GAHC010124582022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./586/2022

NEPUT RAJIYUNG@ ACTION DIMASA@ MIPUT RAJIYUNG
S/O. DEPON RAJITUNG, R/O. UMRANGSO, P.S. UMRANGSO, DIST. DIMA HASAO, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE P.P. ASSAM.

2:BIKASH THOUSEN
S/O. UPENDRA JHON
VILL. DONGJEN RAJI
P.S. UMANGRANSO
DIST. DIMA HASAO
ASSAM

Advocate for the Petitioner : MR P NAYAK

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

Date : Date of Hearing : 7.9.2022

Date of Judgment/Order : **27.10.2022**

JUDGMENT AND ORDER(CAV)

Heard Mr. A. M. Bora, learned counsel for the petitioner. Also heard Mr. S. Borthakur, learned counsel for the respondent/informant No. 2. And Mr. D. Das, Learned Additional Public Prosecutor.

2. The present application u/s 482 Cr.P. C. is preferred praying for setting aside and quashing the order dated 4.6.2022 passed in Sessions Case no. 18/2008 by the learned Sessions Judge, Dima Hasao and also for quashing the FIR registered as Haflong PS. Case No. 53/2022 u/s 195A IPC.

3. **The background fact:**

The basic background fact leading to the filing of the present application may be summarized as follows:

I. Respondent No. 2, on 28.4.2007, lodged an FIR before the Officer-in-charge,Umrangsho P.S. inter Alia alleging that when his vehicle which hired by two Dimasa people with one police personnel with arms and boarded the vehicle at Haflong and in the midway one Dimasa person asked to change the direction of the vehicle and thereafter a group of 7/8 boys wearing army dress with arms stopped the vehicle, kidnapped them and taken away the ammunitions of the PSOs. The extremist also took away his vehicle. Based on such FIR USO PS Case No. 22 of 2007 was registered.

II. After completion of the Investigation,the police laid a charge sheet in the aforesaid case and informant/respondent No.2 was shown as one of the witnesses to prove the charges. In the charge sheet, it was also

mentioned that the present petitioner/accused in the aforesaid case, may be considered as an approver of the case and a prayer was made for appropriate action. During the investigation, the statement of the present respondent No.2 was recorded u/s 161 Cr. P. C. He depicted the same story in his statement under 161 Cr.P.C. He further stated that if he sees the two Dimasa persons who came in the vehicle he can recognize them.

III. Thereafter, the trial proceeded and the present respondent No. 2 was examined as PW 4 in the proceeding of the Sessions Case No. 18/2008. He was examined on 26.4.2021. During the examination-in-chief, respondent No.2 deposed that he could not identify the extremist as their faces were covered and he could not collect more information due to fear. He further deposed that army personnel detained him in their custody for more than two months. He proved the FIR lodged by him as well as his signature. During cross-examination,he deposed that he did not write the FIR and it was written by one police personnel namely, UBC Deba Kanta Laskar, who was posted at Diyungmukh Outpost. During cross-examination, he further deposed that those who hired the vehicle on the date of the incident are not present in the court on that day. He also deposed that he could not identify the person present in the Court on that day and whether they committed the offence on the date of the incident. To a suggestion of the defense, he admitted that he has given his signature on a blank paper. To a pointed query of the Court, respondent 2 deposed that the person who boarded at Haflong with the PSO was open-faced, he did not notice any mask on their faces. To another query of the court, he deposed that the extremist snatched away his car key.

IV. Thereafter, on 04.06.2022, the present respondent No.2 filed a petition being Petition No.620/2022 before the learned Trial Court below

to get him re-examined by the court. The ground for the filing of such an application was that the present petitioner accused Sri Miput Rajiyung @ Action Dimasa along with three other unknown persons abducted him and his wife from Haflong Town at gunpoint on 6.4.2022 and he was forcefully brought to Umrangso and the present petitioner directed the respondent No. 2 to make statements before the court as he directed and not to implicate the accused Debolal Gorlosa before the court and accordingly, as per their direction, he deposed before the court. It was further pleaded in the said petition that the present accused threatened and pressurized respondent No.2. It is further pleaded that the deposition made by him before the court was made as per the direction of the present accused.

V. Based on such application the impugned order dated 4.6.2022 was passed. By the impugned order the learned Court below directed the Superintendent of Police, Dima Hasao to register a case u/s 195A IPC and investigate the same. A further direction was given to assess the threat perception of respondent No. 2 under the Witness Protection Scheme and the present respondent No.2 was also directed to be present before the S.P., Dima Hasao and report the matter.

