



GAHC010239322023

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

Case No. : Crl.Pet./1146/2023

MANOJ KUMAR DAS
INSPECTOR RPF, S/O- LATE SIBARAM DAS, R/O- VILL.- GOTANAGAR, P.O.
GOTANAGAR, P.S. JALUKBARI, DIST. KAMRUP(M), ASSAM, PIN- 781011.

VERSUS

THE CENTRAL BUREAU OF INVESTIGATION AND 3 ORS
REPRESENTED BY DIRECTOR OF CENTRAL BUREAU OF INVESTIGATION.

2:THE DEPUTY INSPECTOR GENERAL

CENTRAL BUREAU OF INVESTIGATION
ANTI-CORRUPTION BRANCH
OPPOSITE BALAJI TEMPLE
BETKUCHI
NH-37
GUWAHATI-35.

3:THE HEAD OF BRANCH
CENTRAL BUREAU OF INVESTIGATION
ACB
GUWAHATI
OPPOSITE BALAJI TEMPLE
BETKUCHI
NH-37
GHY-35.

4:THE INSPECTOR OF POLICE

CENTRAL BUREAU OF INVESTIGATION
ACB
GUWAHATI



OPPOSITE BALAJI TEMPLE
BETKUCHI
NH-37
GHY-35

Advocate for the Petitioner : S BORGOHAIN

Advocate for the Respondent : SPL. PP, C.B.I.

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER (CAV)

Date : 09-02-2024

1. Heard Mr. S. Borgohain, learned counsel for the petitioner Sri Manoj Kumar Das and Mr. M. Haloi learned Special Public Prosecutor for the respondents, CBI.
2. The petitioner has filed this application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) seeking quashing of the proceedings of CR Case No. 4232/2018 arising out of CBI, ACB, Guwahati Case No. 10(A)/2016 registered under Sections 120(B)/420/467/468/471 Indian Penal Code (IPC for short) and read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act for short) and pending in the Court of learned Special Judicial Magistrate, Kamrup(M) (Special Magistrate for short). The petitioner has prayed for quashing the impugned orders dated 11.01.2019 and 04.11.2022, passed by the learned Special Magistrate in the abovementioned case, taking cognizance against the petitioner for offences under Sections 120(B)/420/423/467/468/471/511 of the

IPC.

3. The FIR unfolds that some officials/officers of Northeastern Frontier Railways (NF Railways for short) in connivance with private persons were instrumental in drawing house building advance from the department by submitting forged and fabricated documents against the already constructed houses and flats. It is alleged that these houses and flats were non-existent and were purported to be constructed by Housing and Development Society, Bijni at various places in Palashbari and Rangia. Wrongful loss was caused to the Railways as house building advance was sanctioned to purchase flats which were non-existent. 28 (Twenty Eight) applicants had applied to the department for purchasing such phantom houses and flats through their applications and submitted forged and fabricated documents to purchase flats purportedly sanctioned and issued by the Housing and Flat Development Society, Bijni. In furtherance of the said conspiracy, the verification officers, who were deputed by the department to verify the genuineness of the applications, in connivance with the applicants, submitted false verification reports, certifying the existence of flats, which were found to be non-existent. In all these 28 HBA Cases, the Housing and Flat Development Society, Bijini allegedly issued the forged documents to the applicants though they were non-existing and Sri Mukul Goswami, President of the Society conspired with the suspected NF Railway officials. 28 (Twenty Eight) accused are named in the FIR and the present petitioner is one of the accused named in the FIR. It is further alleged that the house building advance (HBA) to the applicants were sanctioned in accordance with the Flat Advance Rules

subject to the fulfilment of certain terms and conditions and the terms and conditions were not complied with by the accused named in the FIR as the flats were non-existent. An amount of *Rs.94,69,000/- (Rupees Ninety Four Lakhs Sixty Nine Thousand)* was sanctioned in all the 28 HBA cases, but as Sri Gokul Kumar Deka did not draw the house building advance, wrongful loss to the Railway authority to the tune of Rs.89,09,000/- (Rupees Eighty Nine Lac Nine Thousand) was caused.

