



Serial No. 01

Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 6 of 2017

Date of Decision: 27.12.2024

Central Bureau of Investigation,
Anti-Corruption Branch, Oakland,
Shillong, Meghalaya-793001,
represented by its Head of Branch.

.....**Petitioner**

- Vs-

1. Shri. Uday Nath Majhi,
Son of Late Kuani Majhi,
The then Financial Adviser NEC,
Shillong, Resident of RP-29 Pandav
Nagar, Tonkpani Road,
Bhubaneswar-18.
2. Shri. Richard Patrick Kharpuri,
Son of Late R.M. Hithcock,
Resident of Lummawrie,
Laitumkhrach, Shillong-793003.
3. Shri. Albert Donbor Kharshiing,
Son of Shri. Alexander Warjri,
Extension Officer (S), NEC,
Shillong, Resident of Upland Road,
Laitumkhrach, Shillong-793003.
4. Shri. Peter A. Thorose,
Son of Late A.A. Thorose,
Principal, St. Peter's College,
Shillong, C/o St. Peter's School,



Dhankheti, Shillong-793003.

5. Smti. Dancy Dura Syiem,
D/o Shri. Shron Singh Nongkhlaw,
Vice Principal, St. Peter's College,
Shillong, Resident of Risa Colony,
Shillong-793003.

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. N.A.V. Sogra, Adv. vice
Dr. N. Mozika, DSGI.

For the Respondent(s) : Mr. P. Yobin, Adv. (For R 1 & 2)
Mr. M.F. Qureshi, Adv. (For R 3)
Ms. P.D. Bujarbaruah, Sr. Adv. with
Mr. B.A. Wanswett, Adv. (For R 4 & 5)

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

JUDGMENT AND ORDER

1. Challenged in this petition is the impugned order dated 05.05.2016 passed by the learned Special Judge (CBI), Shillong in Special Case No. 5/2009 under Section 120B, 420, 467 and 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, whereby the respondent Nos. 1-5 as accused persons therein have



been discharged from the liability of the case at the stage of consideration of charges.

2. The background facts leading to the filing of this petition is that the Principal of St. Peters College (Respondent No. 4) had undertaken a project named and styled as “Holistic Cluster Approaches at Grassroots Level for Sustainable Development in the North Eastern Region” in the State of Assam, Meghalaya and Arunachal Pradesh for which the North Eastern Council (NEC) was approached for sanction of the required funds.

3. Accordingly, the NEC had sanctioned an amount of ₹ 4,98,50,000/- on 18.03.2005, the same to be released in installments. At the first instance, the NEC had released the fund in three installments, the first being ₹ 47,00,000/- on 22.03.2005, the second installment of ₹ 20,00,000/- released on 20.06.2005 and the third installment of ₹ 2,00,00,000/- on 25.11.2005, the total being ₹ 2,67,00,000/-.

4. Records would show that there were allegations of irregularities in the implementation of the said project which prompted the Central Bureau of Investigation (CBI) to conduct a fact-finding inquiry. Eventually, an FIR dated 08.05.2009 was filed alleging that the respondents herein, the respondent Nos. 1, 2 and 3 respectively, being



public servants as officials of the NEC, have entered into criminal conspiracy with each other and also with the respondent No. 4, the Principal, St. Peter's College, Shillong and respondent No. 5, the Vice Principal, St. Peter's College, Shillong and in abuse of their official power and position, had fraudulently and dishonestly processed and recommended the sanction for the said project submitted by respondent No. 4 without proper evaluation of the same and also for failing to incorporate the suggestions of the Advisor (Forest & Environment), NEC while releasing the said fund of ₹ 2,67,00,000/-.

5. In course of investigation, the CBI has recorded the statements of 41 witnesses under Section 161 Cr.P.C and has also collected as many as 124 documents to form the basis for making out a case against the accused persons/respondents herein for the said offences aforementioned. A charge sheet dated 30.07.2010 corresponding to FIR No. RC 6 of 2009 was submitted before the Court of the learned Special Judge (CBI) following which a regular case was registered as Special Case No. 5 of 2009.

