



GAHC010226962022

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

Case No. : Crl.Pet./1121/2022

MRIGEN HALOI
S/O LATE LAKSHMI HALOI
R/O VILL- MUGKUCHI
P.S. NALBARI
PIN-781334, DIST. NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:SRI BEDANTA BIKASH DAS
S/O LATE NANDESHWAR DAS
R/O VILL- MAZGAON
P.S. TEZPUR
DIST. SONITPUR
ASSA

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 18-09-2023

1. Heard Mr. A.M Bora, learned senior counsel assisted by Mr. V.A. Chowdhury, learned counsel for the petitioner. Also heard Mr. M Phukan, learned Public Prosecutor, State of Assam and Mr. S.K.

Talukdar, learned counsel for the respondent No.2.

2. The present application under section 482 Cr.P.C read with section 397 and section 401 of the Code of Criminal Procedure, 1973 is filed assailing an order dated 05.11.2022 passed by the learned Special Judge, Assam in Spl. Case No.5/2021, whereby a petition filed under section 319 of the Cr.P.C seeking the respondent No.2 to be arrayed as an accused was rejected on the ground that the respondent No.2 is a whistle blower and his statements are protected under section 24 of the PC Act, 1988.

3. **The background facts in which the aforesaid application was filed can be summarized as follows:**

I. The respondent No.2 on 17.08.2017 lodged an ejahar before the Officer-in-Charge of Bhangagarh police station with the following allegations:

a. The respondent No.2 was a candidate for appointment to the post of Agricultural Development Officer, Examination for which was conducted by Assam Public Service Commission;

b. Though the respondent No.2 cleared the written examination held in the year 2014 but was unsuccessful in oral examination and the reason is that one Rakesh Kr. Paul who was the Chairman of APSC and his agent one Musharaf Hussain has asked Rs. 15,00,000/- as bribe.

c. The respondent No.2 apprehends that both the

aforesaid accused conspired together and by taking Rs.15,00,000 from other candidates selected them for the post.

d. The respondent No.2 also paid an amount of Rs.50,000/- as advance to the aforesaid accused person at Satsanga Bihar as he came to learn that the appointments are given in APSC by taking bribe.

e. As the respondent No.2 had doubt regarding the result, he filed one RTI application and came to learn that a reserved category candidate i.e, the petitioner herein scored 78 marks whereas, in an another RTI reply filed by other person it was shown that the said Mrigen Haloi (the petitioner herein) scored 80. Accordingly, the FIR was filed.

II. On the basis of such FIR, Bhangagarh PS case No.159/2017 under section 120(B)/420/468 IPC read with section 7/13(1)(a)(d) PC Act was registered and investigation was conducted.

III. After completion of the investigation charges were laid wherein the present petitioner amongst others were made accused.

IV. During the trial, the respondent No.2, who is the informant, was examined as PW-8. The important testimonies of the PW-8 (respondent No.2) which are necessary for determination of the present litigation are summarized as follows:

- a. PW-8 passed B.Sc agriculture in the year 2007.
- b. On 05.04.2013 an advertisement for selection of 80 post of ADO was issued and he applied for it.

- c. On 04.05.2014 screening test was held and he was selected for viva voce.
- d. On 05.08.2015 viva voce was taken and viva voce of the PW-8 was taken by one Basanta Kr. Doley and the Departmental expert.
- e. The petitioner Mrigen Haloi also appeared for viva voce on the same date.
- f. On a query, the petitioner intimated the respondent No.2 that whole scheme of things was centered around managing the selection process by payment of money.
- g. Another candidate Mukul Deka informed him that whole selection process is tainted with payment of cash for job. The said Mukul Deka also informed the respondent No.2 that one Musharaf Hussain can secure the job for candidate on payment of Rs.15,00,000 in a single installment.
- h. After getting such information the respondent No.2 requested said Mukul Deka to introduce him to Musharaf Hussain.
- i. In the month of October, 2015, as per instruction he came from Tezpur to Satsanga Bihar, Guwahati and met said Musharaf Hussain along with Mukul Deka.
- j. Musharaf Hussain told him that he would have to pay Rs.15,00,000/- for securing the job.
- k. At around 4.20 pm Rakesh Kr. Paul arrived at Satsanga Bihar, he went inside the room where Rakesh Kr. Paul was sitting and Rakesh Kr. Paul intimated that there are many

persons similarly situated like the respondent No.2 and to get selected as ADO Rs.15,00,000 is to be paid.