4. The FIR was lodged with the allegations of causing wrongful loss to the Government exchequer. After investigation, the CBI filed final report against 55 accused and the petitioner is arrayed as accused at Sl. No. 38 in the charge sheet. On 11.01.2019, the learned Special Judicial Magistrate First Class, Kamrup (M) took cognizance under the aforementioned sections of law and issued summons to the accused. The present petitioner along with fifteen other co-accused approached this Court challenging the impugned order before this Court by invoking the power under Section 482 of the CrPC and petition was numbered as Criminal Petition No. 254/2022. This Court vide order dated 01.04.2022 at motion stage disposed of the matter with a liberty to the petitioners to raise the issue canvassed in the petition before the learned trial Court with a direction to the learned trial Court to consider the same, in accordance with law (Annexure-P/4).
5. The petitioner then filed a petition in the trial Court and vide order dated 04.11.2022 the petition was rejected without appreciating the settled position of law (Annexure-P/5). It is further contended by the petitioner that, there are two sets of accused in the petition. A group of accused took the house building advance by submitting false and fake

documents along with the applications for HBA whereas the other group of accused are the inspectors of RPF, who were ordered to verify the ground reality of construction of flats, which were purported to have been purchased through the HBA procured by the accused. The allegations against the present petitioner is that he being an employee of the Armed Forces approved false and fabricated documents of Constable Sh. Lohit Ch. Das (A-18), who had availed HBA facility from the Railways. It is further averred that Section 197 (2) of the CrPC debars the Courts from taking cognizance of any alleged offence to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in discharge of his official duty, except with a previous sanction of the Central Government.

6. The petitioner being a member of the Armed Forces of the Union, is squarely protected by Section 197 (2) of the Code. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in the case of *State of Maharashtra Vs. Budhikota Subharao (Dr.)* reported in (1993) 3 SCC 339 and has submitted that the ratio of this case supports the petitioner's case. It is contended that the learned trial Court has erroneously held that offences alleged to have been committed by the accused were prima facie not committed by them while acting or purporting to have been acting in discharge of their official duties and as such, prosecution sanction was not required. It was also erroneously held by the learned trial Court by relying on the decision of Hon'ble the Supreme Court in *Devinder Singh and others Vs. State of Punjab* reported in (2016) 12 SCC 87 that the question of sanction under Section 197 of the CrPC can also be decided when it

arises, at a later stage. It is averred that the learned trial Court has failed to understand the ratio laid down by Hon'ble the Supreme Court in Devinder Singh's case (supra).

7. As the learned trial Court has failed to appreciate the principle summarised by Hon'ble the Supreme Court in its true earnest, the order passed by the learned trial Court is *non est* in law. The learned counsel for the petitioner has also submitted that the Hon'ble Apex Court has laid down some guidelines in the *State of Haryana Vs. Bhajan Lal reported in (1992) Suppl. (1) SCC 335* and has submitted that the impugned order dated 11.01.2019 passed by the learned trial Court was without any authority and was contrary to the scheme of the Code.
8. The procedure adopted by the learned trial Court while passing the impugned order dated 11.01.2019 is unknown and alien to criminal jurisprudence. It is submitted that the impugned orders are untenable and unsustainable and are liable to be set aside. The petitioner has prayed to set aside and quash the impugned orders along with the proceedings captioned above.
9. *Per contra* the learned Special Public Prosecutor for the respondents has submitted that in the decision of Hon'ble the Supreme Court in *Devinder Singh and others Vs. State of Punjab through CBI reported in (2016) 12 SCC 87* it has been held and observed that:

“39. The principles emerging from the aforesaid decisions are summarized hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official

nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."

10. Relying on the decision of Hon'ble the Supreme Court in Devinder

Singh's case (supra), the learned counsel for the respondent has submitted that the question of sanction can be decided at the stage of trial also. At this juncture there is no prima facie case to quash the proceedings. The offence was committed by the petitioner while discharging his duty. A fraud cannot be said to have been committed while discharging duty. A fraudulent act is a criminal offence and a criminal offence cannot be committed by a person while discharging his duty. In the light of the decision of Hon'ble the Supreme Court in Devinder Singh (supra), the learned Special Public Prosecutor has prayed to dismiss the petition as the petitioner has other opportunities of reprieve.

11. In reply, the learned counsel for the petitioner has submitted that the learned counsel for the respondent has misinterpreted the ratio of the decision of Hon'ble Supreme Court in Devinder Singh's case (supra). It has been held by Hon'ble the Supreme Court in Devinder Singh's case (supra) that at any stage the issue of sanction can be raised before the appellate Court. Even at the very initial stage, the issue of sanction can be raised before the appellate Court. It is submitted that the offence alleged in the FIR *ex facie* reveals that it was committed by the petitioner while he was discharging his duty by certifying the correctness and validity of the documents. The learned counsel for the petitioner has further relied on the decision of Hon'ble the Supreme Court in *State of Maharashtra Vs. Dr. Budhikota Subbarao reported in (1993) 3 SCC 339* wherein it has been held and observed that:

“6.....Use of the expression ‘official duty’ implies that the act or omission must have been done by the public servant in course of his service and that it should have been in

discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In P. Arulswami v. State of Madras² this Court after reviewing the authorities right from the days of Federal Court and Privy Council held:

“...It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.”

