decision : Dismissed

Judgement

1. Heard Mr. K N Choudhury, learned Senior counsel, assisted by Mr. S Nawaz, learned counsel for the petitioner. Also heard Mr. M Phukan, learned Special Public Prosecutor, Chief Minister's Vigilance Cell, Assam assisted by Mr. P Dutta, learned Assistant Special Public Prosecutor, CM's vigilance Cell.

2. The present application is filed assailing an order dated 19.10.2023 passed by the learned Special Judge, Assam in Special case No. 02/2022, whereby charges under section 120-B IPC and under Section 13(2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as PC Act) had been framed against the petitioner.

3. THE FACTUAL BACKGROUND:

I. On 02.06.2021, a complaint was lodged by one Hasanur Ahmed, before the Superintendent of Police, Chief Minister's Vigilance and Anti Corruption Cell, Rupnagar, Assam alleging primarily that the petitioner was a corrupt police

officer, who had accumulated properties in crores of rupees.

II. On the basis of such complaint against the petitioner, a preliminary enquiry No. 01/2021 was initiated with the approval granted by the Hon'ble Chief Minister, Assam.

III. After completion of the preliminary enquiry, a report was submitted before the Chief Minister, Assam seeking approval, to initiate a regular enquiry and such approval was also granted.

IV. Accordingly, regular enquiry (RE No. 02/2021), was initiated and a report was submitted by the Enquiry Officer, concluding that the petitioner had accumulated disproportionate assets compared to his income from known sources to the tune of 164.80%. Accordingly, it was suggested to register a criminal case and investigate against the petitioner.

V. On the basis of aforesaid recommendation, an FIR was lodged by the Deputy SP, CM's Special Vigilance Cell, Assam on 05.10.2021, before the Officer-in-Charge, Vigilance PS, CM's Vigilance Cell and accordingly Vigilance PS case No. 06/2021 under Section 13 (1)(a)(b)/ 13(2) of the PC Act, 1988 was registered and investigation was started.

VI. After completion of the investigation, the I/O submitted charge-sheet on 30.11.2021 and subsequently, a supplementary charge-sheet was also filed on 23.01.2022.

VII. The charge-sheet was laid under Section 120B IPC read with Section 13(1) (b)/13(2) of the PC Act, 1988 and under section 3(c)/4(1)/5 of the Official Secrets Act, 1923.

VIII. Special Case No. 02/2022 was registered and the learned Special Judge, Assam took cognizance of the offences under Section 120-B IPC read with Section 13 (1) (b)/13(2) of the PC Act against the petitioner.

IX. Thereafter, by way of the impugned order, charges under section 120B IPC and under section 13(2) of the PC Act were framed.

4. SUBMISSIONS MADE ON BEHALF OF THE PETITIONER:

I. The only ground urged by Mr. Choudhury, learned senior counsel for the petitioner, assailing the proceeding of the Special Case No. 02/2022, is non-compliance of Section 17A of the PC Act, 1988. It is the case of the petitioner that no approval was sought from the competent authority, while initiating the enquiry/ investigation as required under Section 17 A of the Act, 1988. According to Mr. Choudhury, at the time of initiation of the enquiry / FIR/ investigation, the petitioner was a member of All India Service (IPS) and as such, in terms of Article 311 (1) of the Constitution of India, the Central Government alone could have removed him from his service and therefore, in terms of Section 17A of the PC Act, 1988, an approval for initiation of the enquiry/ FIR ought to have been taken from the Central Government, which has not been done in the present

case. The approval obtained from the State Government, more particularly from the Chief Minister, is nonest in the eye of the law as per mandate of Section 17 A of the PC Act, Argues Mr. Choudhury.

II. According to Mr. Choudhury section 17A of the Act does not mandate any exception of the provision qua disproportionate asset cases and the only exception to section 17-A is in trap cases i.e., for cases involving arrest of a person on the spot, on charge of accepting or attempting to accept any undue advantage for himself or any other person.

III. Mr. Choudhury, learned Senior Counsel further contends that from the reading of the text of section 17A of the PC Act, 1988, the intention of legislature is very clear that the exemption of prior approval in initiating enquiry/inquiry/investigation is applicable only in cases involving arrest on a trap taking bribe. Therefore, according to Mr. Choudhury the learned trial court has committed serious error while passing the impugned order.