6. After the charge sheet was filed, on 04.07.2012, the Trial Court proceeded to frame relevant charges against the respondents Nos. 1, 2 and



3 respectively. At that point of time, the charges could not be framed against the respondent Nos. 4 and 5, since they were not present in court on the day the charges were framed.

7. However, the respondent Nos. 4 & 5 filed an application under Section 91 Cr.P.C with a prayer for production of the complete set of audit statement pertaining to the period 22.03.2005 to 31.03.2009, but the same was rejected by the Trial Court vide order dated 21.09.2012.

8. Another application under Section 227 Cr.P.C seeking discharge from the case was also preferred by the respondent Nos. 4 & 5 respectively, this too was rejected vide order dated 31.01.2013.

9. The orders dated 21.09.2012 and 31.01.2013(supra) was then challenged by the said respondent Nos. 4 & 5 before this Court in Crl.Ptn. No. (SH) 11 of 2013 and Crl.Ptn No. (SH) 12 of 2013. On consideration of such petitions, and upon hearing the parties, this Court has, vide order dated 20.03.2013 rejected the prayer made in both the petitions.

10. Yet again, the respondents Nos. 4 & 5 herein have filed an application under Section 482 Cr.P.C read with Article 227 of the Constitution of India, with a prayer to quash the FIR dated 08.05.2009, the charge sheet dated 30.07.2010 and the entire proceedings in Special Case



No. 5/2009. Such applications being registered as Criminal Misc. Application Nos. 17 and 18(SH) of 2013 respectively, this Court on consideration of the same has, vide order dated 31.12.2013 disposed of the two applications by directing the Trial Court to look into the material evidence/documents produced by the accused respondents at the time of framing of charge and also the documents annexed with the revision petitions at the time of consideration of charges.

11. In compliance with the said order dated 31.12.2013, the Trial Court vide order dated 11.12.2014 observed that the charges already framed against the accused respondents Nos. 1, 2 & 3 respectively on 04.07.2012 have become defunct, and hence, charges against all the accused respondents are required to be considered afresh.

12. After allowing all the accused respondents to file documents, the learned Special Judge vide order dated 05.05.2016, has, discharged all the accused persons therein from the liabilities of the case by holding that the charge sheet filed against the accused respondents Nos. 1, 2 & 3 respectively was based on invalid and incomplete documents as well as suppression of relevant documents. As far as the accused respondent Nos. 4 & 5 are concerned, the Trial Court found that no prima facie case is



made out against them.

13. Being highly aggrieved and dissatisfied with the said order dated 05.05.2016 passed by the Trial Court, the petitioner/CBI have now approached this Court with this instant revision petition with a prayer to set aside the said impugned order dated 05.05.2016.

14. Dr. N. Mozika, learned DSGI appearing for the petitioner/CBI in his argument has submitted that in the first instance, the respondent Nos. 4 & 5/accused Nos. 4 & 5 realizing that the fact finding enquiry would get them into trouble, they wrote to the NEC withdrawing their earlier Utilization Certificates dated 15.06.2005 and 26.07.2005 with a prayer for submission of a fresh Utilization Certificate. Such new UC being prepared on 29.09.2009 and submitted on 12.11.2010, much after the charge sheet was filed.

15. It is the contention of the learned DSGI that after four years of submission of the Utilization Certificates, such certificates being accompanied by an audited statement by a Chartered Accountant, the same cannot be withdrawn or altered at any point of time.

16. Another attempt made by the said respondent Nos. 4 & 5 is that on a finding that land was purchased by them out of the said sanctioned



fund, which act of purchase was questioned, they immediately clarified that the component of land was contributed from the college fund and not from the NEC fund.

