

THE GAUHATI HIGH COURT

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

Criminal Revision Petition 410/2015

Shri Gun Bahadur Chetry
S/o Lt. Min Bahadur
R/o Bokakhat W/No. 2
PO & PS Bokakhat
Dist. Golaghat

.....Petitioner

-Vs-

- 1) The State of Assam
- 2) Shri Ram Charan Sarma,
Inspector of Police, Vigilance & Anticorruption Department, Assam,
Srimantapur, Rupnagar, Guwahati - 32

.....Respondents

BEFORE

HON'BLE MR. JUSTICE HITESH KUMAR SARMA

Advocate for the Petitioner : Mr. P Sharma.
Advocate for the Respondents : Mr. B Sarma, learned Additional Public Prosecutor
Date of Hearing : 16.11.2017
Date of Judgment : 13.12.2017.

JUDGMENT AND ORDER (CAV)

This is a criminal revision petition, filed under Sections 397/401 of the Cr.PC, challenging the legality, propriety and correctness of the order, dated 12.10.2015, passed by the Special Judge, Assam, in Special Case No. 6/2015, framing charges against the accused-petitioner under Sections 420/409/468/471 IPC read with Sections 13(1)(e)/13(2) of the Prevention of Corruption Act, and the order dated 5.8.2013, directing re-investigation of the case and the charge-sheet, vide C.S. No. 1/2015 dated 5.5.2015, filed against the accused-petitioner under the aforesaid provisions of law.

2) The fact of the case is that, the accused-petitioner, Shri Gun Bahadur Chetry, joined the service in the Office of the Director of Rural Development Agency (hereinafter referred to as "DRDA") in the year 1985 and posted at Golaghat West Development Block, Bokakhat. The Vigilance and Anti-Corruption Department (hereinafter referred to as "V & AC, Assam"), lodged an FIR stating that during the

enquiry in RE No. 24(5)/2001, the accused-petitioner was found to have acquired disproportionate assets of Rs. 6,33,919/- to his known sources of income during the period May, 1985 to March, 2001.

3) After completion of the investigation, final report was submitted in the case stating the case to be a '**mistake of fact**' by the Investigating Officer. The final report was submitted with the sanction of the competent authority.

4) On consideration, the Special Judge, Assam, vide order dated 5.8.2013, refused to accept the final report, so submitted, and directed to make proper investigation in the case again by an officer not below the rank of Deputy Superintendent of Police and to submit the report in full form. Thereafter, another Investigating Officer carried out the investigation of the case, and this time, he submitted charge-sheet, referred to above, against the accused-petitioner for possessing assets disproportionate to his known sources of income amounting to Rs. 6,38,172/-, under Sections 420/409/468/471 IPC, read with Sections 13(1)(e)/13(2) of the Prevention of Corruption Act. Therefore, vide order dated 12.10.2015, the trial Court of Special Judge, Assam, framed a formal charge against the accused-petitioner under Sections 409/420/468/471 IPC, read with Sections 13(1)(e)/13(2) of the Prevention of Corruption Act.

5) I have heard Mr. P Sharma, learned counsel for the accused-petitioner. I have also heard Mr. B Sarma, learned Additional Public Prosecutor for the State respondents.

6) I have gone through the petition and the annexures furnished therewith as well as the records of the trial court.

7) Learned counsel for the accused-petitioner has submitted that the order dated 5.8.2013, by which the learned Special Judge, Assam, ordered re-investigation, was illegal, as Section 173 of the Cr.PC does not provide for re-investigation.

8) I have perused the order and found that the learned trial Court did not use the word "re-investigation" or "further investigation". The learned Special Judge, Assam,

recorded in his aforesaid order that the investigation carried out in the case was perfunctory as certain materials were not brought in against the accused-petitioner during the investigation. Therefore, an order was passed to send back the case diary and the seized documents to the Superintendent of Police (V & AC, Assam), with a direction to appoint a new investigating officer, not below the rank of Deputy Superintendent of Police, to investigate the case and to submit report in full form. From the language used in the order, dated 5.8.2013, it appears that the investigation, after refusal to accept the final report, was ordered to be carried out by the same agency, of course, by another officer and the same agency has also submitted the charge-sheet after such investigation. This investigation, as per order dated 5.8.2013, is the continuation of the investigation carried out by the earlier investigating officer. So, it appears that the investigation carried out, in accordance with the order dated 5.8.2013 was, in effect, a further investigation, performed by the same agency and the documents seized by the earlier investigating officer are also the documents in the further investigation of the case, on the basis of which the charge-sheet was laid. Of course, some additional materials were collected by the investigating officer. Therefore, this court is of the view that the order, dated 5.8.2013 was, in fact, an order for further investigation as provided in Section 173 of the Cr.PC. The learned trial court did not mention the same to be "further investigation" and mentioning of the same as "investigation" is only a technically incorrect word and a misnomer. Therefore, in the considered view of this Court, this argument canvassed by the learned counsel for the accused-petitioner fails.

