

Smt.Helen Dawngliani
Addl. District & Sessions Judge

Crl. Revision No.22/2013

Mizoram Rural Bank, Vaivakawn Branch
Aizawl, through the Branch Manager ... Applicant

Versus

1. Hmingthansiami D/o Laldala (L)
Chaltlang Ruam Veng
Ex. Branch Manager
Rural Bank, Vaivakawn Branch
2. FR Ralsun (Ex. OJM) S/o HL Sela
R/o Bazar Bungkawn, Aizawl ... Opposite Parties

Date of hearing 26.05.2014

Date of Order 28.05.2014

APPEARANCE

For the Applicant	Mr. MM Ali Mr. T. Lalnunsiam, Advocates
For the Opposite parties	Mr. W. Sam Joseph Mr. Bhanu Kavar, Advocates

ORDER

1. This revision petition u/s 397 Cr.P.C have been filed challenging the Order dt.13/12/2011 passed by Mrs. Lalrochami Ralte, JMFC, Aizawl in Crl. Tr. No. 2528/2009 u/s 409/420/34 IPC.
2. Considering the fact that the Order put under challenge ois an order discharging the two accused persons at the time of consideration of charge, vide Order dt.20.5.2014 it was ordered that attemot would be made to dispose the case at the admission hearing. Heard the Ld. Counsels.
3. Mr. T. Lalnunsiam, Ld. Counsel for the revision petitioner submitted that the impugned Order though was passed u/s 239 Cr.P.C was not passed in terms of the said provision of law. In this regard the Ld. Counsel submitted that the

impugned Order was passed as the Ld. Court was unable to get the documents required from the Investigating officer, whereas, section 239 Cr.P.C provides that the said provision can be invoked if after hearing the parties the Magistrate considers the charge against the accused groundless. The Ld. Counsel strenuously argued that as the revision petitioner stand to loose about Rs.1,18,37,395.40 as a result of the issuance of Bank guarantee by the two respondents, from the time they came to know about the incident, they have tried all means to revive the criminal case and this revision petition is their last resort. The Ld. Counsel submitted that the allegation against the two respondents are for commission of a heinous crime and it would not be proper if the prosecution is closed on procedural lapse. The Ld. Counsel has placed on record the case of **Iqbal Singh Marwah & Anr. -Vs- Meenakshi Marwah** decided by the hon'ble Apex Court in **Appeal (Crl.) 402/05 on 11.3.05**.

On the other hand, Mr. W. Sam Joseph, Ld. Counsel for the opposite parties submitted that umpteen times the prosecution was given chance to submit statements made u/s 161 Cr.P.C. According to the Ld. Counsel, the Ld. Court below did not commit any illegality because it acted on the basis of materials before the Court after giving ample opportunity to the prosecution to remedy the defect. Challenging the locus standii of the revision petitioner the Ld. Counsel submitted that said bank has to come to the Court through its Chairman and the branch Manager of one Branch office does not have the locus standii to sue for the Bank in the absence of any authorization. The Ld. Counsel submitted that in criminal revision private party has really no locus standii. The Ld. Counsel submitted that it is not that all the doors are shut to the informant by discharging the two accused/respondents and if the complainant so desire they could have approached the Home Department to instruct the Public Prosecutor to do the needful. But till date nothing has been done by them. According to the Ld. Counsel, (though delay has already been condoned) from the annexure enclosed to the written objection filed against the Condonation of delay application, it is clear that the application for reinstatement into service which was submitted by the respondent no.2 was duly received by the Head office of the MRB on 14.12.2011 which is the very next day of the Order. Any communication gap within the Department is not a ground to cause undue hardship more so when by now Respondent no.2 is already reinstated into service. The Ld. Counsel argued that even if the revision petition is allowed, at this belated stage what material can the prosecution produce which they could not do for long 10 months before the Learned trial court. In support of his submissions, the Ld. Counsel has placed

reliance in the case of **Thakur ram versus State of Bihar** reported in **1966 CrLJ (SC) 700**.

4. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of social interests of the community at large and so it is for the State to take all the steps that is necessary for bringing to book those persons who acted against social interests of the community.

5. The instant application has been filed by the Branch Manager of Mizoram Rural Bank, Vaivakawn Branch. The said Bank is established under the Regional Rural Bank Act, 1975. The respondents were during the relevant time its employees. The Branch Manager of Branch of the said Bank cannot represent the interest of the Bank as a whole without the Bank being first represented by its Chairman. Further, the grievance of the applicant is not his personal grievance, as such, there has to be valid authorisation from the competent authority to sue on behalf of the Bank. This has not been done by the instant applicant.

6. The honb'le Apex Court in the case of **Bhupendra Kumar versus State of Rajasthan 1996 Cr.LJ 3180** has held: -

'it is amusing to note that the learned Sessions Judge did not address himself at whose instance, his revisional jurisdiction was invoked. It is to be imbibed that once in a particular case, criminal investigation and prosecution is launched by the State, then, complainant in his individual capacity cannot be allowed to interact with courts of law by filing appeals or revisions subject to only one exception in cases of acquittal in rarest of rare cases, the complainant has locus standi to file a revision. Suffice it to say that the State is ultimate custodian of peace within its territory and criminal machinery cannot be allowed to be used by the complainant in such cases to satisfy his bleeding ego or to wreak his vengeance with the accused-persons creating vicious circle in the society. The courts of records i.e. Supreme Court and High Courts have evolved principle of filing revision by the complainants in rarest of rare cases of acquittal as measure of extra precaution so that public criminal justice system may not suffer owing to the bad faith and divided loyalties on the part of criminal redressal machinery under the Code of Criminal Procedure.'