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature.....”

12. Relying on the decision of Hon'ble the Supreme Court in Dr. Budhikota Subbarao (supra) the learned counsel for the petitioner has submitted that where the act is unconnected with the official duty, there can be no protection. The Hon'ble Supreme Court has held that protection can be extended to even those acts or omissions which are done in

purported exercise of official duty and under the colour of the office. In this case at hand the allegation against the petitioner *ex facie* reveals that in connivance with the 28 applicants who had applied to the department for purchasing houses or flats by submitting false documents, the present petitioner approved the false and fabricated documents of one of the applicants, Constable Lohit Chandra Das (A-18), who had availed HBA facilities from the Railways. Thus sanction is mandatory under Section 197(2) of the CrPC.

13. Contrary to this the learned Special Public Prosecutor Mr. M. Haloi has relied on the same decision of Hon'ble the Supreme Court in Dr. Budhikota Subbarao (*supra*) and has submitted that it has also been observed by Hon'ble the Supreme Court that:

“6. Such being the nature of the provision the question is how should the expression, ‘any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty’, be understood? What does it mean? ‘Official’ according to dictionary means pertaining to an office. An official act or official duty means an act or duty done by an officer in his official capacity. In S.B. Saha v. M.S. Kochar¹ it was held: (SCC pp. 184-85, para 17)

“The words ‘any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty’ employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, ‘it is no part of an official duty to commit an offence, and never can be’. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these



two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. “

14. In a recent judgment of Hon'ble the Supreme Court in *A. Srinivasulu Vs. State represented by the Inspector of Police (2023) SCC OnLine SC 900*, the decision of *Devinder Singh Vs. State of Punjab* through CBI (supra) was referred to and it has been observed that :

48. *Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal vs. State of Punjab¹⁰. It reads as follows:-*

“50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.”

49. On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of cheating, cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.

50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.”

15. It is further submitted by the learned counsel for the petitioner that the Hon'ble Supreme Court held that prosecution ought to have taken previous sanction in terms Section 197(1) of the Code for prosecuting

A-1 for the offences under the IPC.

16. The learned counsel for the respondents has also relied on the decision of Hon'ble the Supreme Court in A. Srinivasulu (supra) and has submitted that the ratio of this case is not applicable to the instant case. It is submitted that the appellants in the case of A. Srinivasulu (supra) were acquitted after the conviction and sentence for various offences were set aside by Hon'ble the Supreme Court.
17. I have considered the submissions at the bar with circumspection. In the wake of the foregoing discussions it is held that an issue relating to sanction can be raised at any stage. It is true that the issue of sanction can be raised even at the stage of trial. The impugned order dated 11.01.2019 was passed by the learned Special Judicial Magistrate First Class while taking cognizance against the petitioner as well as the other co-accused named in the FIR.
18. The scanned copies of the LCR reveals that charge sheet has been laid against the accused and this case was fixed for hearing on consideration of charge on 10.11.2023. Trial has not yet commenced against the petitioner. The charges against the petitioner are that the petitioner being an employee of the Railway Protection Force has allegedly committed an offence under Section 120(B)/420/423/46/468/471/511 of IPC. The allegation is that 28 officials of the Railway Protection Force (RPF), Northeastern Frontier Railway (NFR), conspired with the railway officials and private persons, who obtained false and fabricated documents of flats (ready built house) and submitted those false and fabricated documents with their HBA applications against flat to get their HBA sanction by the Chief

Security Commissioner, NF Railway, Zonal Headquarters, Maligaon. Before sanctioning the flats of the HBA, orders were issued to Inspectors of RPF to verify the ground reality of construction of flats against which HBA were applied and also to ascertain veracity of the deeds and other documents enclosed with the HBA applications. Despite their knowledge that the builder i.e. the Housing and Flats Development Society, Bijni was physically non-existent and no flats were constructed at the given locations, the verifying officers submitted false report to the effect that flats have been constructed and were ready for sale and the documents furnished with HBA applications were approved as genuine. It has been alleged that the establishment of the Chief Security Commissioner and Sanctioning Authority (Chief Security Commissioner) who were responsible for processing the HBA, in connivance with the applicants approved the forged documents submitted along with HBA applications and thereby aided the 28 Railway Officials in procuring the sanction of the HBA. The Housing and Flats Development Society of Bijni posed as builder and issued false money receipts of advance payments against the flats by the HBA applicants and exhibited false deeds of agreements with the 28 HBA applicants, affirming intentions of the society/HBA applicants to sell/buy the flats, despite the fact that no flats were constructed by the society. An amount of Rs.89,09,000/- (Rupees Eighty Nine Lacs and Nine Thousand) was disbursed causing wrongful loss to the Railway department.

