

GAHC010028552016



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

Case No. : Crl.Pet./848/2016

HITESH CHANDRA RAY
S/O LT. BANAMALI RAY R/O VILL- TULUNGIA P.O. NORTH SALMARA P.S.
ABHAYAPURI DIST. BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE HOME SECRETARY TO THE GOVT. OF ASSAM, DISPUR
CAPITAL COMPLEX, DISPUR, DIST. KAMRUP M, ASSAM PIN- 781006.

2:SHRI PINAKI PRASAD MITRA
INSPECTOR OF POLICE
VIGILANCE and ANTI CORRUPTION
ASSAM
SRIMANTAPUR
GUWAHATI
DIST. KAMRUP M
ASSAM PIN - 781032

Advocate for the Petitioner : Mr. K. N. Choudhury, Senior Advocate.

Mr. D. S. Deka.

Advocate for the Respondent : Mr. D. Das, Additional Public Prosecutor.

Date of Judgment: 20.04.2024.

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT & ORDER

1. Heard Mr. K. N. Choudhury, learned Senior Counsel, assisted by Mr. D. S. Deka, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State Respondent.

2. This application under Section 482 of the Code of Criminal Procedure, 1973, has been filed by Shri Hitesh Chandra Ray, praying for quashing of the First Information Report (FIR) dated 13.06.2016, filed by one Pinaki Prasad Mitra, Inspector of Police, Vigilance and Anti-Corruption, Assam, on the basis of which Anti-Corruption Bureau Police Station Case No. 04/2016 was registered under section 120B/167/409/420/465 of the Indian Penal Code, read with section 13 (1)(d)(e)/13(2) of the Prevention of Corruption Act, 1988.

3. The facts relevant for consideration of instant Criminal Petition, are as follows:-

i. The Government of Assam in the year 2015 had issued advertisement for recruitment to the post of UB Constable in the Police Department of Assam and it constituted District Level Selection Committee (DLSC) for different districts including the district of Nagaon.

ii. The present petitioner was serving as Additional Superintendent of Police (Head Quarter), Nagaon during the relevant period.

iii. During that time there were

newspaper reports that in the selection process of UB Constable there were anomalies and there were instances of demanding money from prospective candidates for recruitment as UB Constables. On the basis of such reports, the Government of Assam had formed a Special Investigating Team, (SIT) for conducting regular inquiry on the issues of reported anomalies and on the basis of report of the SIT, on 13.06.2016, one Shri Pinaki Prasad Mitra, Inspector of Police, Vigilance and Anti-Corruption, Assam had lodged an FIR before the Officer-In-Charge of Anti-Corruption Bureau Police Station, Vigilance and Anti-Corruption, Assam. It was, *inter-alia*, alleged therein that during regular inquiry, the SIT found that the present petitioner along with other 14 accused persons, named in the FIR, entered into a criminal conspiracy and have manipulated records. It was also alleged that instead of free and fair interview, they abused their official position for wrongful gain and thereby committed criminal breach of trust and cheated in the process of recruitment of UB Constables in the districts

of Dhubri, Barpeta, Nagaon.

4. Learned Senior Counsel for the petitioner has submitted that the name of the petitioner has been mentioned in the FIR without any basis as he was in no way involved in the selection process of UB Constables when the recruitment process was going on in the year 2015/2016.

5. It is submitted by learned Senior Counsel for the petitioner that the Additional Director General of Police (TAP), Assam & Chairman, State Level Police Recruitment Board, by order dated 24.12.2014, had constituted various District Level Selection Committees for conducting the process of recruitment to the post of UB Constables. For the district of Nagaon, where the present petitioner was posted at relevant time, the District Level Selection Committee was constituted with the Superintendent of Police, Nagaon as Chairman. Shri Arabinda Kalita, IPS was the Superintendent of Police at the relevant time. The Commandant, 9th APBn, Sri Arnab Deka was one of the Members and the other Member was Senior Medical Officer who was nominated by Director of Health Services, Assam. The petitioner was not a member of the District Level Selection Committee and therefore, it is submitted by learned Senior Counsel for the petitioner that he was in no way connected with the process of recruitment to the UB Constables.

6. Learned Senior Counsel for the petitioner has also submitted that in the written objection filed by the informant, Shri Pinaki Prasad Mitra (Respondent No.2), he has stated that during the discreet and confidential inquiry conducted by Sri Karuna Bordoloi, APS, Deputy Superintendent of Police, Vigilance and Anti-Corruption, he found that the present petitioner was the leader of the collection group and had collected huge amount of money from 100 to 150

numbers of candidates at the rate of Rupees three lakhs from each candidate, however, none of the said candidates have lodged any FIR or complaint against the present petitioner neither the Officer who conducted the discreet and confidential inquiry has disclosed the basis of his findings, therefore, merely on the basis of subjective observation/finding of the Officer, who conducted the discreet and confidential inquiry, the petitioner's name has been included in the FIR, which is a abuse of process of law.

7. Learned Senior Counsel for the petitioner has also submitted that no aggrieved person has made any statement under Section 161 or Section 164 of the Code of Criminal Procedure, 1973 implicating the present petitioner.

8. Learned Senior Counsel for the petitioner has submitted that the initiation of criminal proceedings is a serious matter and criminal law cannot be set into motion as a matter of course. He has submitted that there has to be some materials on record against the present petitioner for initiating the criminal proceeding against him, however, in the instant case, no credible material against the present petitioner is there except the bald assertions made by the Officer who conducted the discreet inquiry and the Chairman of the SIT which conducted the regular enquiry.

