

GAHC020000132023



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

**Case No. : Tr. P.(Suo Moto) 1/2023**

1:SMTI. KHEHOLI SEMA  
ZUNHEBOTO, NAGALAND

VERSUS

1:THE STATE OF NAGALAND  
NAGALAND, KOHIMA

**Advocate for the Petitioner :**

**Advocate for the Respondent :** GOVT ADV NL

**BEFORE  
HON'BLE MR. JUSTICE KAKHETO SEMA**

**ORDER**

**Date : 31-01-2023**

This is a transfer petition (Suo Moto) for transferring State Crime P.S Case No. 01/2016 under section 420/120B/409/468/471 IPC corresponding to G.R No. 80/2016 from the court of the learned Judicial Magistrate First Class, Kohima, to the court of the learned Judicial Magistrate First Class, Zunheboto. The case relates to the fraudulent and wrongful withdrawal of pension etc. by the officials/staffs of the Treasury Office, Zunheboto and the officials/staffs of the Sub-Treasury Office in different Sub-Divisions of Zunheboto district.

**2.** The transfer petition (Suo Moto) originated from the order dated 01/11/2022 passed by the learned Judicial Magistrate First Class, Kohima referring the case to the Principal District & Sessions Judge, Kohima for transferring the case to the jurisdictional court at Zunheboto by invoking section 177 Cr. P.C.

**3.** Subsequent to the order passed by the learned Judicial Magistrate First Class, Kohima, the learned Principal District & Sessions Judge, Kohima, wrote the letter dated 14/11/2022 to the Registrar, Gauhati High Court, Kohima Bench for transferring the said case to the jurisdictional court at Zunheboto since the case related to offences allegedly committed by the officials/staffs of the Treasury Office, Zunheboto and the Sub-Treasury Offices of different Sub-Division under Zunheboto district. The Registrar, Gauhati High Court, Kohima Bench accordingly wrote the letter dated 18/11/2022 to the Registrar General, Gauhati High Court, Guwahati, Assam forwarding the letter written by the learned Principal District & Sessions Judge, Kohima for transferring the said case. The matter was thereafter referred to a Committee of Judges consisting of the Hon'ble Chief Justice, Gauhati High Court, Hon'ble Mr. Justice N. Kotiswar Singh, JAD and Hon'ble Mr. Justice Songkhupchung Serto, Portfolio Judge, Kohima & Zunheboto districts for a consideration, that the Registrar, Gauhati High Court, Kohima Bench be requested to register a Suo Moto transfer petition at the Gauhati High Court, Kohima Bench and for any other order(s) as the Hon'ble Committee may deem fit and proper. The proposal which was placed for consideration of the Hon'ble Committee was accordingly approved. This is how the transfer petition (Suo Moto) has been listed and placed before this Court.

**4.** The gist of the criminal case which has been referred for transfer is as follows;

a). The Office of the Accountant General, Kohima, Nagaland, filed the First Information Report dated Nil to the Director General of Police, Nagaland, Kohima and to the Superintendent of Police (Crime), PHQ, Kohima, alleging that during the audit of the pension payment vouchers in respect to Zunheboto Treasury, multiple and fraudulent withdrawal of pension against fake pension payment orders (PPOs) by the officials of the Treasury Office, Zunheboto and

the Sub-Treasury Office under Zunheboto district was detected. Considering the gravity of the crime, the Government of Nagaland, Office of the Inspector General of Police (Crime), issued the order dated 25/04/2016 constituting a Special Investigation Team (SIT) comprising of; i) Shri. M. Tungoe, IPS, SP (Crime) and Officer-in-Charge, State Crime Police Station, Nagaland, Kohima, as the team leader, ii) Shri. Michael Yhome, NPS, Office-in-Charge, State Cyber Crime Police Station (SCCPS), PHQ, Kohima as the Investigating Officer, and iii) Shri. Abel Kikon, Inspector of Police, SCPS, DIG's Complex, PHQ, Kohima as a member. Consequent to the constitution of the SIT, the State Crime P.S Case No. 01/2016 under section 420/120B/409/468/471 IPC was registered.