IV. The decision of the Madras high court in Dhandapani vs. Vigilance Commissioner and Others in W.P. (MD) No.5417/2020 and W.M.P (MD) Nos.4713/4715/2021, relied on by the learned Trial Court is misplaced inasmuch as, in the case of Yashwant Sinha Vs. CBI, reported in (2020) 2 SCC 338, the hon'ble apex court has in no unambiguous terms held that prior approval is mandatorily to be taken in terms of section 17A, argues Mr. Choudhury.

V. It is contended by Mr. Choudhury that approval from the competent authority is a sine-qua-non for initiation of an enquiry/inquiry/investigation against a public servant under the provisions of the PC Act, 1988, subject to the exception of Trap cases. According to Mr. Choudhury no ratio has been laid down in Dhandapani (supra), except an observation that in cases involving disproportionate asset, there is no requirement of any approval under section 17 A of the Act. Therefore, the decision in Dhandapani (supra) is not a ratio decidendi. Even if such determination is taken to be a ratio, such decision is per incurium to section 17-A of the PC Act.

VI. Mr. Choudhury contends that though two divergent opinions were expressed by two Hon'ble Judges of the hon'ble Apex Court in Nara Chandrababu Naidu Vs. State of Andhra Pradesh reported in (2024) SCC Online SC 47, however, as on date the ratio laid down in Yashwant Sinha (supra) still holds the field, which declares the law that approval under section 17 A is mandatory to initiate any enquiry/inquiry/investigation into any offence under the PC Act.

VII. Relying on the judgment of Madhya Pradesh high court in Yogesh Nayyar and Anr. Vs. State of Madhya Pradesh reported in (2023) SCC Online MP 2049, and Himanshu Yadav Vs. State of Rajasthan reported in 2022 SCC Online Raj 1303, Mr. Choudhury contends that a bare look at section 17A reveals that no police officer can conduct any inquiry or investigation into an offence punishable under the Act of 1988, unless a prior approval of the competent authority is obtained. It is also his contention that the approval under section 17A is mandatory in all

the cases and in absence of such approval the entire proceeding shall be vitiated. Accordingly, Mr. Choudhury submits that the entire proceeding should be set aside and quashed for non adherence of the provisions of section 17A of the PC Act, 1988.

VIII. Referring to the charge sheet Mr. Choudhury argues that the allegation made is to the effect that the petitioner has earned illegal gratification through posting and transfer of junior officials, abused his official position to obtain pecuniary advances and thus enriched himself illegally and acquired disproportionate asset, while being a public servant and therefore, according to Mr. Choudhury, it is clear that the allegation of accumulation of disproportionate asset relates to discharge of his duties inasmuch as transfer and posting, as alleged, shall involve a decision making process and therefore, in the given fact of the allegation, it was mandatory upon the authorities to take approval before starting even the preliminary enquiry.

5. SUBMISSIONS MADE ON BEHALF OF THE STATE:

I. Per contra, Mr. M Phukan learned Special Public Prosecutor, while fairly admitting that no approval from Central Government/ employer of the petitioner was taken in terms of section 17A before initiating the enquiry/investigation against the petitioner, however, such approval is not at all necessary, when the allegation relates to acquisition of disproportionate asset.

II. Mr. Phukan, learned SPP, further contends that the intention of legislature is very clear from the language of section 17A that approval is required only when, the offence is relatable to a decision/decision making process and recommendation. According to him, such provision has been incorporated under section 17A of the Act' 1988 for protection of outright and honest officers against malicious allegation, in taking important decision and recommendation and therefore, allegation of accumulation of disproportionate asset during service as public servant will not require any approval under section 17A of the Act.

III. Relying on the decision of Shankara Bhat Vs. State of Kerela reported in 2021 SCC Online Ker 3427, Mr. Phukan contends that Kerela High Court had categorically held that the provision of section 17A of the PC Act would not be applicable and no prior approval shall be required, in cases, which involves allegation of falsification of accounts, breach of trust and misappropriation of funds or acts which are ex facie criminal inasmuch as section 17A is akin to section 197 Cr.P.C.