17. The exchange of correspondences between the relevant accused persons with the officials of the NEC, who happened to be co-accused in the case as regard the re-submission of the Utilization Certificates as well as the so called clarification as regard the expenditure on the land component where the respondent Nos. 4 & 5 on behalf of the College has stated that the fund for the same was procured from the college funds is nothing but an eyewash to divert the course of investigation. The reliance of the learned Trial Court on such correspondences to discharge the said accused persons is a case of miscarriage of justice, submits the learned DSGI,

18. However, the learned DSGI has submitted that this Court vide order dated 31.12.2013 passed in Criminal Misc. Application Nos. 17 and 18(SH) of 2013 had allowed the accused/respondent Nos. 4 & 5 to produce relevant documents to be considered by the Trial Court at the time of consideration of charges, therefore, it is incumbent upon the learned Trial Court to examine such documents to see whether they are suspicious



or not, but relying on misplaced evidence, the impugned order of discharge was passed, the same being passed without jurisdiction, therefore, the said impugned order dated 05.05.2016 is liable to be set aside and quashed and all the accused persons named in the charge sheet be made to face trial on appropriate charges being framed.

19. Mr. P. Yobin, learned counsel for the respondent Nos. 1 and 2 replying to the argument of the learned DSGI in response, has submitted that this Court exercising revisional jurisdiction under Section 397 Cr.P.C. is very limited and cannot be done so in a routine manner. The case of ***Amit Kapoor v. Ramesh Chander & Anr, (2012) 9 SCC 460*** at para 20 was cited in this regard.

20. The learned counsel has also submitted that the petitioner/CBI to support its case has chosen to rely on certain documents and has alleged that the contents of such documents, would reveal the complicity of the respondents herein, including respondent Nos. 1 & 2, however, such reliance was made without reference to the other documents and correspondences which has clearly shown that the accused persons in question are not involved in any wrongdoing.

21. That the learned Trial Judge in the impugned order has



specifically referred to certain documents which were produced by the accused persons and which documents and correspondences were also annexed with the petitions filed before this Court, that is, in Criminal Misc. Application Nos. 17 and 18(SH) of 2013, wherein, vide order dated 31.12.2013, this Court had directed that the Trial Court should also rely on such documents while considering whether charges are to be framed against the accused persons or not, was also pointed out by the learned counsel, particularly referring to para 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90 of the impugned order, and has submitted that it is apparent that the learned Trial Judge has considered all aspects of the case of the parties with reference to the relevant documents and correspondences which has revealed that the respondent Nos. 4 & 5 have already started the project even before the fund was sanctioned by the NEC and certain expenditures have been incurred in this respect, including the purchase of land for the said purpose, the revised Utilization Certificate have been submitted taking this factor into account, but documents and correspondences in this regard, have not been noted by the CBI while filing the charge sheet, thus, causing prejudice to the accused persons therein who are the respondents herein, including respondent Nos. 1 & 2.

22. As to the case against the respondent Nos. 1 & 2, the learned



counsel has submitted that they are not the final authority as far as sanction of the project fund is concerned, inasmuch as, the said respondents have simply processed the paper works and on the same being placed before the Secretary NEC, who is the sanctioning authority, their role is very limited and as such, no charges could have been framed against them. Reference is made to the observations of the learned Trial Judge, who at para 93 and 94 of the impugned order, has come to a finding that there is no evidence that the respondent Nos. 2 & 3 have received any pecuniary benefits for themselves and, therefore, no prima facie case is made out against them. At para 96, the learned Trial Judge has reiterated that since the charge sheet has been filed on the basis of invalid documents, the charges against the respondent Nos. 1, 2 & 3 are not sustainable. In support of this contention, the case of ***State of Madhya Pradesh v. Sheetla Sahai & Ors, (2009) 8 SCC 617***, para 44, 45, 49 and 55 have been cited.

23. Mr. M.F. Qureshi, learned counsel for the respondent Nos. 3 in his defence, has submitted that as far as this respondent/accused is concerned, his role in the process is only to issue monitoring letters and reminders to A4/respondent No. 4 for timely submission of physical and financial progress reports, books of accounts and expenditure vouchers.



