

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional Sessions Judge,
Aizawl Judicial District, Aizawl.

Criminal Revision No. 27 of 2014

State of MizoramComplainant Petitioner

-Versus-

Shri K.Chhawnthuama
S/o Thangluaia
R/o Durtlang, Aizawl. Accused Respondent

APPEARANCE

For the petitioner : Shri R.C.Thanga, Special Public Prosecutor.

For the respondent : Shri L.H.Lianhrima, Senior Advocate.

Hearing : 11.2.2015

Order delivered on : 23.2.2015

ORDER

The revision petition is filed under Section 399 of Cr PC for setting aside the impugned order passed by the learned Judicial Magistrate First Class in CrI. Tr. No. 2195 of 2013 arising out of Aizawl Police Station Case No. 373 of 2013 whereby the charges under Sections 201, 506 and 507 of Cr PC against the petitioner were dropped.

2. The petitioner's case is that on 11.12.2013 at about 7:00 p.m. the respondent in the name of Phantom sent offensive and threatened messages through **his mobile phone No. 8575891878 to Shri Lal Thanhawla**, the Chief Minister of Mizoram. In the message, the respondent accused Shri Lal Thanhawla that he (Shri Lal Thanhawla) had manipulated the last election of Mizoram Legislative Assembly. As a result, Shri Lal Thanhawla submitted F.I.R. to Aizawl Police Station on 13.2.2013 for

taking action against the respondent. Accordingly, Aizawl P.S. Case No. 373 dated 13.12.2013 was registered against the petitioner under Sections 171 G of IPC read with 66A (a) & (b) of IT Act, 2000. After due investigation of the case, a charge sheet under Sections 201, 204, 506, 507 of IPC and 66A (a) & (b) of IT Act, 2000 was laid against the respondent.

3. On filing this criminal revision petition, the Lower Court Records were requisitioned for the purpose of disposal of the revision, Lower Court Records are made available to this court.

4. It is noticed from the records of Criminal Trial No. 2195 of 2013 that an order was passed by the learned Judicial Magistrate First Class-II on 26.5.2014. By the order, charges were framed against the respondent under Sections 204 of IPC and 66A (a) & (b) of IT Act, he pleaded not guilty and claimed to be tried. However, the learned Judicial Magistrate First Class-II dropped the charges against the respondent under Sections 201, 506 and 507 of IPC.

5. The State of Mizoram being aggrieved thereby approached the Court of the learned Sessions Judge, Aizawl by filing this revision petition, but the revision petition was transferred to my predecessor. In exercise of the powers conferred upon me by Section 400 of Cr PC, the revision is heard and disposed off.

6. I heard the learned Senior Public Prosecutor, Shri R.C.Thanga appearing for the State and the learned Senior Counsel L.H.Lianhrima for the respondent.

7. The first ground taken up by the learned Special P.P. is that while considering the charge against the respondent, the learned Judicial Magistrate First Class misinterpreted Section 201 of IPC. According to the learned Special P.P., the order under challenge is liable to be set aside and quashed inasmuch the interpretation of the learned Judicial Magistrate First Class that the accused to be charged under Section 201 of IPC must not be the accused in the main offence. In his further submission, the learned Special P.P stated that the act done by the respondent to screen the offence committed by him is material to charge the respondent under Section 201 of IPC. To

support his case, the learned Special P.P. cited the decision of Madras High Court (1930) 59 MLJ 677 wherein His Lordships held,

'5. The true principle seems to be that there is no law preventing the main offender being convicted under Sections 201 to 203, but in practice no Court will convict an accused both of the main offence and under these sections. But if the commission of the main offence is not brought home to him, then he can be convicted under Sections 201 to 203. Therefore there is no misjoinder in charging an accused in the alternative with the main offence and under Sections 201 and 203, Indian Penal Code, nor is there anything irregular or improper in a Judge holding, as the learned Sessions Judge has done in this case, that, while the accused is himself not free from the suspicion of being the actual murderer, he can be none the less convicted under Section 201 or 203. This position is not without authority, though as noted above most of the reported cases have followed Reg v. Kashinath Dinkar (1871) 8 Bom. H.C.R. (Cri.) 126 Most of these rulings have been considered in a judgment of the Punjab Chief Court in 1903 in Buck v. King-Emperor (1903) 1 P.R. (Cri.) 1904 wherein it was held that an accused acquitted of the charge of committing a crime can be convicted under Section 201 in respect of the offence "with the commission" of which he is no longer charged or liable to be charged" and the mere suspicion that an individual is the actual murderer or the facts that he has even had his trial and been acquitted of the offence of murder will not prevent his conviction under Section 201. A mere suspect or an acquitted accused is not in the eye of the law an offender 'within the meaning of Section 201. The reported ruling in Teprinessa v.

