
(2018) 05 GAU CK 0253
In the Gauhati High Court
Case No : Crl.Rev.Pet. No. 1 of 2018

Zoramthanga and ors

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173, 209, 225, 226, 227, 228(1), 228(2), 397, 401, 482
Indian Penal Code, 1860 — Section 34, 120B, 409
Prevention of Corruption Act, 1988 — Section 13(1)(c)(d), 13(2)

Citation : (2018) 05 GAU CK 0253

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : C. Lalramzauva, Zoramchhana Fanai, T.J. Lalnuntluanga, H. Zodinsanga, Vanlalhriati, H. Lalramhluna

Final Decision : Dismissed

Judgement

NELSON SAILO

1. Heard Mr. C. Lalramzauva, the learned senior counsel assisted by Mr. Zoramchhana Fanai for the petitioners and Mr. A.K. Rokhum, the learned

Public Prosecutor for the State respondent.

2. On 10.04.2018, Court passed the following order:-

â??This criminal revision petition has been filed under Section 397/401 read with Section 482 of the Cr.P.C seeking revision of the Orders dated

25.10.2017 and 15.02.2018 passed by the learned Special Judge, Prevention of Corruption Act in SR (PCA No. 8/2013) in connection with ACB P.S

Case No. 6/2009 under Section 120B/409/34 IPC read with Section 13(1)(c) (d)/13(2) of the Prevention of Corruption Act, 1988.

The learned senior counsel submits that the petitioners were furnished with a copy of the charge sheet and thereafter, the case was fixed for opening of the case and consideration of charge on 23.04.2014. The petitioners through their appointed counsels made their submissions before the Trial Court and thereafter filed written argument on 16.12.2015. However, the learned Trial Court without considering the submissions made by the petitioners through their appointed counsels as well as without considering the written argument simply fixed certain dates for framing of charge. The learned senior counsel submits that charge has not been framed as yet but, however, the case has been fixed for framing of charge on 12.04.2018.

Considering the submissions made by the learned senior counsel, let notice be issued to the State through the Public Prosecutor. Since the Public

Prosecutor is not present today, the learned counsel for the petitioners shall serve a copy of the petition to the learned Public Prosecutor within two

days. The notice is made returnable within two weeks. Depending upon the response made by the Public Prosecutor, Court shall consider

requisitioning the Lower Court Records.

In the interim, it is hereby provided that the proceeding in SR (PCA No. 8/2013) pending before the learned Special Judge under the Prevention of

Corruption Act shall remain suspended.

Let the case be listed again on 26.04.2018.â??

3. On 26.04.2018, this Court directed the parties to produce the orders passed by the learned Special Court w.e.f., 23.04.2014 up to 25.10.2017 and

thereafter, the learned Public Prosecutor was asked to produce the Mizoram Intodelhna Project (MIP) Guidelines.

4. The learned senior counsel, Mr. C. Lalramzauva submits that from a bare perusal of the charge sheet filed by the Investigating Agency, no case

under the Prevention of Corruption Act, 1988 (P.C. Act) has been made out against the petitioners. The allegation made against the petitioners is

that there was no provision in the MIP Guidelines for giving out the MIP fund to any beneficiary on loan and that the same was meant to be given as a

grant is only unfounded. In fact, there is no allegation against the petitioners that the fund released was not actually received by the beneficiaries and

that the fund was not properly utilized. The petitioners therefore upon filing of the charge sheet made a detailed submission before the Trial Court and

also submitted their written argument on 16.12.2015. However, the learned Trial Court thereafter kept the matter pending for a long time and decided

the frame of charges against the petitioners vide Order dated 25.10.2017. He therefore submits that the entire proceedings should be set aside by this

Court by invoking its inherent powers under Section 482 of the Cr.P.C and if not, the impugned Order dated 25.10.2017 should be set aside.

