

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 22 of 2017

Date of Decision: 30.07.2018

Smti Agnes Kharshiing Vs State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice

Appearance:

For the Petitioner (s)	:	Mr. M.F. Qureshi, Adv. with Ms. K. Chisa, Adv.
For the Respondent(s)	:	Mr. H. Kharmih, GA (For R 1-3) Mr. N. Syngkon, Adv. (For R-4)

- | | | |
|-----|---|-----|
| i) | Whether approved for reporting in
Law journals etc.: | Yes |
| ii) | Whether approved for publication
in press: | No |
-

ORAL

1) The instant petition has been filed under Section 482 Cr.P.C. with a prayer to quash P.S. Case No. 32(12) 2013 registered for commission of offence punishable under Section 182/203 IPC pending before court of Judicial Magistrate First Class, Mairang and order dated 10th July 2015 passed by trial court in pursuance whereof charges have been framed against the petitioner and respondent No. 4.

2) Briefly stated, the case has its own peculiar features. Respondent No. 4 had lodged a report against one Shri Thiwanstar Mawlong alleging commission of offence punishable under Section 506 IPC. Subsequent thereto statement of complainant (respondent No. 4)

under Section 164 Cr.P.C. has been recorded wherein she has stated that FIR filed against accused Shri Thiwanstar Mawlong is false and allegations contained therein are also false. FIR was prepared by Ms. Agnes Kharshiing (petitioner) without understanding the contents complainant wrongly signed the same. FIR may be treated as cancelled as she withdraws it against Shri Thiwanstar Mawlong. The allegations leveled by her against the accused are completely false.

3) The final report under Section 173 Cr.P.C. submitted on completion of investigation, to Magistrate is to the effect that he could not find any proof to substantiate allegations FIR in fact is false in view of confessional statement of complainant. Learned Magistrate while considering said report, vide order dated 2nd December, 2013 has taken note of the fact, that complainant had falsely implicated the accused under Section 506 IPC. The said offence has been made cognizable and non-bailable in the State of Meghalaya. Finally, while taking serious note of lodging false report learned Magistrate has released the accused from judicial custody at the same time directed investigating officer to lodge FIR against both complainant (respondent No. 4) and petitioner under Section 182/203 IPC.

4) Based on said direction case has been registered case as P.S. Case No. 32(12) 2013 under Section 182/203 IPC against petitioner and respondent No. 4.

5) It is stated by the learned counsel of the parties that investigation in said case has been completed charge sheet has been presented thereafter Magistrate has framed charges so both petitioner and respondent No. 4 have been put to trial.

6) It is the contention of learned counsel for petitioner that once investigating officer on completion of investigation concluded that the case is not proved and submitted a final report, learned Magistrate was required to put complainant on notice so as to enable him to lodge protest against closure. Instead learned Magistrate at the first instant directed registration of case against petitioner and respondent No. 4 for commission of offence under Section 182/203 IPC.

7) It is the settled position and also requirement of law that once a case is not proved, the final report submitted to the Magistrate is not to be accepted until the complainant is put on notice to lodge protest. In this behalf, learned counsel for the petitioner has rightly placed reliance on the judgment **AIR 1985 SC 1285**. Portion of Para-4 is advantageous to be quoted as to what has been held in the said judgment.

“4..... There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of S. 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under subsec. (2)(i) of S. 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.....”

8) Learned counsel for the petitioner contends that before issue of notice for protest by the complainant, the Magistrate could not issue direction for registration of a case against the complainant and the petitioner.

9) Notice was to be served upon the complainant so as to enable him to lodge protest against closure but the complainant herself in the statement recorded under Section 164 Cr.P.C. has divulged that the FIR is false, it is on that basis the case has been closed as not proved. Issue of notice to him in such circumstances for lodging protest shall be an idle formality. That apart, learned Magistrate has issued notice to the complainant for lodging protest which she has lodged and the Magistrate shall pass appropriate order thereon whatever permissible under law.

10) Coming to another aspect of the case i.e. direction, issued by the Magistrate for registration of the case against the complainant (respondent No. 4) and the petitioner, according to learned counsel for the petitioner was barred in terms of Section 195 Cr.P.C. because when the final report was

submitted by investigating officer and in that report he had mentioned commission of non-cognizable offence punishable under Section 182/203 IPC, Learned Magistrate has issued direction for registration of the case because report by police officer was in effect also under Section 155 Cr.P.C.

11) Power to be exercised under Section 482 Cr.P.C. is not unfettered, such power has to be exercised with great care and circumspection with sole object to advance cause of justice and to avoid miscarriage of justice or abuse of the process of the Court.

12) Complainant had set police machinery in action as it is on the basis of her report case has been registered against the accused and the accused taken into custody. Subsequently, complainant stated that report was false, legal action against such wrong report has to be taken.

13) It is submission of learned counsel for petitioner that earlier petition under Section 482 Cr.P.C. bearing No. Crl. Petn. No. 1 of 2016 was filed which was dismissed vide judgment dated 29th March, 2016 with an observation that since charges have been framed petitioner has remedy of invoking revisional jurisdiction. The said remedy has been availed unsuccessfully because learned Sessions Judge has dismissed the same on grounds that the order was interlocutory order.

14) Submission as made by learned counsel for respondent No. 4 that statement recorded under Section 164 Cr.P.C. in effect is recorded de-horse the proper procedure. According to him complainant fully could only understand Khasi language whereas statement has been recorded in English language. Whether any interpreter was engaged or whether Magistrate was conversant with Khasi language. Such defences are open to be projected and proved during trial, such factual aspects cannot be looked into at this stage while exercising the power under Section 482 Cr.P.C.

15) It shall be open to petitioner as well as respondent No. 4 to project the grounds as shall be available to them before trial court while setting up their defense. It is made clear that observations made herein

above shall remain confined to disposal of this petition because during trial some new facts may emerge which are not available at this stage. On conclusion of trial, trial court shall pass appropriate orders un-influenced by the observations made in this order. Similarly learned court, before whom closure proceedings in terms of Section 173 Cr.P.C. regarding the case which was filed against the accused Shri Thiwanstar Mawlong, are pending shall also pass appropriate orders thereon i.e. to accept or to reject the closure report.

16) Petition being without merit is dismissed. Copy of this order be sent to trial court for information.

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
30.07.2018
"V. Lyndem PS"