9. It is also submitted by learned Senior Counsel for the petitioner that the allegations made in the FIR, even if they are taken on its face value, does not constitute any offence under Sections 120B/167/409/420/465 of the Indian Penal Code, and Section 13 (1)(d)(e)/13(2) of the Prevention of Corruption Act, 1988 against the present petitioner, therefore, he should not be compelled to undergo the agony of appearing before the Investigating Officer and to undergo the rigours of criminal proceedings.

10. It is also submitted by learned Senior Counsel for the petitioner that only due to the pendency of the present criminal case against the petitioner, his promotions are withheld and he has been unjustly prejudiced.

11. Learned Senior Counsel for the petitioner has also submitted that the allegations made in the FIR are so absurd and inherently improbable that on the basis of which no prudent person can ever reach which a just conclusion that there is sufficient ground for proceeding against the present petitioner.

12. In support of his submission, learned Senior Counsel for the petitioner has cited a ruling of the Apex Court in the case of "**Pepsi Food Ltd. And Another Vs. Special Judicial Magistrate And Others**" reported in "**(1998) 5 SCC 749.**"

13. Learned Senior Counsel has also cited a ruling of the Apex Court in the case of "**State of Haryana And Others Vs. Bhajan Lal and Others**" reported in "**1992 Supp(1) SCC 335**" to fortify his submissions.

14. Learned Senior Counsel for the petitioner has submitted that compelling the present petitioner to undergo the agony of a criminal investigation without there being any material on record against him would amount to abuse of the process of the court, therefore, the First Information Report, impugned in the present criminal petition, is liable to be quashed, *qua* the present petitioner.

15. On the other hand, Mr. D Das, learned Additional Public Prosecutor has submitted that this is not a fit case for invoking the powers of this Court under Section 482 of Code of Criminal Procedure, 1973 as there are sufficient materials on record against the present petitioner.

16. It is submitted by learned Additional Public Prosecutor that though the present petitioner was not a Member of the District Level Selection Committee for Nagaon district, where he was posted at a relevant point of time, however,

he was holding an influential post of Superintendent of Police (Head Quarter) and the discrete inquiry conducted by the Shri Karuna Bordoloi, APS, Deputy Superintendent of Police, Vigilance and Anti-Corruption had revealed that the present petitioner was involved in collecting huge amount of money from prospective candidates in the recruitment process to the post of UB Constables.

17. It is also submitted by learned Additional Public Prosecutor that apart from the discrete inquiry, even during regular inquiry the petitioner was found involved in malpractices which had occurred during recruitment process of UB Constables in the district of Nagaon and therefore, he has prayed that in this case, the FIR may not be quashed and the police may be allowed to investigate the matter for finding out the truth.

18. Learned Additional Public Prosecutor has also produced the case diary of Anti-Corruption Bureau Police Station Case No. 04/2016, which was called for in connection with this case.

19. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record very carefully, including the case diary of Anti-Corruption Bureau Police Station Case No. 04/2016.

20. In the case of ***State of Haryana and Others Vs. Bhajan Lal and Others (Supra)***, the Apex Court has observed that “*the power of quashing a criminal proceeding should be exercised very sparingly and with circumspections and that too in rarest of rare cases.*” The Apex Court also observed that “*the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in FIR or the complaint and*

that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction to the Court to act according to its whim and caprice."

21. On perusal of the case record, it appears that in the instant case, though, the FIR was lodged on 13.06.2016 against the present petitioner and 14 other named accused, however, by order dated 04.11.2016, passed in this case, the further proceedings in respect of the said FIR, so far as it relates to the present petitioner, were stayed and therefore, the investigation against the present petitioner could not proceed since that day. It also appears from the case diary, that due to operation of the order regarding the stay of proceedings against the present petitioner, the investigation in respect of the allegations of criminal conspiracy under Section 120B of the Indian Penal Code in this case could not be properly carried out.

22. The Supreme Court of India in the case of "***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others***" reported in **2021 SCC Online SC 315** has observed as follows:

"The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure."

23. In the instant case, the FIR which was lodged by the Inspector of Police, Vigilance & Anti-Corruption, Assam, on 13.06.2016, against fifteen numbers of accused persons, including the present petitioner, makes categorical allegation therein regarding involvement of the accused persons named in the FIR, in criminal conspiracy, manipulation of records and abuse of official position for wrongful gain in the process of recruitment of Constables. Said FIR was lodged on the basis of the finding of regular inquiry conducted by the Special Investigation Team formed by the Government of Assam, which was preceded by a discreet enquiry. In the case diary, there are allegations against the present petitioner having been involved in collecting huge amount of money from the prospective candidates as well as involvement of the accused persons named in the FIR in large scale malpractices during the recruitment process of the UB Constables. The said allegations, which on its face value do constitute cognizable offences, are required to be investigated into, as scuttling the investigation against the present petitioner, in spite of there being categorical imputations against him in the discreet inquiry as well as regular inquiry, conducted prior to lodging of FIR, would only amount to thwarting the investigation at an initial stage. The Court at this stage, while considering an application under Section 482 of the Code of Criminal Procedure, 1973, cannot embark into the genuineness or otherwise of the allegations made against the present petitioner in the FIR as well as other incriminating materials available in the case diary including the statement of the Police Officer who conducted the discreet enquiry, as well as the report of the regular enquiry, Only a thorough investigation may reveal the truth.

24. For the reasons discussed herein above, this Court is of the considered

opinion that the petitioner has failed to make out a case for quashing the FIR in the instant case.

25. Accordingly, this Criminal Petition is hereby dismissed and the interim stay granted by this Court by order dated 04.11.2016 on further proceeding of the investigation *qua* the petitioner is hereby vacated.

26. Send back the case diary.

JUDGE

Comparing Assistant