l. As the respondent No.2 was carrying only Rs.50,000 at that point of time, he paid the same as advance which was accepted, however, it was intimated that the respondent No.2 is to pay balance amount as early as possible.

m. As the respondent No.2 could not arrange the balance amount, he could not pay the same.

n. On 04.02.2016 the result of viva voce examination was declared and the name of the petitioner was not in the select list. Thereafter, he filed one RTI application as narrated in the FIR. According to him as per RTI the petitioner secured 78 marks and he had secured 72 marks.

o. He also requested the other candidate Mukul Deka to file RTI application and in the reply made to the RTI application filed by said Mukul Deka, it was intimated that Mrigen Haloi obtained 80 marks.

p. Having seen the said discrepancy the respondent No.2 got fully convinced that there was cash for job scheme in the whole process and accordingly, FIR was lodged on 17.08.2017.

4. In the aforesaid backdrop the application under section 319 was filed by the present petitioner. The learned Special Judge, Assam has rejected the aforesaid application basically on the following considerations:

I. The amendment made to the PC Act 1988 came into force

w.e.f. 26.07.2018 and such amendments are prospective in nature.

II. Though it is urged that the cause of action for arraying the PW-8 as accused arose on 31.10.2022 i.e., the day of first deposition of PW-8 in the court, however, such argument was negated for the reason that the alleged offence of payment of illegal gratification was done prior to the amendment of the Act i.e., in the month of October, 2015.

III. The date of occurrence in a criminal case is the day on which the incident took place inasmuch as even if any offence has been committed by the informant, commission of such offence should relate to the date when the bribe was paid to accused Rakesh Kr. Paul.

IV. Therefore, the informant PW-8 is protected from prosecution under the provision of section 24 of the PC Act, 1988 and his protection shall continue on all subsequent dates.

V. The mere fact that the deposition in the court was made post amendment, he will not be disentitled to the protection under Section 24 of the PC Act, 1988.

VI. The PW-8 is a whistle blower against a corrupt person who was holding a constitutional post.

VII. Instead of appreciating the courageous step of the informant, the accused petitioner, who was allegedly selected illegally tries to condemn such whistle blower and if such petition is allowed, nobody in future shall dare to agitate any anomalies and illegalities during trial.

VIII. The steps taken by the petitioner is dangerous in nature and

such type of act will give a bad message to the society in future.

Accordingly, the petition was dismissed with a cost of Rs.50,000.

5. **Argument advanced by Mr. AM Bora, learned Senior counsel:**

Mr. A.M Bora, learned senior counsel representing the petitioner argues the following:

I. In terms of section 319 Cr.P.C., a court is empowered to proceed against a person, if it appears from the evidence during course of inquiry or trial that any person has committed an offence and the person who committed such offence can be tried together and the court may proceed against such person when the court is having the satisfaction that the said person appears to have committed such offence.

II. Section 24 of the PC act does not envisage a blanket protection of the bribe giver inasmuch as immunity to bribe giver is provided where he is unwilling to pay illegal gratification to public servants.

III. Relying on the judgment of the Honble Apex Court in the case of ***Rajat Prasad Vs. CBI*** reported in ***(2014) 6 SCC 495***, Mr. Bora learned Senior counsel contends that a crime does not stand obliterated or extinguished merely because its commission is claimed to be in public interest. He further contends that for the offence of abetment in the case in hand section 12 shall require criminal intent on the part of the offender like any other offence and in the case in hand from the statement made in FIR to the testimonies before the court made by the respondent No.2,

clarifies that he had a clear intention to bribe the prima accused Rakesh Paul to obtain a job and accordingly, he paid the amount also therefore, such kind of people is not protected under section 24 of the PC Act, 1988.

