

(2018) 03 GAU CK 0080
In the Gauhati High Court
Case No : Criminal Petition No. 03 of 2015

Sri Paresh Chandra Neog

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173(2)227, 228, 397, 482

Indian Penal Code, 1860 — Section 120B, 409, 420, 477A

Prevention of Corruption Act, 1988 — Section 13(1)(2), 13(1)(d)

Citation : (2018) 03 GAU CK 0080

Hon'ble Judges : HITESH KUMAR SARMA

Bench : Single Bench

Final Decision : Dismissed

Judgement

1.This petition, under Section 482 of Code of Criminal Procedure, has been filed by Sri Paresh Chandra Neog for quashing of the order, dated

9.10.2014, framing charge against him for the offences under Section 120B of Indian Penal Code read with Section 13(1)(c) and 13(1)(d) of the

Prevention of Corruption Act in Special Case No. 1/2011 pending in the Court of Special Judge, CBI, Assam, Additional Court No. 3.

2. The petitioner states that, on the request of Government of Assam, an FIR was lodged before the CID P.S stating that pay & allowances of 10th

APBn was fraudulently drawn in excess of actual dues during the period from March 2001 to February 2006 by Sri Paresh Chandra Neog, the

petitioner herein and some others in conspiracy with Sri H.K. Medhi and Sri Randeep Baruah, the second in command. During the course of

investigation, CBI, EOW, Kolkata took up the investigation of the case and after completion of investigation, a chargesheet was laid against the

petitioner and others under Section 120B/409/420/477A read with Section 13(1) (c) and 13(1)(d) of the Prevention of Corruption Act, 1988. The

petitioner further states that at the time of consideration of charges against the petitioner necessary arguments were made by the petitioner before the

trial Court regarding the lack of materials against the petitioner. However, the learned trial Court, by placing wrong reliance on the provisions of

Treasury Rules, framed charges against the petitioner by the impugned order dated 9.10.2014.

3. The respondent No. 1, Central Bureau of Investigation, has submitted affidavit-in-opposition contesting the averments made in the petition. The

respondent No. 1 has re- iterated the facts unearthed during investigation that the petitioner as Commandant of 10th Assam Police Battalion, during

the relevant period, was discharging his duties as public servant. It is further alleged that the petitioner, as drawing and disbursing Officer, entered into

criminal conspiracy with other accused to misappropriate Govt. funds.

4. I have heard Mr. P Kataki, learned Counsel for petitioner the and also heard Mr. SC Keyal, learned Counsel for the respondent No. 1/CBI.

5. The Honâ??ble Supreme Court in Sajjan Kumar v. CBI, reported in (2010) 9 SCC 368, on consideration of various authorities laid down the

following principles with respect to standard required for framing of charge

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence

for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie

case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be

fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total

effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving

enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion

that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court

must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts

emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift

the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common

sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to

discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

6. In the present case, perusal of charge sheet laid against the petitioner reveals that he had delegated his powers as drawing and disbursing officer to

his second-in-command. The chargesheet reveals that not only bills have been drawn against fictitious persons but repeat withdrawals have

also been made. The petitioner, as alleged, during his tenure from December 2002 to May 2004 was Commandant of 10th

Assam Police Battalion when he entered into criminal conspiracy with the other accused persons to misappropriate the Govt funds to the tune of Rs

2,89,78,830 and Rs 2,66,18,320.

7. It may be pointed out that Investigating Agency has also seized all the relevant documents to justify the allegations made against the petitioner.

8. On the basis of the materials on record, against the petitioner, an opinion can easily be formed that the accused might have committed the offence.

In view of the principles laid down in the case of Sajjan Kumar (supra) this standard is sufficient enough to frame the charge against the petitioner,

though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

9. Now, coming to the scope of Inherent as well Revisional jurisdiction of High Court vis-à-vis framing of charges it would be proper to reproduce

herein the principles laid down in the case of Amit Kapoor v. Ramesh Chander, reported in (2012) 9 SCC 460 wherein the Honâ??ble Supreme

Court has culled out several principles regarding the jurisdictional distinction in the two provisions Section 397 and Section 482. The principles are as

follows;

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is

to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the

Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted

therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever

reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in

conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might

be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in

exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution

and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the

offender.

27.7. The process of the court cannot be permitted to be used for an oblique or

ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a

“civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in

quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to

determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the

allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating

agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a

criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by

an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the

record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be

more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a

view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its

jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice

favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of

extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has

been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have

not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

Emphasis supplied

10. In view of the materials on record against the petitioner and the legal principles, discussed above, I find no merit in this petition, and accordingly,

the petition is dismissed.

11. A copy of this order be communicated to the learned Special Judge, CBI, Additional Court No. 3, Chandmari, Guwahati.