19. It was unearthed through the investigation that Sri Sanatan Das (A-47) an electrical fitter, his sister Smt. Bina Das (A-52) and his wife Smt.

Lakhi Das hatched up a conspiracy way back in April, 2002 at Bijni, to form a society (NGO) for supplying fake and fabricated documents to Railway employees in lieu of money, for securing House Building Advance (HBA) from Railway department. The society was registered with the Registrar of Societies, Assam, Guwahati in the year 2002 under the name and style as "Housing and Flat Development Society, Bijni" vide registration No. RS/BONG/252/A/29 of 2002-2003, with its office at Bijni with the imaginary objective of looking after welfare of House & Flat owners of district Bongaigaon, Assam so that the Society appears like a Housing Society. An executive body of the Society was also formed and some accused were holding important portfolios of the sham society. This Society had declared its office at Bijni at three different locations, but no such society or office was found to be existing.

20. It was unearthed through investigation that a make shift office was established by accused Sanatan Das in league with accused Sri Sibendra Dutta (Railway employees). The above named accused along with other accused including Mukul Goswami (A-44) also contacted pattadars of 8 plots of land located near Azara with the objective to create documents, execute false General Power of Attorney between the pattdars with the intent to project that the pattadars have given Power of Attorney to the society to obtain permission to construct RCC building having flats to manage and sell plot of lands/constructed flats.
21. During investigation it was also unearthed that the Railway Department nominated several verifying officers including the present petitioner to verify the ground reality of the flats and ascertain genuineness of the

deeds and documents furnished with the HBA applications and the present petitioner submitted report in HBA case of Constable Lohit Chandra Das.

22. The submission of the learned counsel for the petitioner is that the present petitioner inspected the documents in discharge of his duty as he was appointed as an inspector.
23. Can the present petitioner be held to have acted in discharge of his duty when he allegedly acted in tandem with the other accused and verified documents for non-existent flats. Charges are yet to be framed. It cannot be held that the petitioner's case lies in a narrow compass and he acted only in discharge of his duty at this juncture. If this case against the present petitioner is quashed, this order will have a cascading effect. Charge sheet has been laid against 55 accused. The role attributed to the accused is not similar to the role attributed to another group of accused. It is true that there are two sets of accused. One set of accused are those who procured the loan allegedly by submitting false documents and other set of accused are those who verified the false documents as genuine. The charge sheet reveals that the entire Housing Society was a sham non-existent society. At this juncture, I would not like to get into the merits of the case by describing the role of the present petitioner. On a later stage of the proceeding the petitioner can raise the issue of sanction. At this juncture, I abstain from setting aside and quashing the proceeding by holding that the petitioner's act was limited only to discharge of his official duty and sanction was required under Section 197 (1) of the CrPC to proceed against the petitioner. Whether the petitioner acted

within the realm of his official duty when he allegedly, in connivance with a non-existent NGO verified and approved documents for loan of non-existent flats/houses.

24. The facts and circumstances of this case have to be dealt into and properly assessed. At this juncture it cannot be decisively affirmed that the petitioner acted only and only in discharge of his official duties when the petitioner is alleged to have acted in connivance with a sham company which is an NGO. As the flats and houses are non-existent, it would not be appropriate to quash the proceeding on the issue of sanction. It is true that the charge sheet is before this Court to ascertain if the petitioner was discharging his official duty or whether under the cloak of official duty he has committed the offence as alleged.
25. I have relied on the decision of Hon'ble the Supreme Court in Devinder Singh's case (supra). The decision of Hon'ble the Supreme Court in Dr. Budhikota Subbarao's case is also relevant to this case. There is no dispute that if a person acts in discharge of his official duty, sanction to prosecute such a person is indispensable. It is true that *if these words 'any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty' are construed too narrowly, the section will be rendered altogether sterile, for, it is no part of an official duty to commit an offence, and never can be.* It has to be borne in mind that in the instant case the documents were verified and approved by the petitioner for a sham company and for non-existent flats and houses. Can verification of fake documents by an official for a fake NGO and non-existent houses and buildings to



procure HBA, be considered to be within the realm of official duty. The issue of sanction can be raised any stage. I believe this case is at its nascent stage and I abstain from abruptly truncating this case at this juncture.

26. In view of my foregoing discussions, petition is dismissed.

JUDGE

Comparing Assistant