IV. Relying on the judgment of the Delhi High Court in the case of ***Bhupinder Singh Patel Vs. CBI***, reported in (2008) SCC Online 711 Mr. Bora further contends that it is during the investigation and trial the complainant is required to make such statement and on such statement he cannot be prosecuted for the offence of abetment under the Act and section 24 of the Act does not envisage blanket protection to the bribe giver under all circumstances. According to him, the immunity for bribe giver is provided, where he is unwilling to pay illegal gratification to a public servant and approaches the police agencies in order to get the public servant trapped while accepting the bribe. Mr Bora further submits that such decision of the Hon'ble Delhi High Court in Bhupinder Singh (supra) was affirmed by the Hon'ble Apex Court in the case of Rajat Prasad (supra).

V. Therefore, according to Mr. Bora, in the present case it is crystal clear that the respondent No.2 became wise only when even after payment of money he did not get the job inasmuch as he waited to file the FIR for more than one year from the date on which the respondent No.2 allegedly bribed the prime accused and that too when result was declared and he did not find his name in the select list. Such persons cannot have any protection under section 24 of the Act.

VI. According to Mr. Bora in view of such kind of activities of the accused persons the legislature in its wisdom has deleted section 24 and incorporated new section wherein a specific period of 7 days has been provided to inform the police, then only the protection is being given.

VII. Relying on the judgment of the Honb'le Apex Court rendered in the case of ***Laxmipat Choraria and Others Vs. State of Maharashtra*** reported in ***AIR (1968) SC 938*** and also the definition of the proceeding given in Black's Law Dictionary, Mr. Bora argues that the expression "causes to be instituted criminal proceeding" was held to include the making of a report to the police or to such officer whose duty it is to forward the report for action by the police.

VIII. Mr. Bora further submits that the language of section 24 clearly establishes that the protection is meant for those genuine person who offers bribe inasmuch as the legislature with clear intention used the word offer and in the case in hand admittedly the respondent No.2 has not only offered but paid the amount to get the job and lodged the FIR when he failed to obtain the job even after payment of bribe and therefore, the protection/immunity under section 24 is not available to a person like that of respondent No.2.

6. **Arguments advanced on behalf of the learned State respondent.**

Mr. M Phukan, learned PP while defending the decision of the learned

Special Judge argues the following:

- I. On the date of lodging the FIR the un-amended Prevention of Corruption Act, 1988 was holding the field and therefore, the said Act shall be made applicable so far relating to the conduct of the respondent No.2 inasmuch as under section 24, protection is to be given to the respondent No.2. Therefore, in terms of section 24 the respondent No.2 cannot be treated as an accused inasmuch as it is the admitted case of the petitioner that the cause of action arose in the year 2015, more particularly, when the offence was committed on 05.08.2015 and on the said date the old Act was in existence.
- II. The word "offer" used in section 24 shall have no relevance inasmuch as the heading of section 24 is to be treated as preamble and the heading describes protection to "bribe giver." Therefore, the emphasis given by the learned senior counsel for the petitioner upon the word 'offer' shall have no relevance.
- III. It is immaterial whether actually bribe has been given or not to get the protection under section 24 of the un-amended Act. According to Mr. Phukan, "to prosecute" means to institute and pursue a criminal action against a person in terms of the definition given in the Black's Law dictionary.
- IV. According to Mr. Phukan, learned Public Prosecutor, on the date of lodging of the FIR the prosecution shall start. Therefore, the statement made in the FIR shall also get protection under section 24 of the PC Act and not only at the stage of judicial proceeding but at the stage of initiation of any criminal proceeding

till the legal conclusion.

V. The protection given to a bribe giver under section 24 is a substantive provision and not a procedural provision and therefore, the deletion of the said provision shall not extinguish the protection inasmuch as the incorporation of the new section, wherein it is provided that the information is to be given within 7 days for availing such protection shall not be applicable in the case in hand inasmuch as the proceeding was initiated in the year 2015 by lodging the FIR.

