IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT

CRL. REV. P. 07 (AP) 2017

Dr. Otam Taggu,
D/o Shri Talong Taggu,
Medical Officer, District Hospital, Aalo,
West Siang District,
Arunachal Pradesh.

.....***Petitioner.***

-Vs-

1. *Shri Tageng Pado,*
Chief Judicial Magistrate, Seppa,
District- East Kameng,
Aruanchal Pradesh.

2. *The state of Arunachal Pradesh,*
Through Public Prosecutor,
Arunachal Pradesh,
Gauhati High Court,
Itanagar Permanent Bench.

.....***Respondents.***

For the Petitioner	:	Mr. P. K. Tiwari, Sr. Counsel.
For the respondent No. 1	:	Mr. M. Pertin, Sr. Counsel.
For the respondent No. 2	:	Ms. M. Tang, Addl. PP.
Date of hearing	:	05.06.2017.
Date of Judgment and Order	:	08.06.2017.

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

JUDGMENT & ORDER (CAV)

(Ajit Borthakur, J.)

This is a criminal revision under Section 397 read with Section 401 of the Cr.P.C., preferred against the order, dated 17.04.2015, passed by the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh in Aalo P.S. Case No.134/2013, under Sections

353/354 IPC, rejecting the Charge-Sheet No. 21/2014, dated 14.05.2014 and thereby discharging the accused-respondent No.1.

2]. The victim-petitioner's case, precisely, is that she, who is a Medical Officer in Aalo District Hospital, Arunachal Pradesh, was the complainant/ victim in Aalo P.S. Case No.134/2013 against the respondent No. 1, wherein, after completion of investigation, Police submitted the Charge-Sheet, dated 14.05.2014, recommending framing of charges against the said respondent No. 1, under Sections 353/354 IPC. The petitioner has stated that at the relevant time of the incident, the respondent No. 1 was serving as the Chief Judicial Magistrate, Seppa, East Kameng District and the place of occurrence is situated in West Siang District and further, he was not discharging his official duty. Therefore, the investigating officer was of the opinion that the prosecution sanction under Section 197 of Cr.P.C. was not required to be obtained.

3]. The petitioner/ victim has contended that on 19.01.2015, the learned Chief Judicial Magistrate, Aalo perused the Charge-Sheet and having found a prima-facie case, took cognizance of the aforesaid Charge-sheeted offences and accordingly, issued summons to the respondent No. 1. On 16.04.2015, the learned Chief Judicial Magistrate, Aalo heard the learned counsel of both the parties and on the following day, that is, on 17.04.2015, passed the impugned order holding that there is no sufficient ground for presuming that the respondent No. 1 herein committed the offences as Charge-Sheeted and therefore, discharged him of the aforesaid charges and set him at liberty with immediate effect.

4]. The petitioner has further contended that being the informant-victim, she was not a participant in the proceeding during consideration of charges and as a result, she was unaware about the impugned order. It was only when, the respondent No. 1 initiated civil action against the petitioner seeking damages for implicating him in the aforesaid criminal

case and when she received summons in the said civil suit, she became aware of the aforesaid impugned order.

5] Now, by the instant revision petition, which is converted from criminal appeal No. 04 (AP) 2017 as per judgment and order, dated 18.05.2017, passed therein by another Bench of this Court, the petitioner has assailed the above impugned order, *inter alia*, on the following grounds:-

(i) That, the evidence available with the Charge-Sheet unequivocally demonstrates that the charges recommended against the respondent No. 1 are not groundless and as such, the order of discharge is not tenable in law;

(ii) That, the learned trial court misconstrued and misappreciated the evidence available on record in finding fault with the victim and blaming her for creating a situation due to which the respondent No. 1 herein behaved in a particular manner. It was highly inappropriate for the learned Trial Court to find reasons for the offensive behaviour of the respondent No. 1 (thereby rationalising the behaviour of the respondent No. 1) at the stage of framing of charges, under Chapter XIX of Cr.P.C.

(iii) That, the learned trial Court travelled beyond the scope of Sections 239 and 240 of Cr.P.C. and applied a wrong test for arriving at a decision as to whether or not on the basis of evidence available with the Charge-Sheet, the Charges recommended by the investigating officer are required to be framed against the respondent No. 1; and

(iv) That, the learned trial Court misconstrued the ratio of the judgments of the Apex Court rendered in Union of India-vs-Prafulla Kr. Samal & Anr, reported in (1979) 3 SCC 4 and Satish Mehra-vs-Delhi Administration & Anr., reported in (1996) 9 SCC 66.