b). In the course of the investigation of the case by the SIT, a prima facie case was found well established against the officials and staffs of the Treasury Office, Zunheboto which also included the Senior Treasury Officer, Zunheboto, the officials and staffs of Sub-Treasury Office, Aghunato and Akulto under Zunheboto district and the staff of the State Bank of India, Zunheboto for fraudulent withdrawal of pensions by fabricating documents and by forging the signatures of the officials of the Accountant General's Office, Kohima.

c). On completion of the investigation of the case, the Police submitted the charge sheet dated 02/12/2021 against 14(fourteen) alleged accused persons under section 420/120B/409/468/471 IPC.

d). The learned Chief Judicial Magistrate, Kohima took cognizance of the offence against the alleged accused person No. 1 to 6 and 9 to 14 under section 420/120B/409/467/468/471 IPC and against the accused person No. 7 & 8 under section 420 IPC. The case being a Magistrate triable case, the same was endorsed to the court of learned Judicial Magistrate First Class, Kohima for trial and disposal. The learned Judicial Magistrate First Class, Kohima on 30/09/2022 issued summons to the accused persons fixing the case on 01/11/2022.

e). On 01/11/2022, the learned Judicial Magistrate First Class, Kohima, however passed the order referring the case to the learned Principal District & Sessions Judge, Kohima for forwarding the case to the Hon'ble High Court, Kohima Bench for transferring the case to the appropriate jurisdictional court at

Zunheboto as provided for under section 177 Cr. P.C. This is how the transfer petition (Suo Moto) has been placed for consideration before this Court after routing through the Committee of the Hon'ble Judges headed by the Hon'ble Chief Justice of the Gauhati High Court, Guwahati, Assam.

**5.** On 27/01/2023 when the Transfer Petition (Suo Moto) was listed before this Court, Mr. Moa Imchen, learned Sr. Government Advocate was requested to study the file of the case and to appraise this Court on the question of transferring the criminal case in question from the court of the learned Judicial Magistrate First Class, Kohima to the court of learned Judicial Magistrate First Class, Zunheboto.

**6.** Today when the matter is listed, Mr. Moa Imchen, learned Sr. Govt. Advocate submits that considering the entire facts and circumstances of the case, it may not be in the interest of justice, at this stage, to consider the transfer of the case from court at Kohima to the court at Zunheboto, although the offence was alleged to have been committed by the officials and staffs of the Treasury, Zunheboto and the officials/staffs of the Sub-Treasury Office under Zunheboto district.

**7.** From a perusal of the records of the case, it appears that the alleged offence of fraudulent withdrawal of pension was committed by the officials/staffs of the Treasury Office at Zunheboto and by the officials/staffs of the Sub-Treasury Office of different Sub-Divisions under Zunheboto district by fabricating documents and forging the signature of the Officers of the Office of the Accountant General, Kohima, Nagaland. The alleged offence was however dictated by the officials of the Office of the Accountant General, Kohima, Nagaland, during audit of the pension payment vouchers in respect of Zunheboto Treasury. Considering the seriousness of the crime an SIT was constituted comprising of Officers from the State Crime Police, the Cyber Police etc. for investigating the case. Investigation of the case, prima facie revealed the involvement of 14(fourteen) accused persons who were serving in the Treasury Office, Zunheboto and the Sub-Treasury Office in different Sub-Divisions under Zunheboto district. The involvement of the staffs of the State Bank of India, Zunheboto, was also found well established. The charge sheet in

the case was accordingly filed against the alleged accused persons in the court of the learned Chief Judicial Magistrate, Kohima who took cognizance of the case against the accused persons and thereafter, endorsed the case to the court of learned Judicial Magistrate First Class, Kohima for trial and disposal, the case being one triable by a Magistrate's Court. The learned Judicial Magistrate First Class, Kohima, thereafter on 30/09/2022, issued summons to the accused persons fixing the case on 01/11/2022. However, on 01/11/2022, the learned Judicial Magistrate First Class, Kohima referred the case to the learned Principal District & Sessions Judge, Kohima for forwarding the case to the Gauhati High Court, Kohima Bench for transferring the case to the jurisdictional court of the Judicial Magistrate First Class, Zunheboto.