VI. The learned PP further contends that until and unless there is any expressed declaration or necessary implication to the effect that the operation of an Act or an amended provision is retrospective in nature, the same shall always be treated as prospective and in the case of amendment of the Prevention of Corruption Act, 1988, there is neither any expressed provision nor is there any necessary implication to show that it is retrospective in nature. Therefore, the protection under section 24 shall continue to be applicable in the case of respondent No.2.

VII. According to Mr. Phukan, learned PP the object of section 24 is to protect a person or an informant who discloses offence against a public servant.

VIII. Relying on the judgment of the Hon'ble Apex court rendered in **Hardeep Singh Vs. State of Punjab and Ors**, reported in **(2014) 3 SCC 92** Mr. Phukan submits the following:

- a. The section 319 Cr.P.C deals with evidence in trial stage and it may also include inquiry (pre trial stage) as such section 24

will hit the section 319 of Cr.P.C.

b. Again if the old PC Act is looked into, the bribe giver is given extra protection by incorporating section 24 to protect him from application of section 319 Cr.P.C.

IX. Mr. Phukan further contends that even if for the sake of argument, it is agreed that the respondent is required to be arrayed as an accused by the learned trial court in exercise of its power under section 319 Cr.P.C., the order under challenge cannot be said to be perverse or cannot be said that the learned Special Judge has committed any glaring illegality which requires exercise of its power under section 482 by this court inasmuch as the law is well settled that the power under section 482 is to be exercised sparingly and in those cases where the circumstances so warrant.

X. He further contends that degree of satisfaction required for summoning a person under section 319 Cr.P.C would be same as framing of charge i.e., one which is more than prima facie case as exercised at the time of framing of charge but short of satisfaction to the extent that the evidence if goes un-rebutted, would lead to conviction.

XI. Countering the argument of Mr. Bora that the FIR itself was lodged very belatedly, Mr. Phukan argues that the same cannot be a ground to waive the right of the respondent No.2 under section 24 of the Act inasmuch as question of delay in the given facts of the present is not a relevant question.

XII. In the case in hand except the own deposition of PW-8

there is no other evidence before the court. Therefore, court has rightly exercised its power under section 319 Cr.P.C., by refusing to treat the respondent No.2 as an accused.

7. Arguments advanced on behalf of the respondent No. 2.

Mr. S.K. Talukdar, appearing on behalf of the respondent No.2 in addition to what has been argued by the learned PP argues the following:

I. The oral argument of the petitioner during the course of argument that section 24 PC Act protects only the person agreeing to offer bribe and not the real bribe giver is misconceived. By enacting section 24, legislature had intended to protect the whistle blower from exposure to criminal prosecution who offers or gives bribe to public servant. The legislative intention that both the bribe giver as well as the offerer are protected can be gathered from the heading of section 24 which uses the expression "bribe giver". That apart, the use of expression "offered" in the said enactment would mean the actual bribe giving.

II. If the expression "offered" occurring in section 24 is constructed otherwise, such construction would defeat the purpose of section 24 and make it redundant.

III. Section 24 has to be understood from the perspective of the giver and not from the receiver's end. The bribe giver within the meaning of section 24 is protected from prosecution under section 12 of the PC Act, which includes both the act of bribe

giving and offering. Therefore, the interpretation of the petitioner that section 24 only protects the person who agrees to offer but not actual bribe giver, is misconceived.

IV. The respondent No.2 by his FIR dated 17.08.2017 busted a racket and exposed as many as 44 accused persons facing trial in Special Case No. 05/2021. Therefore, the respondent No. 2 being the whistle blower is entitled to protection under Section 24 of the PC Act.

V. The expression 'proceeding' under Section 24 of the PC Act has been given a restricted meaning by the petitioner and thereby it has been understood to be confined only to a 'judicial' proceeding. The expression 'any proceeding' under Section 24 would amply denote that such a restricted meaning is not permissible and the same if allowed would frustrate the very object of the said provision. The expression 'any proceeding' would invariably include a proceeding initiated by the police under an investigation. That apart, the expression 'proceeding' occurring in Section 24 has to be understood in the context in which it has been made and it is not permissible to read into Section 24 to interpret in a way which is opposed to the literal meaning of the said provision. Therefore, the interpretation of the petitioner in respect of the expression 'proceeding' being erroneous and contrary to the intention of the Legislature is liable to be discarded.