7. With regard to filing of revision petition by a private party, the following decisions are quoted below:

The honble Apex Court in the case of **K.Chinnaswamy Reddy versus State of Andhra Pradesh** reported in **AIR 1962 SC 1788** has held :-

“7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of s. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished of produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of s. 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles”.(emphasis supplied)

Again, in **Thakur Ram v. State of Bihar** (supra) the Hon'ble Supreme Court has held that a case being proceeded on a police report, a **private party** has no locus standi to proceed further, when there is no **revision** preferred **by** the State. The defacto complainant is the author of the complaint given before the police.

Based on the complaint, the State on the principle of criminal jurisprudence that a crime is an act against the society had initiated the criminal proceedings before the Courts below having jurisdiction.

8. Regarding the argument of the Ld. Counsel for the revision petitioner that though the impugned Order was passed u/s 239 Cr.P.C it was passed on procedural defects which is not envisaged under the said provision of law. It may be profitable to quote the relevant portion of the impugned Order dt.13.12.2011 – “*Heard the submission of both sides at length. After due consideration of the submission made by both sides and on perusal of the case record it appears that the case suffers from various defects and considering the serious nature of the offence the prosecution was given several chances since order dated 30.03.2011 to remedy the defects in the case and this court was not inclined to dismiss the case in the beginning. Hence, the prosecution was given several chances to remedy the defects and produce statements recorded u/s 161 Cr.P.C before this Court. However, despite the attempts made by the prosecution including the case I.O the said documents were untraceable and not produced before the court. The Learned APP also prayed to proceed with the case and submitted that statements recorded u/s 161 Cr.P.C could only be use for the purpose of contradiction and not corroboration. However, even if the case were to proceed with trial on perusal of the documents such as seized documents CMR No.11/2010 on which the prosecution would rely to prove their case it is very likely that the case should fail for(emphasis supplied).*”

Hence, regard being had to the fact and circumstances of the case and after perusal of the case record this court has no other alternative but to discharge the accused persons on account of the procedural lapses in the case”

Upon a close reading of the said portion of the impugned Order, it is clear that the Ld. Court below had taken into consideration what would be the outcome of the case if it were to proceed on the basis of the materials before it. Though the Ld. Trial Court stated that the discharge was on due to procedural lapse, from a reading of the impugned Order, the ld. Trial Court had considered the materials before it and was of the view that there was no sufficient material to proceed against the two accused persons.

9. It is also noticed from the impugned Order that since 30.3.2011 to the time the impugned Order dt.13.12.2011 was passed, chances were given to the prosecution to remedy the defect. For long 8 months statements u/s 161 Cr.P.C

could not be located. Though statements recorded by the Police u/s 161 Cr.P.C is not evidence and its use is only to contradict a witness, it is the means by which the defence would know what to expect from the prosecution witness and in the absence of any statement of witness u/s 161 Cr.P.C the accused/defence is deprived of their valuable right to contradict the witness because in the absence of any material the question of contradiction would not arise.

10. It is also noticed from the impugned Order that since 30.3.2011 to the time the impugned Order dt.13.12.2011 was passed, chances were given to the prosecution to remedy the defect. For long 8 months statements u/s 161 Cr.P.C could not be located. Though statements recorded by the Police u/s 161 Cr.P.C is not evidence and its use is only to contradict a witness, it is the means by which the defence would know what to expect from the prosecution witness and in the absence of any statement of witness u/s 161 Cr.P.C the accused/defence is deprived of their valuable right to contradict the witness because in the absence of any material the question of contradiction would not arise.

11. The decision of the honb'le Apex court (*Iqbal Singh Marwah versus Meenakshi Marwah*) which is placed on record by the Ld. Counsel for the revision petition is a complaint case/case instituted otherwise than on Police Report. But in the instant case we are dealing with case instituted on Police Report. Since the nature of the case are different, with due respect, the decision of the honb'le Apex Court would have no application in the instant case.

12. In view of the decisions of the honb'le Apex Court as highlighted above, considering the manner of discharge of the two accused persons, I do not find that the same would fall within the exceptions highlighted by the honb'le Apex Court as guidelines. Moreover, it has been submitted that the Respondent No.2 is already reinstated into service.

13. With the above Order, the revision petition is rejected.

14. Case stands disposed off accordingly.

Sd/- HELEN DAWNGLIANI
Addl.District & Sessions Judge
Aizawl Judicial District : Aizawl

Memo No:...../AD&AJ(A)/2014 : Dated Aizawl, the 28th May, 2014
Copy to: -

1. Mizoram Rural Bank, Vaivakawn Branch through Counsel Mr. T. Lalnunsiana, Advocate.
2. Hmingthansiami & F.R. Ralsun through Counsel Mr. W. Sam Joseph, Advocate.
3. Registration Section.
4. Guard File.
5. Case Record.
6. Calendar Judgment.

P E S H K A R