6] Hence, it is prayed to quash and set aside the above impugned order, dated 17.04.2015 and pass such other order (s) under Section 386 and/ or under the relevant provisions of the Cr.P.C. for ensuring fair

justice, in accordance with law on the basis of evidence available with the Charge-Sheet.

7] Heard Mr. P. K. Tiwary, learned Sr. Counsel assisted by Mr. Y. Riram, learned counsel for the victim-petitioner and Mr. M. Pertin, learned Sr. Counsel assisted by Mr. D. Tatak, learned counsel for the respondent No. 1. Also heard Ms. M. Tang, learned Addl. Public Prosecutor for the State-respondent No. 2.

8] Mr. P. K. Tiwari, learned Senior counsel appearing on behalf of the Victim-petitioner, referring to the scope of Sections 239 and 240 Cr.P.C., has submitted that at the time of consideration of charges, it is the duty of the learned Trial Court to consider the police report submitted u/s 173 Cr.P.C. and the documents forwarded therewith and hearing of the prosecution and the accused. Mr. Tiwari, learned senior counsel has submitted that if thereafter, the learned trial court finds no ground for presuming that the accused has committed an offence, the charge must be considered groundless, and in that case, he is to be discharged. This is different to the stage of the proceeding, when the learned trial court takes cognizance of the offence (s) and decides to issue summons to the accused, without any prejudice caused to the informant or victim. However, when the learned trial court decides not to take cognizance of the offence and issue process, the informant/ victim must be given an opportunity of being heard so that he can make his submissions to persuade the learned court to take cognizance of the offence and issue process as held in Bhagwant Singh-vs- Commissioner of Police, reported in (1985) 7 SCC 768. Mr. P. K. Tiwari, learned Senior Counsel has further submitted that it is the requirement of law that the learned trial court should apply its judicial mind to the materials placed as required u/s 246 Cr.P.C. before coming to a conclusion that the charge against the accused is not sustainable for no reasonable person could come to a conclusion that there is ground, with reference to the ingredients of the offences complained, which can only be done on affording opportunity of being heard to the informant/ victim, so that no

prejudice is caused thereby and in case of prejudice, the order of discharge is exposed to challenge in revision. Mr. Tiwari, learned Senior Counsel, stressed that the impugned order of discharge of the respondent No. 1, being contrary to the materials available on police report and the documents forwarded therewith, is wholly illegal and prejudicial to the right of the informant/ victim, who was not even given the opportunity of hearing and as such, liable to be quashed and set aside.

9] Mr. Pertin, learned Senior Counsel for the respondent No. 1, has submitted that in view of the grounds cited by the petitioner, the instant revision is not maintainable against the impugned order of discharge of the respondent No. 1 in the connected case, which are basically appeal grounds and that the impugned well reasoned order shows that there is no prima-facie evidence in support of the ingredients of the offences u/s 353/354 IPC. Mr. Pertin, learned Senior Counsel has relevantly referred to the proposition of Law laid by the Apex Court in Sheetala Prasad & Ors-vs- Sri Kant & Anr., reported in (2010) 2 SCC 190.

10]. Ms. M. Tang, learned Additional Public Prosecutor, Arunachal Pradesh has concurred with the argument of the learned Senior Counsel for the respondent No. 1.

11] The facts giving rise to the present revision petition may, in brief, be stated thus. The petitioner, Medical Officer, District Hospital, West Siang District, Aalo, Arunachal Pradesh lodged an FIR before the Officer-in-Charge, Aalo Police Station on 27.12.2013 at 08.30 hrs., alleging that while she was discharging her duty from 02.00 PM to 08.00 PM., on 24.12.2013, suddenly one person, whom she later came to know to be Mr. Tageng Padoh, presently serving as the Chief Judicial Magistrate, East Kameng District, Arunachal Pradesh, Seppa started abusing her of not attending the chamber. It was further alleged that inspite of her explanation that she was busy in attending an emergency case of suicide,

he started accusing her of dereliction of duty and pulled away the EMO duty table and also attempted to mishandle her physically.

12] Based on the above FIR, Aalo P.S. Case No. 134/2013 u/s 353 IPC was registered and on completion of investigation submitted the Charge-Sheet u/s 353/354 IPC against the accused-respondent No. 1, herein.

13] The learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh took cognizance of the Charge-Sheeted offences and accordingly, by order, dated 19.01.2015, issued summons to the accused-respondent No. 1 herein. Thereafter, on hearing the learned counsel of the prosecution and the accused, on 16.04.2015, passed the impugned order of discharge of the accused-respondent No. 1, on 17.04.2015.

