
(1990) 07 GAU CK 0001

In the Gauhati High Court

Case No : Criminal Revision No's. 270/87 and 4 of 1990

State of Mizoram and Another

APPELLANT

Vs

K. Lalruata and Others

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161(3), 164, 173, 173(5)
Penal Code, 1860 (IPC) — Section 409

Citation : (1992) CriLJ 970

Hon'ble Judges : N. Ibotombi Singh, J

Bench : Single Bench

Advocate : K.C. Sarma Baruah, for the Respondent

Judgement

Y.I. Singh, J.—Right in the beginning, the learned Advocate-General has submitted that he is not in a position to represent the Government of Mizoram as the respondents were his clients before he was appointed as the Advocate-General of the State of Mizoram. The respondents are also absent without assigning any reason whatsoever. However, as the revision petition cannot be dismissed for default of the parties, I have decided to dispose of the matter on merit.

2. This petition u/s 397 has challenged the correctness, legality and propriety of the order dated 30-4-87 passed by the learned Special Judge, Mizoram at Silchar in Special Case No. 1 of 1982.

3. On the basis of the First Information Report lodged by Shri H.K. Chakravarty, Superintendent of Police, C.B.I. on 23-12-81 that during the year 1978 while Shri K. Lalruata was functioning as Office Assistant in the Office of the Superintendent, Railway Out Agency, under the Directorate of Supply and Transport, Government of Mizoram, Aizawl, he sold 7 numbers of railway tickets for Silchar to Bombay to one K.L. Muana and collected from him an amount of Rs. 1494.50 np, being the costs of the said numbers of railway ticket, by issuing money receipt No. 948201 dated 28-12-78 under his own hand writing as token

of the receipt of the said amount and that the said K. Lalruata misappropriated the same, a case was registered at CBI Police Station at Silchar. On conclusion of the investigation, the charge u/s 409, IPC was hauled up against the accused and in course of time, the Investigating Officer submitted charge sheet against the accused to the Special Judge, Mizoram at Silchar. By his order dated 30-4-87 in Special Case No. 1 of 1982, the learned Special Judge discharged the accused presumably u/s 239, Cr. P.C.

It is against this order of the learned Special Judge, Mizoram that the State of Mizoram has preferred the present revision.

4. On my anxious and careful scrutiny of the impugned order, it is candidly seen that the learned special Judge discharged the accused on two grounds. The first ground is that the learned Public Prosecutor was absent in spite of repeated adjournments. The second ground is that the copies of the documents referred to Section 173, Cr. P.C. have not been furnished to the accused in complete violation of the mandatory provisions of Section 207, Cr. P.C.

5. Before consideration of the points involved in this case, I consider it proper to set out the relevant provision of law bearing on those points. Section 239 of the Criminal Procedure Code, hereinafter referred to as the Code, deals with the discharge of the accused. It provides as follows:--

If upon considering the police report, and the documents sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

6. Section 173 deals with the report of the police officer on completion of investigation.

7. Section 207 relates to supply to the accused of copies of police report and other documents. It provides as follows:--

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:--

(i) the police report;

(ii) the first information report recorded u/s 154;

(iii) the statements recorded under Sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding there from any part in which a request for such exclusion has been made by the police officer under Sub-section (6) of Section 173;

(iv) the confessions and statements, if any, recorded u/s 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate

with the police report under Sub-section (5) of Section 173;

Provided that the Magistrate may, after perusing, any such part of a statement as is referred to in Clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in Clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

Now, from a plain reading of the above provision of Section 239, it is a crystal clear that the discharge of the accused under this Section can be made only for reason that the accusation against the accused is groundless. Before discharging the accused under this section the following preliminaries have to be gone through -- (1) Consideration of police report and the documents referred to in Section 173 and which are furnished to the accused (2) Examination if any, of the accused as the Magistrate thinks necessary (3) Giving prosecution and the accused an opportunity of being heard. And then to consider whether the charge is groundless. Thus the Magistrate before either passing an order of discharge under this section or framing a charge u/s 240 has first to determine whether the material before him furnishes a reasonable basis for foundation of the accusation. In the present case, as stated above, the Magistrate discharged the accused solely on the grounds that the learned Public Prosecutor was absent on that day and that the documents referred to u/s 173 have not been furnished to the accused. On perusal of the records, it is seen that the documents referred to Section 173, Cr. P.C. have already been furnished to the accused and that there were sufficient materials before the learned Special Judge to form an opinion as to whether the accusation against the accused is groundless or not. Therefore, the learned Special Judge committed an error of law in discharging the accused without satisfying himself as to whether the material before him furnishes a reasonable basis for foundation of the accusation. After all, when copies of the relevant documents are produced before the Court and have been supplied to the accused, the accused cannot be discharged on the ground of failure of the prosecution to produce the records in original.

8. For these reasons, the impugned order must not be allowed to stand. In the result, the revision is allowed and the impugned order is hereby set aside. The case is sent back to the Court below with a direction to dispose of the matter in accordance with law after giving opportunities to both the parties of being heard. At least 11 winters must have passed since the date of occurrence and, therefore, the learned Special Judge is directed to dispose of the matter within 3 months from the date of the receipt of the records.

With the above order and direction, the revision petition is disposed of.