9) The learned counsel for the accused-petitioner has further submitted that the calculation-sheet in respect of the assets, liabilities, etc. of the accused-petitioner made by the investigating officer is based on incorrect calculation and had the calculation been correctly made, there could not have been disproportionate assets found to have been accumulated by the accused-petitioner to his known sources of income. In the calculation, the building of the accused-petitioner is assessed at Rs. 4,17,388/- in the year 2014. In the first investigation made in this case, which resulted in submission of the final report, the building is found to have consisted of two rooms only, but another assessment of the same property was made prior to that and the value was assessed at Rs. 11,24,600/-. Such a huge variation in assessment of the valuation of the building by the two different Government officers of the same department, makes the

valuation itself doubtful and the value of the building could not be said to have been perfectly assessed. That apart, the admitted position, as appears from the charge-sheet itself is that the land measuring 1 katha 5 lechas, under Dag No. 56 of Bokakhat Town stands in the name of Smti Pabitra Chetry, the mother of the accused-petitioner, and out of 2 bigha 4 katha and 8 lechas of land, under Dag No. 253/245 of village Kandulimari, 2 bighas of land belongs to the accused-petitioner. That apart, out of 1 bigha 4 katha and 14 lechas of land, under Dag No. 253/254 of the same village, 1 bigha 4 katha and 8 lechas belongs to the accused-petitioner, but, this land was purchased by him in the year 1981, i.e. prior to his joining the DRDA, Bokakhat. In respect of the house property over the plots of land of the accused-petitioner, the value of the same was assessed to be Rs. 30,500/-. On the other hand, after re-assessment of the building and the Assam type house of the accused-petitioner, the RCC building is valued at Rs. 4,30,200/-, Assam type building is valued at Rs. 6,73,600/-, and the valuation of brick compound wall was assessed at Rs. 80,000/-. But, the fact remains that the Assam type house was constructed by the mother of the accused-petitioner, has not been disputed even in the charge-sheet. In the calculation-sheet, prepared by the investigating officer, the educational expenditures of the two daughters of the accused-petitioner are shown. The check period in this case is May, 1985 to March, 2001, but, in the educational expenditure column, the educational expenditure is shown to be Rs. 1,62,000/-. The second daughter of the accused-petitioner was born on 1.4.1996. But, the educational expenditures calculated for 9 years is for both the daughters. From 1.4.1996 to March, 2001, the age of the second daughter was slightly less than 5 years. There is no materials to show that she was admitted in school before she attained 5 years of age. Further, the educational expenditures calculated for 9 years means it is calculated before she was born which is completely inconceivable. That apart, it has come out from the materials on record that the assessment of the assets of the accused-petitioner was made in the year 2014 although the check period is May, 1985 to March, 2001. The income of the accused-petitioner beyond the check period from April, 2001 to 2014 has not been taken into consideration although it was necessary in view of the fact that there is no specific evidence collected that he has acquired the assets during the check period only. Rs. 750/- per month assessed as educational expenditure for a kid during the check period, is not based on any specific calculation based on documentary evidence and appears to be in the higher side in a place like Bokakhat in state of Assam. That apart,

how can the monthly educational expenditure be remained static for the whole check period of 15 years ? On the other hand, the accused-petitioner got some land from his mother is an admitted position which has not been brought in evidence during investigation. Such being the position, it does not prima-facie, appears that if such evidence remains unrebutted, the same will result in conviction of the accused-petitioner.

10) So far the charges framed against the accused-petitioner under Sections 409/420/468/471 of the IPC is concerned, I have considered the materials available on record.

11) So far the accusation under Section 409 of the IPC is concerned, there was, no entrustment of any property upon the accused-petitioner, as public servant, and as such, the offence under Section 409 of the IPC is, prima-facie, not attracted in the case. There is also no evidence that the accused-petitioner forged any document for the purpose of cheating or used, as genuine, a forged document to attract the offences under Sections 468/471 of the IPC. The allegation against him is not of forging of documents or production of forged documents for obtaining loan from his department; rather the allegation against him is that in Dag No. 253/245 of village Kandulimari, he had 2 bighas of land, but the said area covers 2 bigha 4 katha and 8 lechas of land, which he had shown in his land document produced for obtaining loan. Since the land is under the same patta and there is no instance in the materials, so far collected by the investigating officer, that for the 2 bighas of land belonging to the accused-petitioner, there was a separate patta issued by the Government; therefore, he might have produced the land document of the area of land covered by Dag No. 253/245 which included 2 bighas of his land. Another allegation is that he had shown a plot of land of his mother to obtain another loan. This, in the considered view of this court, cannot be said to be a forged document. The documents are genuine, but in one of the documents, the area of land is slightly higher than actually the accused-petitioner owns and in another document, the land belongs to his mother. But, there is no allegation from the mother about utilization of her document for obtaining a loan from the department. The fact remains that the documents are not forged. Therefore, in the considered view of the court, Sections 468 and 471 of the IPC also, prima-facie, do not attract in the instant case.

12) So far the allegation under Section 420 of the IPC is concerned, it is the case of the prosecution that the amount of loan he had taken, has not been fully utilized for construction of his house. He used a lesser amount than the amount of loan he had obtained for the construction of his house. We have already found that the valuation of property is not made properly. Therefore, it could not be said as to what exactly was the cost of the houses he had constructed, after the loan was obtained. On the other hand, there is no accusation that he is not repaying the loan and cheated the department concerned. This is even not the allegation of the department concerned that the accused-petitioner cheated it.

13) In view of the above discussions it appears that the materials on record, prima-facie, do not disclose a case under the aforesaid provisions of law and if such evidence remain unrebutted, the same will not result in conviction of the accused-petitioner.

14) Therefore, in the considered view of this court, the order dated 12.10.2015, framing charges under the aforesaid provisions of law do not appear to have based on the materials on record for which interference by this court, in exercise of its revisional jurisdiction, is required.

15) Accordingly, the order dated 12.10.2015 and the charge-sheet filed in the case, being C.S. No. 1/2015, dated 05.05.2015, in Special Case No. 6/2015, are set aside.

16) Accordingly, the Criminal Revision Petition is allowed.

17) Sand back the LCR along with the copy of this judgment.

JUDGE

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