5. Mr. A.K. Rokhum, the learned Public Prosecutor on the other hand submits that the petitioners have not been deprived of any right to make a

proper defence in the proceeding. The only requirement in law is that if the Trial Court is prima facie satisfied that there are grounds to proceed with

the case, it may frame the charge and thereafter, call upon the accused persons to make their defence. He submits that no reasons are required to be

assigned by the Trial Court to show satisfaction in framing the charge. It is only when the Trial Court is of the view that the accused should be

discharged that the reasons will have to be assigned.

6. Mr. A.K. Rokhum therefore submits that the learned Trial Court has not committed any illegality in directing the framing of the charge against the

petitioners. He submits that as an interim order was passed by this Court on 10.04.2018 suspending the proceeding before the learned Trial Court, the

interim order should be vacated and the Criminal Revision Petition be dismissed. The petitioners upon framing of the charge will have the opportunity

to defend themselves and if it is found that the petitioners have not committed any breach of law, they will be discharged accordingly. In support of his

submission, the learned Public Prosecutor has relied upon the decision of the Apex Court rendered in Criminal Trial No. 5/2000 (Kanti Bhadra Shah &

Anr Vs State of West Bengal) decided on 05.01.2000 and Criminal Trial No. 497/2001 (State of Orissa Vs Debendra Nath Padhi) decided on

29.11.2004.

7. I have considered the submissions advanced by the learned counsels for the rival parties and I have perused the materials available on records.

8. Chapter XVIII of the Cr.P.C deals with Trial before a Court of Session. Section 225 provides that in every trial before a Court of Session, the

prosecution shall be conducted by a Public Prosecutor. Section 226 provides that on production of the accused before the Court, the prosecutor shall

open his case by describing the charge brought against the accused while stating

the evidence on which basis he proposes to prove the guilt of the accused. Section 227 provides that if the Trial Court considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused after recording the reasons for doing so. Section 228 (1) further provides that if after such consideration and hearing, the Trial Court is of the opinion that there is ground for presuming that the accused had committed an offence, he shall frame in writing a charge against the accused, whereafter, under Section 228 (2), the charge will be read and explained to the accused while asking him whether he pleads guilty of the offence charged or claims to be tried.

9. In the case of Kanti Bhadra Shah & Anr (Supra) the Apex Court has held that if a Magistrate forms an opinion that there is ground for presuming that the accused had committed the offence which the Court is competent to try, in such a situation, the Court is only required to frame a charge in writing against the accused and for which, there is no requirement of recording the reasons as to why he framed the charge. It was further observed that if the High Court decides to quash the charge, it is open to the High Court to record the reasons thereof. However, in taking such a decision, the High Court would be required to re-examine the records to consider whether the charge framed was sustainable or not. In the case of Debendra Nath Padhi (Supra), the Apex Court while adverting to Section 227 of the Cr.P.C read with Section 209 of the same code held that there was no provision in the Cr.P.C for granting the accused the right to file any material or document at the stage of framing of charge. Such right was granted only at the stage of trial. The Apex Court went on to observe that Section 227 was incorporated with a view to save the accused from prolonged harassment, which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. The Apex Court also referred to the case of State Anti Corruption Bureau, Hyderabad & Anr Vs State Surya Prakasker 1999 SCC (CrL.) 373, wherein it was held that at the time of framing of charge, what the Trial Court is required to do and can consider are only the Police report referred to under Section 173 of

the Code and documents sent with it. The only right that the accused has at that stage is of being heard and nothing beyond that.

