

GAHC040003122025



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

Case No. : Crl.Petn./35/2025

Ms Shalini Jain
Daughter of Late Praveen Jain, resident of 15, Poorvi Marg, Basement, Vasant Vihar,
New Delhi 110058

VERSUS

The State of AP and Anr
represented by the PP of AP 2:Tarh Nachung
Age: 0
Occupation :
Son of Late Tarh Hipik
resident of Nirjuli-II
Po and PS Nirjuli
Papum Pare District
Arunachal Pradesh

Advocate for the Petitioner : N Rama, Dindo Boni, Teshi Aaku, T Rahul, N Kuma, N Kanu, P Tatam

Advocate for the Respondent : P P of AP,

-BEFORE-

HON'BLE MRS. JUSTICE MITALI THAKURIA

03.03.2025

Heard Mr. N. Rama, learned counsel for the petitioner and also heard
Mr. T. Ete, learned Addl. PP for the State of Arunachal Pradesh.

This is an application under Section 528 of the BNSS, 2023 praying

for quashment of the FIR bearing Nirjuli P.S. Case No. 51/2024 under Section 420 and 406 of the Indian Penal Code.

Issue notice returnable by 28.03.2027.

Since Mr. T. Ete, learned Addl. PP has entered appearance and accepted notice on behalf of the State of Arunachal Pradesh, no formal notice is required to be issued. However, extra copies of the petition along with the annexures appended thereto be furnished to him during the course of the day.

The learned counsel for the petitioner is directed to take steps for issuance of notice upon respondent No. 2 by registered post with A/D as well as by usual process. Steps be taken within a week from today.

It is submitted by Mr. N. Rama, the learned counsel for the petitioners that the petitioners entered into an agreement with the respondent No. 2 for certain project works and pursuant to that agreement, the respondent No. 2 has also paid Rs.26,19, 200/- (Rupees Twenty Six Lakhs Nineteen Thousand and Two Hundred). Accordingly, she started the project work, however, due to flood, the work could not progress further and when she asked for the subsequent payment, the respondent No. 2 had lodged the FIR with some false and concocted allegation. He also further submitted that a transit bail was obtained and thereafter, the same was regularized. She also appeared before the I.O. of the case as and when called for and co-operated in the investigation by producing all the relevant documents before the I. O. of the case but, only to harass the petitioner, the I.O. of the case is sending notice one after another to appear before him in the name of investigation. Accordingly,

the learned counsel for the petitioner submits that personal appearance of the present petitioner may be dispense with. However, he submits that he does not insist for stay of the investigation.

Mr. T. Ete, learned Addl. PP submitted, in this regard that there cannot be stay of the investigation at present and from the conduct of the accused petitioner seems that she did not complete the allotted work within the time period and it has to be investigated as to how she used the money which was paid to her. He further submitted that the FIR alleges some dishonest conduct of the accused petitioner and during the investigation, the I.O. of the case has to collect materials. Therefore, at this stage, the FIR also cannot be quashed. To substantiate his plea, the learned Addl. PP has referred to the case of ***Somjeet Mallick-vs-State of Jharkhand and Others***; reported in ***2024 SCC OnLine 2820*** and the relevant extracts are reproduced hereinbelow for ready reference:-

“18. It is trite law that FIR is not any encyclopedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the Court is not required to ascertain as to which specific offence has been committed. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the court, the court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.

19. No doubt, a petition to quash the FIR does not become infructuous on submission of a police report under Section 173(2) CrPC, but when a police report has been submitted, particularly when there is no stay on the investigation, the court must apply its mind to the materials submitted in support of the police report before taking a call whether the FIR and consequential proceedings

should be quashed or not. More so, when the FIR alleges an act which is reflective of a dishonest conduct of the accused”.

After hearing the submission of the learned counsel for both the sides and considering all aspect of the case, I do not find it proper to pass any order on the stay of the investigation of the case. However, from the submission made by the learned counsel for the petitioner, it is seen that she is co-operating the I.O. and produced the relevant documents before him, however, at this stage, it cannot be said that the personal appearance before the I.O. may not be required for the purpose of the investigation. Accordingly, at this stage, I do not find it proper to pass any order dispensing the personal appearance of the petitioner before the I. O. of the case during the investigation.

List the matter on **28.03.2025**.

JUDGE

Comparing Assistant