This role was duly recognized by the learned Trial Court and observations in this respect was made in the impugned order when it was remarked that the A3/respondent No. 3 is not the sanctioning authority and thus, he has not obtained any pecuniary benefits whatsoever, therefore, no prima facie case is made out against him.

24. The learned counsel has also referred to para 93 and 94 of the impugned order, wherein is found the findings of the learned Trial Court justifying the discharge of A3/respondent No. 3 from all liabilities in the case.

25. Mrs. P.D. Bujarbaruah, learned Sr. counsel appearing for the respondent Nos. 4 & 5 respectively has, at the outset stated the facts of the case before the Trial Court referring to the FIR filed by the CBI on 08.05.2009, wherein the respondent Nos. 4 & 5 herein have been implicated as accused persons being A4 and A5 on the allegation of mis-utilization of the sanctioned money under the said Project, namely 'Holistic Cluster Approaches at Grassroots Level for Sustainable Development in the North Eastern Region' including the dispute arising out of purchase of land, the relevant sections of law involved being Section 120B, 420, 467, 471, IPC read with Section 13(1)(d) of the



Prevention of Corruption Act, 1988.

26. It is the submission of the learned Sr. counsel that in course of investigation, the CBI have seized a number of documents, however, on inspection of the documents by the respondent Nos. 4 & 5 herein, it was found that most of the vital documents such as the audited statement of accounts, bills and vouchers marked as M5 and M6 were not forwarded by the CBI to the court along with the charge sheet which was submitted on 30.07.2010. Also notable amongst these documents is the consolidated Utilization Certificate dated 29.09.2009 submitted by the College to the NEC on 12.11.2010 and received by NEC on 18.11.2010, but the same was forwarded to CBI by the NEC only on 13.02.2013, much after the charge sheet was filed, hence, there has occurred a non-consideration of the relevant documents at that point of time, which has prejudiced the case of the accused Nos. 4 & 5, who are the respondent Nos. 4 & 5 herein.

27. In the light of the facts and circumstances of the case, the learned Trial Court have come to a correct finding as far as the impugned order is concerned, and as such, the same having been passed within jurisdiction, it may not be upset by this Court, further submits the learned Sr. counsel.



28. This Court has considered the submission and contention raised by the respective parties herein and in the context of the issues raised, the propriety or impropriety as well as the scope of jurisdiction exercised by the learned Special Judge(CBI) in the impugned order dated 05.05.2016 will be tested on the anvil of law and facts.

29. To briefly summarized, the contents of the impugned order, at the first instance referred to the order dated 31.12.2013 passed by this Court in Criminal Misc. Application (SH) No. 17 and Criminal Misc. Application (SH) No. 18 of 2013 preferred by the respondent Nos. 4 & 5 herein. This Court, in the operative portion of the said order, has at para 24 of the same directed that *“For the foregoing discussions, in the given case, the trial court can look into the material evidence produced by the petitioners accused at the time of framing of charge and the core question no. 1 formulated above is answered accordingly. The core question no. 2 formulated above is also answered that this Court can exercise its jurisdiction under Section 482 Cr.P.C in the present revision petition and present revision petition is maintainable. Corollary of the answers are that the trial court shall look into the documents mentioned above and also the documents annexed to the revision petition, if not suspicious, at the time of consideration of the charge or at the time of consideration as to whether*



or not prima facie case against the present petitioners has been made out. The accused petitioners are to place the documents mentioned above and the documents annexed to the present revision petition before the trial court at the time of consideration of the charge.”

30. Records would also show that vide order dated 11.12.2014, the learned Special Judge(CBI) had allowed the petition filed by the respondent Nos. 2 & 3 herein to the effect that they were allowed to also produce relevant documents before the Trial Court and the same to be considered. The charges already framed against them have been directed to be considered afresh.