10. Now let us examine the orders passed by the learned Trial Court which has been produced by the learned counsel for the petitioners pursuant to the Order dated 26.04.2018. The order sheet reveals that on 23.05.2014, the Trial Court issued summons to the parties concerned fixing 12.06.2014 for appearance. On

12. 06.2014 the accused persons were absent but they were represented by their appointed counsel. The documents were however delivered to their appointed counsel and 04.07.2014 was fixed for opening of the case. Thereafter, several dates were fixed for opening of the case w.e.f., 04.07.2014 up to 30.09.2015. On

3. 11.2015, the learned Additional Public Prosecutor before the learned Trial Court opened the case and the defence lawyers were also heard and they were directed to submit their written arguments by fixing 03.12.2015 as the next date. The case was put up on 04.12.2015 but the same was adjourned on the prayer of the counsel for the defence and case was adjourned to 16.12.2015 for submission of written argument. On 16.12.2015, the following orders were passed:-

â??16.12.2015

Parties through counsels are present. Today is fixed for submission of W/A. However, the learned Additional Public Prosecutor prays for adjournment. Prayer is allowed.

Fixed 23.01.2016 for W/A.â??

11. What can be noticed from the Order passed on 16.12.2015 is that the case stood adjourned to 23.01.2016 on the prayer made by the learned Additional Public Prosecutor. However, the said order bears no signature of the Trial Court.

12. Thereafter, on 25.10.2017 the case was taken up again wherein the Trial Court directed that charge be framed as was prayed by the learned Public Prosecutor. 21.11.2017 was fixed as the next date for charge consideration and parties were directed to be informed over phone. The said Order dated 25.10.2017 is the order which is impugned by the petitioners in the present revision petition amongst others.

13. From a perusal of the certified copy of the order sheet produced before this Court, what can be noticed is that for the issuance of summons to the parties concerned on 23.05.2014, as many as 14 dates were fixed for opening of the case by the prosecution w.e.f., 12.06.2014 to 13.09.2015.

Thereafter, when the Trial Court ultimately heard the parties on 03.11.2015, further opportunity for submission of written argument was given to the parties till 16.12.2015. Although the learned counsel for the petitioners submit that the written argument on behalf of the petitioners were submitted

before the learned Trial Court on 16.12.2015 but however, there is no indication in the order passed on that day. Moreover, it is most surprising to note

that there is no signature against the Order dated 16. 12.2015. Therefore, the question is; who passed the Order dated 16.12.2015? What happened on

23.01.2016, the same being the next date fixed for submission of written argument? Why was the case only taken up again on 25.10.2017? These

questions remained unanswered even as the Criminal Revision Petition seeking quashment of the criminal proceeding, pursuant to the filing of the

charge sheet by the Investigating Agency is being taken up for final disposal. The manner in which the case has been dragging since 23.05.2014 only

shows lack of any intention on the part of the Trial Court as well as the learned counsels appearing for the parties to proceed further with the case.

14. Pendency of the case without framing of any charge between 16.12.2015 to 25. 10.2017 as noticed remains unexplained. It can also be seen that

the parties at the same time did not bother to take any steps in order to find out what transpired after 16.12.2015. Without there being any explanation,

it would amount to gross negligence on the part of the Trial Court. What is expected from a Court is to arrive at a decision based on the materials

placed before it and not to keep the case lingering without any progress for months and years together.

15. However, in view of the fact that this Court at the outset decided to dispose the case and since the original case record was also not requisitioned,

this Court refrains from directing the submission of a report by the learned Trial Court. As has been submitted, in terms of the relevant provision of the

Cr.P.C as well as the decisions of the Apex Court that was referred, there is no requirement for the Trial Court to assign reasons for framing of

charge except extending the right to be heard to the accused. It is also a well settled law that the inherent power under Section 482 of the Cr.P.C is to

be exercised with due case and caution, especially when the question of quashing a criminal trial which is yet to commence is concerned. Therefore,

under the facts and circumstances of the case and upon due consideration, I do not find it to be a fit case to exercise the inherent power of this Court

under Section 482 of the Cr.P.C.

16. In the result, the Criminal Revision Petition is found to be without merit and the same is dismissed. The interim order passed on 10.04.2018 stands vacated.

17. Before parting with the order, it is made clear that this Court has not expressed anything on merit and the learned Trial Court shall proceed strictly in accordance with law with due care and caution.