VI. Thereafter, under such direction, respondent No.2 appeared before the Superintendent of Police, Dima Hasao along with a copy of the impugned order and lodged a First Information Report along with the certified copy of the order dated 4.6.2022 before the Superintendent of Police, Dima Hasao alleging the abduction and threatening etc. similar to the pleadings made in Petition No. 619/2022. The said information was registered as Haflong P.S.Case No. 53 of 2022 u/s 195 A IPC.

4. **Argument on behalf of the petitioner:**

Mr A. M. Bora, learned Senior Counsel representing the petitioner,challenging the

impugned order dated 4.6.2022 and the FIR registered by the S.P submits the following :

I. The learned Sessions Judge could not have directed the Superintendent of Police to register a case u/s 195A IPC and to investigate the same. Neither the Sessions Court is having any jurisdiction to pass such a direction nor the S.P. is having any authority to get an FIR registered on a standalone allegation of commission of offence u/s 195A IPC.

II. In view of the procedure laid down u/s 195(1) (b) (i)Cr. P. C.,in the given facts of the present case, the learned judge was left with the option but to proceed as per Section 340 Cr.P.C showing reasons of his satisfaction for such course of action and not a direction for registration of FIR under section 195A IPC and investigation by police inasmuch as such action is not permissible under law.

III. Section 195 A Cr.P.C. provides that any witness or any other person may file a complaint concerning an offence under Section 195A IPC. Registration of FIR is barred under the said provision in as, much as given the provision of section 2 (d) Cr.P.C., a complaint is necessarily required to be filed before a Magistrate. Therefore the very direction for registration of FIR and resultant registration thereof by the Superintendent of Police is void ab initio.

IV. Adherence of Section 340 Cr.P.C. is sine qua non for proceeding u/s 195 Cr.P.C., including a prosecution under Section 195A IPC, when a court wants to launch a prosecution and adherence of Section 195A Cr.P.C. is must when an individual opts to prosecute another person u/s 195A IPC and none of the aforesaid mandates of law have been followed while passing the impugned order and lodging the

impugned FIR

V. Initiation of the FIR registered by the SP, Dima Hasao and the order impugned being without jurisdiction and in total disregard of statutory provisions and procedures, the entire proceeding is liable to be set aside and quashed.

VI.

5. <u>Argument on behalf of Respondent No.2.</u>

Mr. S. Borthakur, learned counsel defending the impugned order and the impugned FIR argues the following:

I. The power of police to investigate a cognizable offence is not controlled either by Section 195 Cr.P.C or by Section 340 Cr. P. C. inasmuch as Section 195 A is a cognizable offence and therefore, registering of the FIR by the S. P. under Section 195 A based on the FIR lodged by the respondent No. 2 cannot be faulted with.

II. Section 195 Cr.P.C comes into operation at a stage when the court intends to take cognizance of an offence u/s 195 A IPC and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence including under section 195A.

III. The question of adherence to either Section 195 Cr. P.C. or Section 340 Cr. P. C. will arise at the time of cognizance by a court and not at the stage of investigation and therefore the learned Sessions Judge has rightly asked the Superintendent of Police to investigate, whether any offence u/s 195 A IPC is made out and the court can only take cognizance depending upon the outcome of the investigation and at that stage the question of adherence of Section 195 Cr.P.C or Section

340 Cr.P.C. will arise.

IV. Respondent No. 2 is having a right to file an FIR, over and above the remedy of filing a complaint as provided under section 195 A Cr. P.C. Provision of 195A Cr.P.C. should be read in conformity with the right of respondent No. 2 to file an FIR, which involves cognizable offence inasmuch as Section 195 A IPC is a cognizable offence.

V. In such support of aforesaid submissions, Mr. Borthakur learned Counsel places reliance upon the judgments of the Hon'ble Apex Court in ***State of Punjab Vs Raj Singh and another*** reported in ***(1998) 2 SCC 391*** and ***M. Narayandas Vs State of Karnataka and others*** reported in ***(2003) 11 SCC 251***

6. <u>Determination of the Court:</u>

I. From the submissions made and arguments advanced by the learned counsels for the parties, the issue in the present litigation revolves around the power of the learned Sessions Judge in directing the Superintendent of Police to register a case u/s 195A IPC and to investigate the same. The further issue concerns the power of police to register and investigate a standalone offence under section 195A IPC based on an FIR.