14] The impugned order, dated 17.04.2015, reveals that the learned Magistrate took into consideration of the pre-incident episode at the relevant time, when the accused-respondent No. 1 accompanied by his wife Smti. Yem Pado (Tayeng) had gone to General Hospital, Aalo to get his injured leg treated, but did not find any Emergency Medical Officer (EMO), on duty, although the petitioner doctor was present at the same open space within the hospital near them. The learned Magistrate on scrutiny of the statements recorded u/s 161 Cr.P.C., found that the crux of the incident was only hot exchange of words between the petitioner and the accused-respondent No. 1 herein and further, that the ingredients constituting the offences u/s 353/354 IPC were absent and consequently discharged the accused-respondent No. 1 from the aforesaid charges.

15] Now, so far the respondent Nos. 1's plea that the instant revision is not maintainable being the cited grounds of revision are appealable in nature and that the victim/ private person is barred from preferring

revision in a case instituted on police report, this Court finds that the petitioner initially preferred the instant petition as a criminal appeal, which was registered as Crl. Appeal No. 04 (AP) 2016 against the above impugned order of discharge. However, another bench of this Court, by a judgment and order, dated 18.05.2017, closed the aforesaid appeal with a direction to re-register the appeal as a revision so as to ensure that real and substantial justice is done in the case. In the present case, the State has not preferred revision against the impugned order. Ordinarily a private party has no *locus-standi* to file revision, when the State has not come forward in revision against an order of discharge, but when such order results in miscarriage of justice, the private party or complainant in a case instituted on police report has a right to revision against such order. In Seetala Prasad-vs- Srikant Case (Supra), the Apex Court specified the category of cases, when the revision filed by the private complainant can be maintainable without making categories exhaustive as follows:-

(1) Where the trial Court has wrongly shut out evidence, which the prosecution wished to produce;

(2) Where the admissible evidence is wrongly brushed aside as inadmissible;

(3) Where the trial Court has no jurisdiction to try the case and has still acquitted the accused;

(4) When the material evidence has been overlooked either by the trial court or by the appellate court or the order is passed by considering irrelevant evidence; and

(5) Where the acquittal is based on the compounding of the offence, which is invalid under the law.

16] The case in hand, from the perspective of the petitioner's contentions, the grievances attract the category of case covered by serial No. 4 above. Here, it may be mentioned that under Section 397 (3) Cr.P.C., the revisional jurisdiction can be invoked by ' any person', but the word 'person' is nowhere defined in the Criminal Procedure Code. However, Section 11 IPC defines the word 'person' as includes any

company or association or body of persons, whether incorporated or not and considered thus, the word 'person' includes *inter-alia* a natural person, who can invoke the revisional jurisdiction under Section 397 (1) Cr.P.C. Therefore, this Court has no hesitation to hold that the petitioner complainant-victim being the aggrieved person has right to revision against the impugned order of discharge of the accused-respondent No. 1 in Aalo P.S. Case No. 134/2013, which was instituted on police report.

17]. Section 190 Cr.P.C empowers a Magistrate to take cognizance of offence(s) either(a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer of even upon his own information or suspicion that an offence has been committed. At this initial stage of a proceeding, the Magistrate needs to see whether a prima facie offence is made out, with a cursory look to the materials placed and to see the possibility of conviction or acquittal. Cognizance being related to the offence (s), the Magistrate need not give the opportunity of hearing to the informant and issue process to the accused, but when it is decided not to take cognizance and to drop the proceeding, a duty is cast upon the Magistrate to give notice to the informant, who lodged the F.I.R and give him an opportunity to be heard, while considering the police report as held in Chittarangan Mirdha case (Supra), reported in (2009) 6 SCC 661 and in Gangadhar Janardan Mhatre case (Supra), reported in (2004) 7 SCC 768. In the instant case, the learned Magistrate, upon receiving the police report in the form of the charge –sheet filed u/s 173 Cr.P.C., with the evidence collected during investigation, having found a prima facie case took cognizance u/s 353/354 IPC and issued summons to the accused-respondent No. 1 herein vide order, dated 19.01.2015, fixing 13.03.2015 for his appearance and appointed Ms Karken Angu, the penal lawyer as Public Prosecutor in the case. This entire exercise was done by the learned Magistrate, as per the prescribed procedure provided in Chapter XIV Cr. P.C.