IV. Relying on the decision of Dhandapani (supra), Mr. Phukan, learned SPP further contends that Madras High Court has in no unambiguous terms held that in a case, where allegation is of accumulation of disproportionate asset by a public servant during his service period, no approval under section 17A shall be required. According to Mr. Phukan, such determination is based on sound principal of law and therefore, the learned trial court has not committed any error of law of fact, while passing the impugned order relying on such a decision

of superior court.

V. Relying to a decision of a coordinate bench in *Indrajit Bora Vs. State of Assam* (Crl Pet 101/2024), Mr. Phukan, learned counsel submits that the learned bench has held that section 17A would not be applicable in disproportionate asset cases and therefore, such determination by a superior Court leaves no room for the trial court to pass any other order, than what has been passed, in the shape of the impugned order dtd 19.10.2023. The learned SPP, further contends that such decision is also binding upon this court, subject to however, disagreement and resultant reference to a larger bench. Accordingly, Mr. Phukan contends that the present petition is liable to be dismissed and interim order passed is liable to be vacated.

6. DETERMINATION:

I. This court has given thoughtful considerations to the arguments advanced by the learned counsel for the parties and also has gone through the ratios relied on. Perused the complaint, the FIR as well as the charge sheet and the impugned order.

II. In the backdrop of arguments advanced by the learned Counsel for the parties, touching the nature and applicability of section 17A of the Act 1988, the contents of the complaint, on the basis of which inquiry and investigation was conducted, is having a vital relevance. Accordingly, the same is quoted herein below:

To

Superintendent of police, Chief Minister Vigilance and anti-corruption, Rupnagar, Assam

Subject : Information on disproportionate properties by Raunak Ali Hazarika, IPS

Sir,

I like to inform that the properties of Raunak Ali Hazarika is not less than Prasanta Dutta retired IPC officer (arrested by CID in SI appointment case). He is a very corrupt officer and richest police officer in Assam. I am concerned civilian and therefore I bringing this to your notice and request you for enquiry into his properties.

He show income as Rs.1,50,000 per month but his property is in crores of rupees. He was running a cow syndicate when he was posted at Bongaigaon and has a lot of properties but still wanted more from the poor people like us. During the LOC scam, the main person R.H. Khan hide his money with this officer. He is not fit to be police officer or a public servant for which I am filing this complaint for necessary investigation against this corrupt officer.

List of properties:

1. Bungalow at Rupknowar path, Dr. Zakir Hussain Road, Backside of Down Town

Hospital, house No.56 white coloured 3 story building- 3 crore.

2. 3 bigha land at Mangaldai near stadium opposite petrol pump-1 crore.

3. House No.86, 2 story building on 2.5 katha land at Ajanta Path, given on rent – 3 crore.

4. 10 bigha land at Ghograpar near national highway, Nalbari – 1 crore.

5. 5 vehicles in his name, one AUDI, 1 scorpio, 1 innova, 1 bolero, 1 swift – total price 1 crore.

6. Daughter studying in Switzerland, annual expenditure 50 lakhs.

7. Family goes for holiday in foreign countries every year – yearly expenses 10-20 lakhs

8. 5 bigha land at Lakhimpur town – 2 crore

9. 1 holiday resort at Kullu Manali – 3 crore

10. 2 story building at Ratan Lal Khaklari path, opposite Direnpara Medical (small bylane, 1 meter walking distance left side, Guwahati – 35 given on rent to Marwari people.

11. Son study in Assam valley school Tezpur, annual fees 15 lakhs

12. Wife spend 1 lakh in beauty parlour per month.

Yours faithfully

Hasanur Ahmed

Ligiripukhuri Phone No.8471889100

III. The basic bone of contention in the present lis is as regards the applicability/ interpretation of section 17A of the PC Act 1988. That being so, before proceeding further let this court reproduce the provisions of the section 17A of the Act, 1988.

[17A. 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.]

IV. From a reading of section 17A, the following mandates of law are discernible:

No police officer can conduct any enquiry or inquiry or investigation without previous approval, when it is alleged that:

A. An offence under PC Act, 1988 has been committed by a public servant;

B. In discharge of official function or duties; and

C. Such offence is relatable to:

i.any recommendation made

or

ii. any decision taken.