VI. The condition precedent for exercise of power under Section 319 of Cr.P.C. is availability of 'evidence' against the

person not being the accused in the trial and the satisfaction of the trial court that such person “appears to have committed” the offence. The Apex court in the case of **Hardeep Singh**(supra) has held that the level of satisfaction of the trial court in this regard is ‘stricter’. It has been further held that such power cannot be exercised as a matter of course and exercise of such power should be made sparingly.

VII. In the present case, the material before the trial court against the respondent No. 2/ PW-8 is the FIR lodged by him and his testimony before the trial court containing inculpatory statement. In that view of the matter, the said FIR is hit by Section 25 of the Indian Evidence Act, 1872 and his own testimony by Section 132 of the Indian Evidence Act.

VIII. The bar under Section 132 Evidence Act is applicable to persons giving evidence who are compelled to do so. In the present case, the respondent No. 2 was compelled to give evidence against himself and disclose the self incriminating statement during his cross-examination by the defence. Being the whistle blower, the respondent No. 2 was compelled to disclose the fact of bribe giving to the public servant involved. Therefore, Section 132 Evidence Act would come into play in the instant case. In other words, both the materials before the trial Court is inadmissible against the respondent no. 2/PW-8. Hence, there was no evidence before the learned trial court against the respondent No. 2/PW-8, on 05.11.2022 when the impugned order was passed by the trial court. Therefore, under such

circumstances, the impugned order dated 05.11.2022 does not suffer from any infirmity.

8. Decisions and reasons thereof:

I. Section 24 gives protection to a person from prosecution under section 12, when the said person makes a statement in any proceeding against a public servant regarding commission of an offence under sections 7 to 11 or under section 13 or under section 15, when such statement is to the effect that he offered or agreed to offer any gratification other than the legal remuneration or he offered or agreed to offer any valuable things to the public servant.

II. Section 12 provides that anybody who abets any offence punishable under section 7 or section 11, irrespective of actual commission of such offence in consequence of such abetment is punishable with imprisonment for a term which shall not be less than 3 years but which may extend to 7 years or also shall be liable to fine.

III. Abetment is an act of assisting, encouraging or insisting someone to commit a crime. Abetment also means aiding the offender while they are committing a crime. Thus, to constitute an offence of abetment amongst other there should be an action on the part of the abettor intentionally assisting someone by way of any act or illegal omission in doing something illegal in commission of an offence.

IV. In the case of ***Sanju Vs. State of Madhya Pradesh*** reported in ***(2022) SCC (CrI) 1141***, the hon'ble Apex Court

defined “abet” as to aid, to assist or to give aid, to command, to procure or to counsel, to countenance, to encourage, or to set another one to commit. Abetment as laid down in **Sanju** (supra) only occurs when there are atleast two persons involved, which further direct towards the arrangement and operation of the act. Further the offence of abetment depends upon the intention of the person who abets and not upon the act which is actually done by the person who he abets.

V. Thus, from a reading of the section 12, it is clear that amongst others who abets a public servant to take gratification other than legal remuneration in respect of an official act, the public servant shall be punishable under section 12 of the Act. In terms of section 12, the actual commission of the offence or the consequence of the abetment is not a necessity to charge a person under section 12 of the PC Act. Therefore, an abettor who is a bribe giver is punishable under section 12 of the PC Act, 1988 and at the same time a protection from prosecution has been granted to such a person under section 24. Therefore, if the section 24 is applied without any qualification, the section 12 of the Prevention of Corruption Act shall have no meaning and the same will become redundant.

