

GAHC010143202023



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

Case No. : Crl.Pet./645/2023

PRANAB KUMAR DAS
S/O MANORANJAN DAS R/O H NO. 8 SANJOG PATH KALIMANDIR
HENGRABARI P.S DISPUR GUWAHATI ASSAM

VERSUS

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

2:ARUP PAUL
S/O ARABINDA PAUL ASSISTANT GENERAL MANAGER
SILCHAR ELECTRICAL DIVISION I APDCL CAR SHILLON

Advocate for the Petitioner : MR. S MITRA, MR S.MITRA,MR A K BORO

Advocate for the Respondent : PP, ASSAM, MR. K P PATHAK (r-2),MR. P N GOSWAMI (r-2)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

26.09.2024

Heard Mr. S. Mitra, the learned counsel appearing for the petitioner. Also heard Mr. D. Das, the learned Addl. Public Prosecutor, Assam representing the State.

- 2.** This is an application under Section 482 of the CrPC praying for quashing the order dated 06.04.2023 passed by the learned Chief Judicial Magistrate, Nalbari in respect of Nalbari P.S. Case No.383/2018 under Sections 120B/409/420/201 of the Indian Penal Code.
- 3.** The Sub-Divisional Engineer, Nalbari Electrical Sub-Division-I, APDCL, LAR, Nalbari had lodged an FIR before police on 04.06.2018. It was alleged that the present petitioner being the Junior Manager-II, had misappropriated and embezzled the revenue of APDCL under Nalbari Electrical Division. Till the date of filing of the FIR, the total amount allegedly misappropriated by the petitioner was approximately ₹15,32,574/-.
- 4.** Police conducted an inquiry and on conclusion of investigation, filed a Final Report for lack of evidence. The informant filed a protest petition before the Chief Judicial Magistrate, Nalbari.
- 5.** On 06.04.2023, the court of the Chief Judicial Magistrate held that the investigating officer did not collect all the materials required for establishing the case against the present petitioner. Therefore, the court directed the investigating officer to further investigate the case.
- 6.** Aggrieved by the aforesaid order, the present petition has been filed.
- 7.** I have considered the submissions made by the learned counsel of both sides.
- 8.** In *Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762, the Hon'ble Supreme Court has as under:

“**23.** However, in the case of a “fresh investigation”, “reinvestigation” or “de novo investigation” there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct “fresh investigation”. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of “fresh”/“de novo” investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already

conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a "fresh investigation".

22. "Further investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as "supplementary report". "Supplementary report" would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation."

9. In *Peethambaran ...V State of Kerala and Another*, reported in *2023 SCC OnLine SC 553*, the Supreme has held as under:

"15. This distinction between further investigation and fresh investigation/reinvestigation/de novo investigation being that the former is a continuation of the previous investigation and is done on the basis of discovery of fresh material, whereas the latter can only be done when there is a definite order of the court to that effect which must state the reason as to why the previous investigation is incapable of being acted upon."

10. Whenever, a Final Report is filed by police, the court has to issue a notice to the informant asking for an objection. If the objection is filed, then the court has to examine witnesses under Section 200 of the CrPC. Thereafter, the court has the liberty to take cognizance of the offences which are *prima facie* available in the said inquiry.

11. So far as the meaning "further investigation" is concerned, if the investigating officer obtains further oral or documentary evidence after the Final Report has been filed before the court in terms of Section 173(8), then only direction for further investigation can be passed. It is done on the basis of discovery of fresh material. It is the continuation of previous investigation and, therefore, it is understood and described as "further investigation".

12. The learned Chief Judicial Magistrate, Nalbari had erroneously passed the impugned order. Therefore, the order dated 06.04.2023 passed by the learned Chief Judicial Magistrate, Nalbari in respect of Nalbari P.S. Case No.383/2018 under Sections 120B/409/420/201 of the Indian Penal Code, is bad in law and hence set aside.

13. If the informant files the protest petition, then the court of the Chief Judicial Magistrate shall register a complaint case and shall examine witnesses under Section 200 of the CrPC. Thereafter, if *prima facie* materials appear in the statements of the witnesses, the court is at liberty to proceed further against the present petitioner.

14. With the aforesaid direction, the criminal petition stands disposed of.

JUDGE

Comparing Assistant