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

Case No. : Crl.Pet./1265/2025

LAKHESWAR SAIKIA
SON LATE TILSWAR SAIKIA, BY OCCUPATION CENTRAL GOVERNMENT
SERVICE, RESIDING AT FLAT- 3B, PROTECH PELICAN APARTMENT,
JAPORIGOG, DR. N.P. BORDOLOI PATH, GUWAHATI, ASSAM, PIN-781005,
CELL NO. 9163331630

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE LD. PP, ASSAM

2:SRI S ANDEEP KUMAR GOGOI
SON OF BIRANDA KUMAR GOGOI
DIVISIONAL MANAGER
FOOD CORPORATION OF INDIA
DIVISIONAL OFFICE
TENGAPARA
KOKRAJHAR
ASSAM- 783370 AND RESIDING AT HOUSE NO. 58
PARAG DAS PATH
CHANDMARI
GUWAHATI
ASSAM
PIN-781003
CELL NO. 91633-3163

Advocate for the Petitioner : MR. N ALAM, Y KHAUND,MR. K MOHAMMED,MR. D DAS SR.
ADV,S A BAKHTIAR,MR N J DAS

Advocate for the Respondent : PP, ASSAM, MR. P K ROY (R-2),MRS. A CHAKRABORTY (R-
2),MR. B DAS (R-2)

Linked Case : I.A.(CrI.)/514/2026

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SON LATE TILSWAR SAIKIA
BY OCCUPATION CENTRAL GOVERNMENT SERVICE
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Advocate for : MR. N ALAM
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

18.05.2026

Heard Mr. D. Das, the learned senior counsel assisted by Mr. K. Mohammed, the learned counsel appearing for the petitioner. Also heard Mr. M.P. Goswami, the learned Addl. Public Prosecutor, Assam as well as Mr. S.K. Chakraborty, the learned counsel appearing for the Respondent No.2.

2. This is an application under Section 528 of the BNSS, 2023 praying for quashing the *charge sheet* being C.S. No.15/2022 dated 31.11.2022 in respect of the petitioner Lakheswar Saikia arising out of BI(EO) P.S. Case No.11/2018 dated 02.07.2018 under Section 120B/ 420/ 409 of the Indian Penal Code.

3. The Regional Office of the Food Corporation of India had floated a Notice Inviting Tender for appointment of regular contractors. After submission of tenders, the lowest bid was accepted. The bidder submitted 2 Bank Guarantees issued by the UCO Bank. Food Corporation of India wanted to confirm the genuineness of the Bank Guarantees and to that effect, sent a letter to the said Bank at Guwahati. Subsequently, because of some criminal acts by the contractor, his contract was terminated and the Food Corporation of India had initiated a process for encashing Bank Guarantees given by contractor. It was discovered that both the Bank Guarantees were not genuine. Therefore, Food Corporation of India prayed that action should be taken against the contractor M/s. 4A Enterprise.

4. After completion of the Investigation, police filed the *charge sheet* against the

present petitioner who was the General Manager of Food Corporation of Indian, Regional Office and also against some other persons.

5. On 28.07.2025, the trial court took cognizance of the offences against the present petitioner Lakheswar Saikia under Section 120(B)/420/ and 409 of the Indian Penal Code. The trial court took cognizance of the said offences against some other accused also.

6. Mr. Das has submitted that the petitioner Lakheswar Saikia had acted in his official capacity. Therefore, sanction under Section 197 of the Code of Criminal Procedure is necessary and without prosecution sanction, the trial court has taken cognizance of the offences against the present petitioner. Mr. Das has submitted that the genuineness or correctness of the acts done by the present petitioner Lakheswar Saikia is immaterial in the absence of prior sanction for prosecution. In order to buttress his point, Mr. Das has relied upon a judgment of the Hon'ble Supreme Court that was delivered in *Suneeti Toteja v. State of U.P. and Another*, reported in *2025 SCC OnLine SC 433*. Paragraphs 29, 31 and 32 are quoted as under:

“**29.** As per the aforementioned proposition, it is only to be seen if the accused public servant was acting in the performance of his/her official duties, and if the answer is in the affirmative, then prior sanction for their prosecution is a condition precedent to the cognizance of the cases against them by the courts. It is therefore largely a disputed question of fact here and not a question of law. However, this fact of appellant herein acting in her official capacity is not seriously contested by the respondents herein. In the instant case, the appellant had filed the counter affidavit and interacted with the complainant in her capacity of a Presiding Officer, ICC. The correctness of the allegations with regard to the conduct of the appellant need not be ascertained herein by this Court but the fact that she was acting in her official duty is sufficient to hold that a prior sanction from the department was in fact necessary before the Magistrate taking cognizance against her. The Magistrate therefore erred in proceeding to take cognizance against the appellant without the sanction for prosecution being received from BIS, and since BIS has eventually refused to grant sanction for the prosecution of the appellant, the prosecution against the appellant could not have been sustained.