V. Thus, when it is alleged that an offence is committed under the PC Act by a public servant, which is relatable to a recommendation or decision taken by him, section 17 A of the act debars a police officer from conducting any enquiry or investigation, without obtaining approval of the Union Government or the State Government or the person competent to remove the public servant, as the case may be.

VI. The legislature, in its wisdom has applied/used the word "an offence relatable".

VII. The word "relatable" is an adjective. The legislature in its wisdom had used the adjective "relatable" to connect the "Offence" to a "recommendation made" or a "decision taken." Therefore, such approval shall be required when the offence is associated with and connected to a decision taken or recommendation made by a public servant in discharge of official duty or function. Use of adjective "relatable" to the "Offence", in the considered opinion of this court limits and restricts the offence to be associated with and connected to a decision taken or recommendation made by a public servant in discharge of official duty or function and therefore, can't be extended to all offences under the P.C. Act.

VIII. Thus, the argument of Mr. Choudhury, learned Senior Counsel that enquiry/ Inquiry/Investigation of all cases under PC Act'1988, except trap cases, require prior approval of competent authority don't find favour of this Court. The legislature, could have clearly made such provision application to all the offences under the PC Act'1988 without relating the offences to "any decision" or "recommendation."

IX. It is by now well settled that provision of law/statutes should be interpreted according to their literal or plain meaning, giving the words their ordinary and natural meaning. In the case in hand not only the literal meaning is clear but also such literal interpretation doesn't lead to an absurd or unreasonable result. It is also unambiguous. By relating the offences to a decision taken or recommendation made, the legislature excluded other offences, not relatable to a decision taken or recommendation made in discharge of official duties.

X. Therefore, this Court is of the unhesitant view that approval is not required in all the situations and the alleged offence must be relatable to an offence committed by a public servant, while taking a decision or making any recommendation.

XI. It is the general principle that police is bound to register an FIR and to investigate, when commission of cognizable offence is disclosed in the FIR/ complaint. However, as discussed and determined hereinabove, a protection in the shape of "prior approval" is given even when cognizable offences are made, under PC Act' 1988 which is relatable to a decision taken or recommendation made.

XII. Thus, from the limited nature of protection granted under section 17A of the Act' 1988, as discussed hereinabove, the intention of legislature can also be gathered. In the considered opinion of this court, the intention is to provide a protective shield to a public servant from being subjected to an enquiry or investigation by a police officer, when the alleged offence relates to a decision making process resulting in a decision and/or a recommendation made in discharge of official duty. The object is to facilitate the officers to take decision and make recommendation without there being any fear of frivolous complaint inasmuch as his/her employer shall have an opportunity to consider, whether the allegation is correct or not or whether the decision taken/recommendation made in discharge of official duty is/are genuine or taken in lieu of illegal gratification.

XIII. Offences and penalties are detailed under chapter III of the PC Act'1988. Section 7 of the Act relates specifically to taking bribe for performance of public duty improperly or dishonestly or to forebear from performing such duty by a public officer himself or by another public servant or improper or dishonest performance of public duty or inducement of another public servant to perform public duty dishonestly etc. Therefore, section 7 clearly relates to dishonest performance of duty by taking an undue advantage/illegal gratification.

Section 7A relates to the offences of taking undue advantage to influence public

servant by corrupt means or by exercise of public influence.

Section 8 relates to bribe giver. Section 9 relates to bribing a public servant by a commercial organization. Section 11 deals with offence when public servant obtains undue advantage. Section 13 deals with criminal misconduct by a public servant.

XIV. In the case in hand the allegation is criminal misconduct by the petitioner. A criminal misconduct is committed, when a public servant dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as public servant or allows any other person to do so.

XV. A criminal misconduct under the PC Act brings under its fold intentional enrichment of public servant himself, illicitly during the period of his office. Though section 7 relates to offences of a public servant being bribed and relates to decision making process, section 13 is not limited to any specific decision making process or recommendation, but envisages misappropriation of property entrusted to or under control of the public servant. Such offence also brings under its fold an action of a public servant when he enriches himself illicitly during the period of his office. Therefore, such offence can be committed, without there being any specific decision making process or any recommendation being made.