**8.** The records of the case further reveals that the confessional statement of some of the alleged accused persons were recorded by the learned Judicial Magistrate First Class, Kohima and the accused persons in the case were enlarged on bail by the court of the learned Principal District & Sessions Judge, Kohima and the learned Chief Judicial Magistrate, Kohima.

**9.** This Court has also perused the provisions of Section 177 of the Code of Criminal Procedure, 1973, wherein it is provided that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. A Constitutional Bench of the Hon'ble Supreme Court in the case of **Kailash Chandra -versus- The Union of India**, reported in **AIR 1961 SC 1346** has held that the expression "Ordinarily" means "in the large majority of cases, but not invariably". So also in the case of **Commissioner of Customs, Mumbai -versus- J.D Orgochem Limited**, reported in **(2008) 16 SCC 576**, the Hon'ble Supreme Court has held that when in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception it never means "primarily". The question which therefore arises for the consideration of this Court is whether the transfer of the criminal case at this belated stage would sub-serve the interest of justice.

**10.** In the instant case, although the offence of fraudulent withdrawal of pension was committed by the alleged accused persons at Zunheboto by

fabricating documents and forging the signature of the officials of the Office of the Accountant General, Kohima, Nagaland, the crime was detected by the Office of the Accountant General, Kohima only during the audit of the pension payment vouchers of Zunheboto Treasury and consequent to which the FIR was lodged by the officials of the Accountant General Office, Kohima with the Director General of Police, Nagaland, and the Superintendent of Police (Crime), PHQ, Kohima. Considering the magnitude of the crime a Special Investigation Team (SIT) was constituted to investigate the crime. On completion of the investigation, the charge sheet was filed by the Police in the court of the Chief Judicial Magistrate, Kohima, who took cognizance of the offence against the accused persons and thereafter, endorsed the case to the court of the learned Judicial Magistrate First Class, Kohima for trial and disposal. The learned Judicial Magistrate First Class, Kohima, on 30/09/2022, issued summons to the accused persons fixing the case on 01/11/2022. This preceding fact reveals that the FIR originated from the Office of the Accountant General, Kohima and the entire investigation of the case was conducted by the SIT at Kohima. All legal steps/exercises in the case was taken before the judicial court's at Kohima. Neither the Police at Zunheboto conducted the investigation in the case nor the court's at Zunheboto had dealt with the case at any given point of time. Besides, the records shows that the vital prosecution witnesses such as, the complainant, the scientific experts, the officials of the Government from the Finance and the department of Treasury & Accounts and the members of the Special Investigation Team (SIT) are all either from Kohima or from outside the State of Nagaland. Taking all these facts and circumstances into consideration, this Court is of the view that it may not be proper, at this belated stage, to transfer the case from court of the learned Judicial Magistrate First Class, Kohima to the court of the learned Judicial Magistrate First Class Zunheboto, since there is every likely hood to disrupt the progress of the trial thereby further delaying the trial of the case and occassing injustice to the State as well as to the accused persons alike.

**11.** The Transfer Petition (Suo Moto) of the criminal case from the court of the learned Judicial Magistrate First Class, Kohima to the court of the learned

Judicial Magistrate First Class, Zunheboto, is therefore disallowed.

**12.** Registry to immediately remit the records of the case (LCR) to the court of the learned Judicial Magistrate First Class, Kohima.

**13.** The learned Judicial Magistrate First Class, Kohima, on receipt of the record shall forthwith proceed with the trial of the case in accordance with law. A copy of this order be furnished to the learned Judicial Magistrate First Class, Kohima.

**14.** Petition disposed.

Sd/-

**JUDGE**

**Comparing Assistant**