31. Similarly, learned counsel for the complainant had placed reliance on the judgment of this Court in *Subramanian Swamy* to lend credence to the argument of deemed sanction for prosecution. However, even the said judgment does not in any manner lay down the notion of deemed sanction. First, the said judgment dealt primarily with the Prevention of Corruption Act, 1988 and the sanction for prosecution under that Act. Secondly, G.S. Singhvi, J. while penning his separate but concurring opinion in the said judgment, had given some guidelines for the consideration of the Parliament, one of which is to the effect that at the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/complaint in the court to commence prosecution within fifteen days of the expiry of the aforementioned time limit. However, such a proposition has not yet been statutorily incorporated by the Parliament and in such a scenario, this Court cannot read such a mandate into the statute when it does not exist.

32. Therefore, we are of the opinion that the learned Magistrate was not right in taking cognizance of the offence against the appellant herein without there being a sanction for prosecution granted by the competent authority. Further, the High Court erred in not considering the fact that the sanction for prosecution was not granted by the competent authority under Section 197 of the CrPC and eventually the sanction was expressly denied by the competent authority with respect to the allegations against the appellant. The necessary sanction not having been granted has vitiated the very initiation of the criminal proceeding against the appellant herein. Consequently, the chargesheet, the summoning order and the consequent steps, if any, taken by the trial court pursuant to the same are liable to be quashed qua the appellant herein and are thus quashed.”

7. Mr. Das further relied upon a judgment of the Hon’ble Apex Court that was delivered in *G.C. Manjunath v. Seetaram*, reported in (2025) 5 SCC 390. Paragraphs 34 and 35 are quoted as under:

“**34.** A careful reading of Section 197CrPC unequivocally delineates a statutory bar on the Court's jurisdiction to take cognizance of offences alleged against public servants, save without the prior sanction of the appropriate Government. The essential precondition for the applicability of this provision is that the alleged offence must have been committed by the public servant while acting in the discharge of, or purported discharge of, their official duties. The protective mantle of Section 197CrPC, however,

is not absolute; it does not extend to acts that are manifestly beyond the scope of official duty or wholly unconnected thereto. Acts bereft of any reasonable nexus to official functions fall outside the ambit of this safeguard and do not attract the bar imposed under Section 197CrPC.

35. Both the aforesaid provisions serve a similar protective function. While Section 170 of the Police Act mandates prior sanction for prosecuting a public official for "acts done under colour of, or in excess of, such duty or authority", Section 197CrPC requires prior sanction where a public official is accused of having committed "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The underlying rationale of both these statutory provisions is to safeguard public functionaries from frivolous or vexatious prosecution for actions undertaken in good faith in the discharge of, or purported discharge of, their official duties, thereby ensuring that the fear of litigation does not impede the efficient functioning of public administration."

8. I have given my anxious considerations to the submissions made by the learned counsels for both sides.

9. The genuineness of the allegations against the petitioner need not be ascertained in this case. The fact that he was acting in his official capacity is sufficient to hold that prior sanction from the authority concerned was necessary before the Magistrate took cognizance against him. In this case, it is an admitted fact that prior sanction could not be procured before filing of the *charge sheet* by the Investigating Officer. In the *charge sheet* itself it has been mentioned about that fact.

10. This Court is of the opinion that under the circumstance, taking cognizance of the offences against the present petitioner without there being a sanction for prosecution granted by the competent authority is not correct. The absence of sanction for prosecution has vitiated the very initiation of the criminal proceedings against the present petitioner. Hence, the impugned order dated 28.07.2025 passed by the learned Judicial Magistrate First Class, Kamrup (M) at Guwahati in PRC Case No.94/2023 is bad in law. In the result, the criminal proceedings of PRC Case No.94/2023 against the present petitioner Lakheswar Saikia is quashed and set aside.

With the aforesaid direction, the criminal petition and the connected

Interlocutory Application are disposed of accordingly.

JUDGE

Comparing Assistant