31. The learned Special Judge(CBI) then went on to hear the argument of the parties on consideration of charges, that is, whether charges are to be framed or not and whether there are sufficient material evidence for doing so. After hearing the parties, and on consideration of the materials on records including the documents as indicated in this Court's order dated 31.12.2013 (supra), the impugned order was passed by the learned Special Judge (CBI) finding that on the basis of the available materials and evidence, no charges could be framed against all the accused persons, who are the respondents herein.



32. It may be pointed out that the order dated 31.12.2013 have not been challenged by the CBI/petitioner and the same has attained finality, as such, the learned Trial Court, on being directed has taken up the case of the parties for fresh consideration of charges, the same which cannot be faulted. No infirmity in this regard can be found as far as the impugned order is concerned.

33. The first contention of the CBI/petitioner is that the A4 and A5/respondent Nos. 4 & 5 sensing trouble, just two days before the FIR, that is, on 06.05.2009, the FIR being filed on 08.05.2009, had written to the NEC to withdraw the Utilization Certificate filed earlier with a request to file a fresh one. This could not have been done as once the Utilization Certificate have been submitted, the same cannot be withdrawn.

34. On the question as regard the controversy over the submission of the Utilization Certificates and the subsequent withdrawal of the same with request to furnish fresh UC, in the impugned order, the learned Special Judge(CBI) have recorded the arguments of the parties and have observed that on the basis of the available documents on record that on receipt of the said letter dated 06.05.2009 from respondent No. 4 seeking



to withdraw the said UCs, the NEC vide letters dated 25.05.2009, 16.06.2009 and 05.02.2010 have asked the College to furnish the detailed item wise expenditure with supporting vouchers. On 17.12.2009, the NEC confirmed their acceptance of the expenditure of ₹ 2.67 crores following which, on 12.11.2010, the College, represented by the respondent Nos. 4 & 5 have then submitted the consolidated Utilization Certificates dated 29.09.2009 for the period 22.03.2005 upto 31.03.2009. There is nothing on record to show that the NEC has declined or refused to accept the said consolidated Utilization Certificates filed by the College.

35. It is in respect of this sum of ₹ 2.67 crores which was utilized by the College, the concerned Official of the NEC, that is, the Director(S&T), NEC, Dr. U.K. Mishra, who is not an accused person in the case, in his communication to the Head of Branch, CBI-ACB, Shillong, dated 17.12.2009, has clearly indicated the acceptance of the NEC as regard the expenditure of the said ₹ 2.67 crores.

36. As observed by the learned Special Judge (CBI), the above aspect of the matter was not considered by the CBI in course of investigation, nor was the same reflected in the charge sheet. As such, the inference made by the Trial Court that relevant documents and material



evidence was not taken note of by the CBI during investigation, resulting in a finding that a prima facie case is made out against the accused persons, such finding is incorrect and not based on evidence. This finding is found acceptable by this Court.

37. Needless to say, even the controversy about the purchase of land which was objected to by the NEC initially, when the same was clarified that the cost of such land was borne by the College itself out of its own fund, the NEC has accepted this explanation and as such, there could not have been any controversy as far as this issue is concerned.

38. As has been observed by the learned Trial Court, the CBI has not been able to clarify as to whether the documents and evidence relied upon at the time the charge sheet was filed are valid or not, or rather as to whether they are invalid and further, even in this instant case, nothing is said as to whether the material evidence relied upon by the Trial Court to discharge the accused persons are suspicious and as such, it can be assumed that the learned Trial Court have found such documents/evidence furnished by the accused persons at the time of consideration of charge not suspicious at all.

39. The manner in which the learned Trial Court has elaborately



addressed the issues involved in the impugned order, has convinced this Court that the same has been passed within jurisdiction and no impropriety can be imputed therein.

40. It may not be necessary to discuss the case laws cited or any other legal authority as this Court is convinced that no infirmity has occurred in the passing of the impugned order, factually or legally.

41. Consequently, this Court is of the view that the impugned order dated 05.05.2016 suffers from no jurisdictional error, the same is hereby upheld.

42. Petition disposed of. No costs.

43. The Trial Court records are to be returned back.

Judge