II. Chapter XIV of Cr.P.C deals with the conditions for initiation of certain proceeding. Section 195 Cr.P.C Chapter XIV of the Code deals with prosecution for contempt of the lawful authority of public servants and offences against the public justice and also for offences relating to documents given in evidence. The said section, more particularly sub-clause(i) of Clause (b) of sub section (1) imposes a condition that no court shall take cognizance of any offence punishable under Section 193 to 196 IPC (both inclusive), Section 199 IPC, 200 IPC, 205 to 211 IPC and 228 IPC, when such offence is alleged to have been committed concerning any

proceeding in any Court, except on a complaint in writing of the court or by such officer of the Court as that Court may authorize in writing in this behalf or of some other courts subordinate to it on its behalf. Thus cognizance of an offence u/s 195 A IPC can be taken only on a complaint in writing of the court (in the present case, the Sessions Court)or by an officer of the Sessions Court, if such direction is issued by learned Sessions Judge or of any other court subordinate to the Sessions Court.

III. Chapter XXVI of Cr.P.C deals with procedures relating to the prosecution of offences affecting the administration of justice and Section 340 under this chapter is relevant for purpose of determination of the present Lis. Section 340 of the Cr. P. C. lays down the procedure that is required to be followed when a complaint under Section 195(1)(b)Cr.P.C., as discussed herein above, is required to be made.

IV. A reading of Section 340(1) Cr.P.C, it is clear that before making a complainant, the court, before whom the proceeding is pending, must form an opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred in sub-section (1) of Section 195 Cr. P.C. appears to have been committed, concerning a proceeding of that court. After having such satisfaction/opinion the court may make a preliminary enquiry. During the preliminary enquiry it can record a finding to that effect, can make a complaint thereof in writing and send it to a Magistrate of 1st class having jurisdiction etc. Section 340 Cr.P.C is a guideline for a court, that desires to initiate a proceeding for the offences enumerated u/s 195 (1) Cr. P.C.

V. The Hon'ble Apex Court while dealing with an issue of adherence to principles of natural justice while conducting an enquiry under Section 340 Cr.P.C, in the ***Pritish vs. the State of Maharastra and ors*** **(2001)** ***1 SCC***

253 held that reading of the sub-section (1) makes it clear that the hub of this provision is the formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. It was also held in **Pritish (supra)** that to form such an opinion, the court is empowered to hold a preliminary inquiry but it is not peremptory that such a preliminary inquiry should be held. Even without such preliminary inquiry, the court can form such an opinion, when it appears to the court that an offence has been committed concerning a proceeding in that court. It was further held that even when the court forms such an opinion, the court doesn't need to make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation, it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though the absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. The Hon'ble Apex Court in **Pritish (supra)** clarified that the preliminary inquiry contemplated is not for finding whether any particular person is guilty or not and the purpose of the preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed. Such enquiry is a pre-trial enquiry

VI. In the case in hand, as the learned Trial Court had directed the SP, Dima Hasao to register and investigate a case under Section 195A, it seems to this Court that the learned Trial Court had already formed an opinion that an

offence under Section 195A has been committed in the proceeding of the Sessions Case No. 18/2008. However, the learned Court instead of following due process as mandated by law and discussed herein above had passed the impugned order which is not permitted under law for the reasons discussed herein above. Thus, the learned Court below passed the impugned order directing the police to register and investigate the case in total derogation of Section 195(1) and section 340 (1)CrPC.

VII. Section 195A Cr. P. C. provides that when any witness or any other person alleges that an offence under Section 195A IPC is committed, then it may file a complaint. Thus from the conjoint reading of Section 195A Cr.P.C and Section 195 A IPC and Section 195 Cr.P.C, it is clear that to launch a prosecution under section 195A IPC, a complaint is a sine qua non. When it is by the Court before whom the proceeding is pending, it should be as per procedure laid down under Section 340 Cr PC and when it is at the behest of a witness or any other person, the procedure required to be followed as mandated u/s 195 A Cr.P.C, which is a complaint. Thus a cognizance u/s 195A IPC can be taken by a competent court only based on a complaint, in either of the situations.

VIII. For the aforesaid reasons, this court is of the unhesitant view that the learned Sessions Judge could not have directed the Superintendent of Police to register and investigate an offence u/s 195A IPC. The course of action open for the learned Sessions Judge, Dima Hasao was to follow the procedure laid under Section 340 Cr. P.C.