18]. In the Century Spinning & Manufacturing Co.Ltd. & ors Vs. state of Maharastra, reported in (1972) 3 SCC 282, The Apex Court elaborated the procedure on framing of charges, under the old Cr.P.C., thus:-

> *"(i)The construction and meaning of Section251-A of Code of Criminal procedure does not present any difficulty. Under sub-section (2), if upon consideration of all the documents referred to in Section 175, Cr. P.C, and examinating the accused, if considered necessary by the Magistrate and also hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has no to be read along with sub-section (3) according to which, if after considering the documents and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chapter XXI of the Code within the Magistrate's competence and for which he can punish adequately he has to frame in writing a charge against the accused. Reading the two sub-sections together, it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that these is no ground for framing the charges. This necessarily depends on the facts and circumstances of each case and the Magistrate is entitled and indeed has a duty to consider the entire material referred to in sub-section (2)".*

19]. It is fairly well settled that u/s 239 and 240 Cr.P.C, the Magistrate is required to consider the police report and the documents forwarded therewith u/s 173 and application of discretion to examine the accused for removal of any doubt in regard to the documents so submitted and to afford opportunity to the prosecution and the accused of being heard. It follows the logical conclusion that if on such consideration, examination and hearing, the Magistrate finds that the charge is groundless, he has to discharge the accused, in terms of Section 239 Cr.P.C., conversely if he finds that there is ground for

presuming that the accuse has committed on offence triable by him, he has to frame charge, in terms of section 240. It is apparent that at this stage, the Magistrate must give opportunity of hearing to the prosecution and the accused and nothing beyond that. The right of hearing as specifically mentioned in section 239 Cr.P.C, is available at this stage only to the prosecution and the accused. This is unlike to a situation when Final Report is submitted under section 173 (2) (ii) Cr.P.C. stating no case is made out, the Magistrate is required to give notice and opportunity of hearing to the informant, before accepting the police report and closing the case.

20]. In the present case, it transpires from the impugned order that the learned Magistrate afforded opportunity of hearing to both the prosecution and the accused and based on consideration of respective submissions on the police papers as well as perusal of the charge – sheet along with the documents, such as the statements, recorded u/s 161 Cr.P.C, concluded that there was no sufficient ground to presume that the accused committed the reported offences and accordingly, discharged the accused and against this order, the prosecution has not preferred any revision. Had the prosecution preferred a revision against the impugned order, the matter could have been adjudicated on merit of the grounds. Unfortunately, as aforediscussed, the law does not provide any such revisional remedy to the informant/ victim as in the case of an appeal provided in proviso to Section 372 Cr.P.C. However, by a catena of judicial pronouncements, the complainant or private party's right to revision against the order of discharge is well recognised, when it is shown that the Magistrate had committed a material error in discharging the accused or had illegally or improperly under-rated the evidence. Considered thus, this court is of the considered opinion that the instant revision petition is maintainable.

21]. Turning to the offences allegeally committed u/s 353 IPC by the respondent No. 1, the Magistrate should appreciate the materials placed

before him to see whether the accused assaulted or used criminal force to a public servant, who was discharging official duty or that the offence was committed with intent to prevent or deter the public servant from discharging a duty imposed on him by law. The offence may also be committed in consequence of something done or attempted to be done by the public servant in lawful discharge of a duty. The question of charge under this head of offence is to be considered, on a harmonious consideration of the statutory definitions provided in sections 349 (force), 350 (criminal force), 351(assault) and 21 (public servant) of IPC. On the other hand, so far the offence u/s 354 IPC is concerned, as derived from the ratio rendered by the Apex court in Raju Pandurang Mahale case, reported in (2004) 4 SSC 371 and Rupan Deol Bajaj (Mrs) case, reported in (1995) 6 SSC 194, intention is always not the sole criterion because offence under this section can also be committed by the person assaulting or using criminal force to any woman, if he knows that by such acts, the modesty of the woman is likely to be affected. It is, however, to be kept in mind that alternative charges are permissible, if the conditions laid down in Section 221 Cr.P.C. are attracted.

22]. Without going deep into the prima facie evidence collected during investigation placed before the learned Magistrate, this Court is of the considered view that since the victim-informant/ petitioner has been aggrieved by the impugned order of discharge and justice must appear to have been done, the victim-petitioner should not be deprived of due hearing or her say.

23]. Accordingly, the impugned order, dated 17.04.2015, passed by the learned Chief Judicial Magistrate, Aalo, West Siang District, Arunachal Pradesh in Aalo P.S. Case No. 134/2013 is quashed and set aside, with a direction to rehear the prosecution and the accused on consideration of charges and further, afford opportunity to the informant-victim to engage her private counsel, if so applied, to assist the learned Public Prosecutor.

24]. Be it mentioned that no observation made by this Court in course of this judgment shall influence the independent decision of the learned Magistrate.

The petition stands allowed with the above directions.

Let a copy of this judgment and order be forwarded to the learned Court below.

JUDGE

talom