



**THE HIGH COURT OF SIKKIM AT
GANGTOK**

(Criminal Appellate Jurisdiction)

O R D E R

CRL. REV. P. No. 02 of 2013

State of Sikkim

...Petitioner

Versus

Genchen Bhutia,
S/ o Lt. Bumlay Bhutia,
R/ o Chandmari, Gangtok,
East Sikkim

...Respondent

CORAM

**HON'BLE THE ACTING CHIEF JUSTICE
MR. JUSTICE N. K. JAIN**

Date of Order : 06.12.2013

For Petitioner : M/ s J.B. Pradhan, Public
Prosecutor, Karma Thinlay,
Addl. Public Prosecutor with
S.K. Chettri and Pollin Rai,
Asstt. Public Prosecutors and
Prarthana Ghataney, Advocate.

For Respondent : M/ s A. Moulik, Sr. Advocate
with J.K.P Jaiswal Advocate.



Jain, ACJ (Oral).

Heard learned counsel for the parties.

2. The State of Sikkim has preferred this CrI. Revision Petition under Section 397 read with Section 401 of the Code of Criminal Procedure (for short, Cr. P.C.) challenging the Order dated 23.08.2013 passed by the Special Judge, Prevention of Corruption Act, South and West at Namchi, South Sikkim in S.T. (Vig) Case No.02/ 2012, whereby accused-respondent Genchen Bhutia has been discharged of the offence under Section 109 IPC read with Sections 13 (2) and 13 (i) (e) of the Prevention of Corruption Act, 1988 (for short, P.C. Act).

3. From the submissions of the learned counsel for the parties as well as the Order impugned, it appears that a charge-sheet was submitted against 3 (three) accused persons, namely, (i) Lakpa Tshering Gensapa, (ii) Anita Chettri and (iii) Genchen Bhutia. The learned trial Court heard arguments for framing of charge and vide its Order dated 23.08.2013, passed an order to frame charge



against 2 (two) accused persons, namely, (i) Lakpa Tshering Gensapa and (ii) Anita Chettri for the offence under Section 13 (i) (e) of the P.C. Act read with Section 120B IPC, but discharged the accused-respondent of the offence as mentioned above. Being aggrieved with the aforesaid order, the State of Sikkim has preferred this Revision Petition.

4. Mr. J.B. Pradhan, learned Public Prosecutor submitted that from the perusal of the order of the learned trial Court, it is clear that it is not a speaking and well reasoned order, no reasons have been assigned for discharging the accused of the charges, for which he was charge sheeted. He also submitted that from the order it appears that the accused has been discharged only for the reason that he is not a public servant, whereas, as per the judgment of the Hon'ble Apex Court in the case of ***P. Nallammal and Another vs. State Represented by Inspector of Police*** reported in **(1999) 6 SCC 559**, the said controversy has already been resolved and the accused-respondent, who is a private person, could have been charged along with remaining public servant for abetment of the crime. He, therefore,



submitted that the present controversy is fully covered by the decision of the Hon'ble Apex Court delivered in ***P. Nallammal's case*** (supra.), therefore, order passed by the learned trial Court be set aside and the matter be remanded back for fresh decision.

5. Mr. A. Moulik, learned Senior Counsel appearing on behalf of accused-respondent fairly submitted that although this point was argued in the trial Court but the law point is settled by the decision of the Hon'ble Apex Court as referred by the learned counsel for the petitioner. His submission is that the learned trial Court has considered the evidence on merit and only, thereafter, has recorded finding that there is no material evidence available on record against the accused-respondent so as to frame charge against him. He referred the order impugned and submitted that there is no illegality at all in the order passed by the trial Court and this Revision Petition deserves to be dismissed.

6. I have considered the submissions of the learned counsel for the parties and gone through the order passed by the learned trial Court. It is a settled



law that passing of an order framing charge is not a mere formality but a judicial mind has to be applied while passing it. From the order, it appears that only the submissions of learned counsel for both the parties have been referred but neither the evidence of the case has been referred nor discussed nor any cogent reason has been assigned for discharging the accused-respondent. In these circumstances, two options are left for this Court. First, is to hear the case on merit again here or to remit the matter to the learned trial Court for passing a fresh order after hearing both the parties, in accordance with law. Learned counsel for both the parties submitted and agreed that the matter may be remitted back to the learned trial Court for passing fresh order in the matter, in accordance with law.

7. After considering submissions of learned counsel for the parties, I opt the second option and remit the matter back to the learned trial Court for fresh consideration of the case.

8. Consequently, the Criminal Revision Petition is allowed. The impugned order passed by the learned trial



Court dated 23.08.2013, qua respondent, discharging the respondent is set aside. The matter is remitted back to the trial Court for fresh consideration of the matter. The learned trial Court is directed to pass fresh order, after affording an opportunity of hearing to both the parties and examining the entire evidence/ record of the case, on framing of charge, in accordance with law. It is needless to mention that a speaking and well reasoned order will be passed. It is also observed that the learned trial Court will not be influenced by order of this Court and will decide the case independently on the basis of materials available on record.

9. With the aforesaid observations and directions, the Criminal Revision Petition stands allowed.

(N.K. Jain)
Acting Chief Justice
06.12.2013

pm/ jk
Index : ~~Yes~~ / No
Internet : Yes / ~~No~~