IX. A complaint is defined under Section 2(d) of the Cr P C as any allegation made before a Magistrate, either orally or in writing, alleging that some person (known or unknown) has committed an offence and

seeking action under the Code against such commission of an offence. Such a complaint can either be oral or in writing but does not include a police report. However, it is also explained in the Code that when police after investigation submit a report before the Magistrate disclosing commission of a non-cognizable offence, such police report is deemed to be treated as a complaint.

X. The Code defines Police Report as a report forwarded by a police officer to a magistrate under Section 173 (2) of the Cr.P.C. The report under Section 173(2) needs to be filed before a magistrate empowered to take cognizance of the Offence. A police report is filed after the completion of the investigation of a cognizable offence by police before a Magistrate, empowered to take cognizance and when such a police report discloses non-cognizable offences, the same is treated to be a complaint by the Magistrate and proceed accordingly.

XI. When information regarding the commission of a cognizable offence is given to an officer in charge of a police station, he is bound to register the same and investigate the same as per the mandate of Section 154 Cr.P.C. At the same time, the code also lays down under sections 195 Cr.P.C, 340 Cr.P.C. and 195A Cr.P.C, a separate procedure for launching prosecution for certain cognizable offences, like for contempt of the lawful authority of public servants, offences against public justice and offences for witness threatening, including section 195A IPC. Therefore, in the considered opinion of this, a prosecution under section 195A IPC can be launched by a witness or any other person, only by way of a complaint before a Magistrate and not by way of an FIR before Police. Thus Section 195A IPC is an exception. The legislature in its wisdom has provided “a complaint” as a remedy for a witness or any other person to launch prosecution by

incorporating Section 195A IPC. Accordingly, the argument of Mr Borthakur, learned counsel that Section 195 Cr.P.C. and Section 340 Cr.P.C. do not control or circumscribe the power of police to investigate the cognizable offence of Section 195A, in the given fact of the present case is negated.

XII. For the reasons discussed herein above, this Court is of the view that Investigating Authority or the Police could not have registered a standalone offence of Section 195A IPC for investigation.

XIII. Coming to the decisions of Hon'ble Apex Court relied on by Mr Borthakur, learned counsel i.e. ***M. Narayandas*** (supra) and ***Raj Singh*** (supra), this Court is of the considered opinion that in both the aforesaid cases, other cognizable offences like section 420, 460 and 467 IPC were alleged to have been committed in course of proceeding of a civil suit and the same is not applicable in the present case since in those cases, the issue was whether Section 195 and Section 340 Cr. P.C. affect the power of police to investigate a cognizable offence. In the case in hand, the FIR registered is only under 195A IPC and the learned Sessions Judge had directed to register an offence u/s 195A IPC and in the present case no other cognizable offences were either registered or directed to have been registered. Therefore in the considered opinion of this Court, the case laws relied on by Mr. Borthakur, learned counsel is not at all applicable in the given facts and circumstances of the present case.

XIV. There cannot be any quarrel on the proposition of law that police shall have the power to register and investigate when a cognizable offence is made out however, at the same time when only commission of offence u/s 195A IPC, which is also a cognizable offence is made out, the procedure for launching prosecution under such standalone Sections is strictly required

to be followed as provided under section 195 Cr.P.C read with Section 340 Cr. P. C. And Section 195A CrPC as discussed herein above.

7. **Direction:**

In terms of the aforesaid discussions, reasons and determination, this Court Directs the Following:

I. The Impugned order dated 4.6.2022 passed by the learned Sessions Judge, Dima Hasao in Petition No.620/2022 is set aside and quashed, so far the same relates to the direction to the Superintendent of Police, Dima Hasao to register and investigate an Offence under Section 195A IPC.

II. The Haflong P.S Case No.53 of 2022 under section 195A IPC is set aside and quashed.

8. As the present petition is allowed for failure on the part of the learned Sessions Judge, Dima Hasao and SP, Dima Hasao in following due procedure under the Code of Criminal procedure, in the considered opinion of this Court it is necessary to make the following clarifications:

I. This court has not expressed any opinion on the merit of the allegation as leveled by respondent No. 2 before the learned Sessions Judge, in his Petition No. 620/2022 and in the FIR filed before the Superintendent of Police, Dima Hasao

II. The learned Sessions Judge shall also be at liberty to proceed afresh, if it has reasons to form opinion as per the provision Section 340 Cr.P.C. and as determined by this Court

III. The Superintendent of Police/ Police shall be at liberty to register a case and investigate the same as per law, if any cognizable offences are made out

based on the FIR lodged by respondent No. 2 and if permitted under the law.

9. With the aforesaid terms, this petition is allowed.

JUDGE

Comparing Assistant