XVI. The legislature in its wisdom has not incorporated such general offences, not specifically relatable to any decision making process or recommendation made and therefore, in the considered opinion of this court, when the allegation does not relate to an offence relatable to any decision or any recommendation resulting in discharge of his official function or duties, rather it is a general allegation that the officer had enriched himself illicitly during the period of his office, there shall be no protection of Section 17A.

XVII. Now let this court deal with the decisions relied on by the learned counsel for the parties.

XVIII. In Yashwant Sinha (supra) the Hon'ble Apex Court held that in terms of the 17(A) no police officer is permitted to conduct an enquiry or inquiry or conduct an investigation into any offence done by public servant, when the offence alleged is relatable to any recommendation made or decision taken by public servant in discharge of public duty without previous approval, inter alia of the authority competent to remove the public servant from his office at the time when the offence is alleged to have been committed. However, such decision nowhere lays down a ratio that in each and every cases under the PC Act, previous approval of the competent authority is required. Therefore, such decision shall not help the petitioner.

XIX. This Court is in total agreement with the opinion expressed by the Madras High Court in Dhandapani (supra) wherein it was held that Section 17 (A) has

been inserted only to give protection to the honest officer but when it constitutes an offence by itself prior sanction or approval from the government would not be necessary, and when FIR is registered for allegedly acquiring assets disproportionate to known source of income during the said period , the provision of Section 17(A) shall not be applicable.

XX. In *Shankara Bhat* (supra) the Kerala High Court laid down a proposition that the scope and principle of Section 197 Cr.P.C., can be extended to the provisions of Section 17(A) of the PC Act when offences alleged are misappropriation, falsification of account, cheating, criminal breach of trust, receiving bribes etc., though Section 197(1) of Cr.P.C. and Section 17(A) of PC Act, operates in two different fields and in distinct situations. Though this Court is in total agreement with the proposition that Section 17(A) is not applicable in all cases, however, respectfully disagrees as regards applying principle of law applicable to Section 197(1) of the Cr.P.C in cases under section 17(A).

XXI. This Court is of the view that not only the two provisions i.e. Section 197(1) Cr.P.C. and Section 17(A) of the PC Act operates in different fields but also approval/sanction in both the cases are relatable to different stages of prosecution, Section 197(1) of the Cr.P.C. is relatable to pre-cognizance stage and Section 17(A) of the PC Act is relatable to stage of enquiry/investigation. Therefore, in a case under Section 197(1) of the Cr.P.C., there is already materials available for the sanctioning authority collected during the investigation so that it can apply its mind. However, in case of Section 17(A) of the PC Act, what is available before the competent authority is the allegation and the official record reflecting the decision taken or recommendation made which is relatable to the alleged offence. Therefore, standard of grant of sanction/approval shall be based on fundamentally different footing.

XXII. Coming to the case of *Indrajit Bora* (supra), rendered by a coordinate Bench, this Court expresses its agreement with such determination.

XXIII. In *Himangshu Yadav* (supra), decided by the Rajasthan High Court the fact of the case was that the petitioner therein, who was a Village Development Officer, demanded a sum of Rs. 7,000/- for clearing the bill of the informant of Rs. 32,000/-, and in the aforesaid factual backdrop it was held that allegation of demanding illegal gratification relates to discharge of official duties. Therefore, it cannot be said that a proposition was laid down that in all cases, the approval under Section 17(A) of the PC Act shall be required inasmuch as the allegation made in the aforesaid case is relatable to a decision of releasing a bill on payment of illegal gratification. That being the position, such decision shall not help the petitioner herein, in the given facts of the present case.

XXIV. In *Yogesh Nayyar* (supra), the high court of Madhya Pradesh held in the given facts of the said case that lodging of FIR in absence of approval is not barred under section 17A of the PC, however, said provision prohibits investigation by a police officer without approval. This court is in respectful

disagreement with such view, for the reasons as discussed and recorded hereinabove.

7. DECISION

I. In view of the reasons discussed and the reasons recorded hereinabove, this Court is of the view that the present petition is devoid of any merit and accordingly, same stands dismissed.

II. The interim order stands vacated.