

GAHC040004602024

2026:GAU-AP:58



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

Case No. : Crl.Petn./43/2024

Higia Bengia Abo
IFS, Son of Late Bengia Lelly, Director SFRI (State Forest Research Institute) Van
Vigyan Kendra, Chimpu, Itanagar address Chulyu Village, PO and PS Yazali, Lower
Subansiri District, Arunachal Pradesh

VERSUS

The State of AP and Anr
represented through the PP of AP

2:Nabam Akam
Age: 0
Occupation :
Son of Late Nabam Nigla
Address Bam Village
PO and PS Balijan
Papumpare District
Arunachal Pradesh

Advocate for the Petitioner : Muk Pertin, Senior Advocate, Tallo Talang,Mudang Yubbey,Dusu
Rillung,Dakjum Riba,Tshering Yangzom Bhutia,Mukbom Pertin,Rimo Riba,Karyom Dabi

Advocate for the Respondent : Ojing Pada, SC (ACB),Teshi Aaku,T Rahul,N Kuma,N Kanu,P
Tatam,N Rama

**BEFORE
HONOURABLE MRS. JUSTICE YARENJUNGLA LONGKUMER**

ORDER

21/01/2026

Heard learned Senior Counsel for the petitioner, Mr. Muk Pertin assisted by learned counsel, Mr. Mukbom Pertin. Also heard Mr. Ojing Pada, learned Special Public Prosecutor for SIC (ACB) and learned counsel, Mr. N. Rama for the complainant/ respondent No. 2.

2. The instant application under Section 482 of Cr.P.C/528 BNSS has been preferred by the petitioner praying for quashing of the FIR dated 03.06.2021, charge-sheet dated 18.05.2023, Supplementary charge-sheet and the proceeding of PCA-02/23 in SIC(VIG)-07/21 u/s 120(B) IPC r/w section 7 of the PC Act pending before the learned Special Judge, PC Act, Yupia, Arunachal Pradesh.

3. The case of the petitioner is that an FIR was lodged against the petitioner by respondent No. 2/complainant on 03.06.2021 alleging that the petitioner has taken bribe from contractors. Accordingly on the basis of the FIR dated 03.06.2021, the SIC (Vigilance) Itanagar has registered a case being SIC (VIG)-07/21 u/s 120 (B) IPC r/w section 7 of the PC Act.

4. The charge-sheet was submitted on 18.05.2025 and a Supplementary charge-sheet was also submitted by the Investigating Officer enclosing the prosecution sanction dated 6th July, 2023 and thereafter, the Special Judge, PC Act took cognizance of the charge-sheet and the annexed documents by the

impugned order dated 26.07.2023.

5. Learned senior counsel for the petitioner submits that the prosecution sanction is accorded by the State government who is not the competent authority to issue the same. Therefore, the sanction accorded by an authority without jurisdiction is a nullity.

6. It is the submission of the learned counsel for the petitioner that it is the Central government who is the competent authority to accord the prosecution sanction as the petitioner was an officer of the Indian Forest Service when the FIR was registered. As per the All India Services Act, 1951 the Indian Forest Service also constitutes an All India Service and therefore, only the Central government would be the competent authority to grant the sanction.

7. Learned counsel for the petitioner further submits that the grant of proper sanction by a competent authority is the sine qua non for taking cognizance of an offence. Accordingly, a discharge application under Section 227 of the Cr.P.C was filed before the learned Trial Court praying for discharge of the petitioner from the liabilities of the case. However, the application for discharge was not disposed by the trial court and instead it was ordered that the application should be kept pending until the proper sanction was received by the investigating officer.

8. Learned senior counsel further submits that the Special Judge, PC Act cannot direct the investigating agency to obtain prosecution sanction. The learned senior counsel has placed reliance on the case of ***Indranil Barua Vs. State of Assam and Anr*** reported in ***2023 (4) GLT 776*** and also the case of

Arambam Thomchou Singh Vs. Union of India and Others reported in **2010 (1) GLT 510**. It is submitted that in the aforementioned cases the Coordinate Bench of this Court has held that cognizance of an offence cannot be taken by the court ignoring the express Legal bar engrafted in section 197 of the Cr.P.C and such cognizance if taken is an abuse of the process of the Court and therefore, there is requirement of exercising inherent powers of this court to quash the order of taking cognizance to prevent such abuse of the process of the court. It was held in the case of *Arambam Thomchou Singh* (Supra), that when a court is not competent to try an accused, for eg. where the requisite sanction under the Prevention of Corruption Act for prosecution of the accused had not been obtained, the trial as a whole is null and void, and the trial would stand vitiated.

9. Learned senior counsel submits that the instant case is squarely covered by the aforementioned cases in as much as there was no prosecution sanction from the competent authority in respect of the petitioner when the Special Judge, PC Act took cognizance of the case by the impugned order dated 26.07.2023.

10. In view of the above submission, the learned senior counsel prays that the FIR dated 03.06.2021, charge-sheet dated 18.05.2023, Supplementary charge-sheet and the further proceeding of PCA-02/2023 may be quashed and set aside in respect of the petitioner herein.

11. The learned Special Public Prosecutor, Mr. O. Pada appearing for the SIC has fairly submitted that the present petitioner is an IFS Officer and therefore, the prosecution sanction is required to be given by the appropriate authority, i.e., the Union of India. However, in spite of reminders the same has not been

received by the Investigating Agency. Learned Special Public Prosecutor has therefore, submitted that in view of the settled law in this regard, the matter is left to the discretion of this Court.

12. The learned counsel for the informant/ respondent No. 2 has also conceded that the cognizance could not have been taken by the trial court without the proper prosecution sanction from the competent authority. However, he has submitted that the trial may be allowed to continue in respect of the other accused persons.

13. Due consideration has been given by this Court to the submission of the petitioner as well as the respondents. In view of the contentions made in the petition the only question that arises for the consideration of this Court is whether proper prosecution sanction is required to take cognizance of the offences against the present petitioner under Section 120 (B) IPC r/w Section 7 of the Prevention of Corruption Act. This Court has also gone through the case law as referred by the learned senior counsel for the petitioner. A perusal of the petition along with the annexure reveals that the present petitioner is a member of the India Forest Service and the prosecution sanction under Section 197 of the Cr.P.C as well as Section 19 of the PC Act was not there at the time of taking cognizance against the present petitioner by the impugned order dated 26.07.2023. The requirement of sanction while committing any offence in discharge of official duty is well settled by a catena of decisions. In the referred cases of *Indranil Barua Vs. State of Assam and Anr* (Supra) as well as *Arambam Thomchou Singh* (Supra), the Coordinate Bench of this Court has held that taking cognizance of an offence ignoring the express Legal bar in Section 197 of the Cr.P.C as well as Section 19 of the PC Act is an abuse of the process of the

court.

14. Admittedly no proper sanction has been obtained from the competent authority as far as the petitioner is concerned. As no prosecution sanction has been obtained from the competent authority before taking cognizance by the learned trial court, the impugned order dated 26.07.2023 passed by the Special Judge PC Act, Yupia has failed to stand the test of law and as such the same requires the interference of this Court.

15. Consequently, this Court finds that the petitioner has been able to make out a case for this Court to exercise the inherent jurisdiction under Section 482 Cr.P.C/528 BNSS. The impugned order dated 26.07.2023 is quashed and set aside and the proceedings of PCA- 02/23 in SIC (VIG)-07/21 registered under Section 120(b) IPC r/w section 7 of the PC Act is also quashed and set aside in respect of the present petitioner only.

The petition stands allowed in term of the above directions.

JUDGE

Comparing Assistant