VI. Therefore, such interpretation shall lead to a situation where there will an ambiguity between these two Sections i.e. Section 12 and Section 24 and therefore, to have a meaningful interpretation, the object of the Act is to be seen and harmonious construction between these two Sections are to be

made. As discussed hereinabove, the main purpose of enactment of PC Act, 1988 is aimed to prevent corrupt practices by establishing a legal frame work that criminalizes bribery, abuse of public office and illicit enrichment. Therefore, harmonious balance is required to be made.

VII. In the aforesaid context now this court is to deal with the section 24. On a bare reading of the section 24, this court is of the considered opinion that to make section 24 applicable, the following ingredients are necessary:

- a. A statement made by a person against a public servant alleging commission of offence under section 7 to 11 or under section 13 or section 15.
- b. Such statement is made in any proceeding.
- c. Such statement made in any proceeding must contain/disclose the fact that the statement giver had offered or agreed to offer any gratification other than legal remuneration or any valuable thing to the public servant.
- d. In the considered opinion of this court, therefore, the use of the word 'offer' shall have a relevance for proper interpretation and in the considered opinion of this court the words 'offer', 'agreed to offer' are purposively used by the Legislature in the text of the Section 24 of the Act and therefore, such provision will not give immunity from prosecution under Section 24 to a person has actually paid the illegal gratification. From a conjoint reading of the Section 12 and Section 24, in the considered opinion of this court, such

protection from prosecution is made available and/or to apply to a person who is an unwilling offeror and not for protection for those person who had actually paid a gratification other than legal remuneration to a public servant. Therefore, whether such protection under section 24 is applicable to a person will depend upon the given facts of each case.

VIII. Such view of this Court is also fortified, as the ambiguity as discussed hereinabove has been removed by the legislature by deleting Section 24 in the amending Act, 2018 and similar provision for immunity from prosecution has been incorporated under Section 8 wherein such immunity is granted to such a person when such an FIR by bribe offeror is lodged within a period of maximum 7 days.

IX. In the case in hand if this court takes the averment made by the respondent No.2 in the FIR lodged by him against the public servant and his testimony in the proceeding of the trial of the case to be correct the following facts emerges:-

- a. That the respondent no.2 came to learn on 05.08.2015 that the job in question can be obtained by payment of Rs.15,00,000.
- b. He came to learn from another candidate that Musharaf Hussain is the middle man for payment of such money and therefore, he requested said Mukul Deka to get introduced him to Musharaf Hussain. Thus, he was willing to pay the illegal gratification to obtain the job. Thereafter, he met the prime accused through Musharaf Hussain, had negotiation that an

amount of Rs.15,00,000/- is to be paid and such negotiation and decision to pay the amount was done in the year 2015 itself and as per his statement, the respondent No.2 has paid an amount of Rs.50,000/- as an advance gratification for obtaining the job. It is also testified that he could not arrange the balance amount.

c. The result was declared on 04.02.2016 and petitioner did not get selected and he lodged the FIR on 17.08.2017 i.e, more than a year from the declaration of the result describing that he paid money to the said accused and after almost two years from the date of payment of illegal gratification.

9. This court is in total agreement with the arguments advanced by Mr. Phukan and Mr. Talukdar that amended provision of the PC Act that information is to be lodged within 7 days cannot be made applicable in the present case inasmuch as when the respondent No.2 lodged the FIR or even on the date he allegedly paid the bribe of Rs.50,000/-, Section 24 was in existence and both the learned counsels have correctly submitted that an amended law cannot have retrospective effect until the same is made retrospective by the law itself or by necessary implication. Nothing is discernible in the amended Act that the amended provision will have a retrospective effect since section 24 was totally removed by way of an amendment made in the year 2018.

10. Now coming to the meaning of proceeding in the case of **Laxmipath Choraria** (supra) at paragraph 12 the Hon'ble Apex Court held that the "expression causes to be instituted criminal proceeding"

include making of a report to the police or such officer whose duty is to forward the report for action by the police. This court is also of the view that a criminal proceeding starts on the initiation/lodging of an FIR or on a complaint and therefore, Section 24 of the PC Act shall relate to a statement made in criminal proceeding starting from the lodging of the FIR/complaint inasmuch in the considered opinion of this court a criminal proceeding involves stages like lodging of FIR, investigation, laying of charge sheet, framing of charges, plea of guilty, evidence of prosecution, statement of the accused recorded under section 313, defence evidence and final argument and judgment.

11. Though the learned Special Judge was right in holding that section 24 is meant for the whistle blowers, however, in the opinion of this court in the backdrop of the facts of the present case the respondent No.2 cannot be said to be a whistle blower, inasmuch as, a whistle blower is a person who offers the gratification and intimates the police to get hold of the corrupt public officials and not a person who pays an illegal gratification to get a job, and when fails to pay the remaining part as a result did not get the job becomes wise. Accordingly, this court is of the view that the learned Special Judge has committed glaring illegality by treating the respondent No.2 as a whistle blower and giving him the benefit of section 24 of the PC Act.

12. Coming to the argument of Mr. SK Talukdar regarding Section 132 of the Evidence Act regarding the self-incrimination of the respondent No. 2, there is no quarrel that such principle is one of the most perplexing rules of criminal justice system, which provides that

no person is bound to testify against oneself. However, Section 132 of the Evidence Act provides for testimonial compulsion of witnesses and it mandates a witness to answer question being asked to him irrespective of such question bearing the tendency of exposing him to incrimination or other kind of penalty and forfeiture. Further, proviso to section 132 grants witnesses subject to such compulsion the immunity from any criminal action against him on the basis of such answers. However, in the case in hand as discussed hereinabove, the entire gamut of the determination under challenge was based on the availability of protection under Section 24 of the PC Act, 1988, neither the provision and applicability and effect of Section 132 of the Evidence Act was either subject matter of the determination before the learned Special Judge or were pressed into by any of the parties to the litigation. Therefore, in the considered opinion of this court for the purpose of determination of the validity and legality of the order under challenge in the present application, this court need not endeavor into the arguments in this regard advanced by Mr. Talukdar, learned counsel.

13. Now coming to the other argument regarding Section 25 of the Evidence Act, same relates to a confession to police officer inasmuch as the said section provides that no confession made to a police officer shall be proved as against a person accused of an offence. Such provision for the reason as discussed hereinabove is also having no relevance in the context of the present case inasmuch as issue was whether the respondent No. 2 in the facts of the present case, as discussed hereinabove, shall be entitled for the protection under

Section 24 of the PC Act, 1988 inasmuch as Section 24 starts with a non-obstante clause. Accordingly, such argument on the Section 25 advanced by the learned counsel for the respondent No. 2 in the context of the present case, in the considered opinion of this court is irrelevant and misplaced.

14. Having concluded thus, the other question remains is the exercise of power under section 319 Cr.P.C. Though deliberations have been made on behalf of the respondent State as well as respondent No.2 regarding the parameter and condition precedent for exercise of power under section 319 Cr.P.C and relied on different judgments including **Hardeep Singh** (Supra), after perusal of the material available on record, this court is of the view that the learned Special Judge had no occasion to consider the parameters and applicability of section 319 in the given facts of the present case whether the present case is a fit case for exercise of power under section 319 inasmuch as the learned Special Judge has concluded that the respondent No.2 is protected from prosecution under section 24. Therefore, in the aforesaid backdrop this court is not inclined to exercise the power under section 319 and to decide whether the respondent No.2 can be arrayed as an accused.

15. In view of the aforesaid though this court has held that in the given facts of the present case the respondent No.2 is not entitled for the protection under section 24 of the PC Act, 1988, it is the Special Judge who is to decide the application under section 319 Cr.P.C filed by the present petitioner/co accused afresh as per law. Accordingly, the impugned order dated 05.11.2022 passed by the learned Special



Judge, Assam in Spl. Case No.5/2021 is set aside and quashed and the matter is remanded back to the learned Special Judge to re-hear the petition No.2128/2022 filed by the present petitioner/ accused under section 319 Cr.P.C and pass an order as per law.

16. With the aforesaid reasons and decision, the present petition stands allowed.

JUDGE

Comparing Assistant