Emperor I.L.R. (1918) C. 427 is practically to the same effect, and also the ruling of a Bench of the Bombay High Court in Hanmappa Rudrappa, v. Emperor (1923) 82 I.C. 709 : 25 Bom. L.R.231 Therefore there is no illegality in the conviction under Sections 201 and 203.'

8. On the other hand, the learned Senior Counsel Shri L.H.Lianhrima appearing for the respondent contested the submission of the learned Special P.P. In his submission before the Court, the mere allegation that the respondent destroying the sim card or hiding it somewhere would not attract to causing disappearance of sending offensive/intimating SMS. According to the learned Senior Counsel, to frame a charge against the respondent under Section 201 of IPC is not appropriate in view of the decision rendered by the Gauhati High Court in Benulal Debnath And Anr. V. State of Tripura 2007 (1) GLT 880.

9. The decision of the Gauhati High Court in Benulal Debnath And Anr. V. State of Tripura 2007 (1) GLT 880 is a case of appeal against the Judgment passed by the learned Additional Sessions Judge, Belonia, South Tripura in Sessions Trial No. 13 (ST/D) of 1998 by which the appellants were convicted under Section 201 of IPC. But, the present case is a matter of discharge of the respondent under Section 201 of IPC. However, for better understanding of the law under Section 201 of I.P.C., I find it is appropriate to quote para. 8 of the decision (Supra)

'8. The Apex Court in Roshan Lal v. State of Punjab while reiterating the legal position, held that the first paragraph of Section 201 lays down the essential ingredients of the offence under Section 201 IPC. It must be proved firstly that an offence has been committed. Secondly, the accused must know or have reason to believe that the offence has been committed. Thirdly, the accused must either cause any evidence of the commission of that offence to disappear or give any information respecting the offence which he knows or

believes to be false. Fourthly, the accused must have acted with the intention of screening the offender from legal punishment. In other words, it must be proved, among others, that an offence, the evidence of which the accused is charged with causing to disappear, has actually been committed and that the accused knew, or had information sufficiently to lead him to believe that the offence has been committed. For example, mere removal of dead body is not sufficient; it must further be proved that removal was made with intention of screening the offender from legal penalty. The accused must be proved to have actively participated in the matter of causing disappearance of the evidence. Therefore, unless the accused is proved to have had knowledge of the offence, Section 201 IPC is not attracted. It is not proper to presume knowledge of offence only because the accused is the brother of the main offender [See Nathu and Anr. v. State of Uttar Pradesh](#). There must be direct and legal evidence to prove the charge under Section 201 IPC. It may be that the identity of the person, who committed the main offence is not established in evidence, there must be material to indicate that the accused knows who the main offender was when the accused did the act of causing disappearance of evidence or giving false information regarding an offence. It is against the backdrop of the aforesaid legal principle that I propose to examine the evidence adduced by the prosecution.'

10. The argument advanced by the learned Special P.P. is convincing. I have perused the order under challenge passed by the learned Judicial Magistrate First Class-II, Aizawl and the charge sheet on record of the learned Trial Court. In the order passed by him, the learned Judicial Magistrate First Class misinterpreted the provision of Section 201 of IPC by stating that accused under Section 201 of IPC must not be the

accused in the main offence. Since, I find that there is a material ground to charge the respondent under Section 201 of IPC, the order is liable to be set aside and quashed.

11. The next contention of the learned Special P.P. is that the learned Judicial Magistrate First Class in the light of the provision under Section 26 of the General Clauses Act, 1987 erroneously misinterpreted that Sections 506 and 507 of IPC cannot be charged against the petitioner together with Section 66A (a) & (b) IT Act, 2000 on the ground of IT Act, a special Act, and that Article 20(2) of the Constitution will be violated. On this, the learned Special P.P. cited a decision of the Apex Court in *State of Rajasthan v. Hat Singh & Ors* (2003) 2 SCC, 152 at paragraph 15

'15. The leading Indian authority in which the rule against double jeopardy came to be dealt with the interpreted by reference to Article 20(2) of the Constitution is the Constitution Bench decision in *Maqbul Hussain v. MANU/SC/0062/1953* : *State of Bombay 1983ECR1598D(SC)* . If the offences are distinct, there is no question of the rule as to double jeopardy being extended and applied. In *State of Bombay v. MANU/SC/0077/1960* : S.L. Apte and Anr., 1961CriLJ725 , the Constitution Bench held that the trial and conviction of the accused Under Section 409 IPC did not bar the trial and conviction for an offence Under Section 105 of Insurance Act because the two were distinct offences constituted or made up of different ingredients though the allegations in the two complaints made against the accused may be substantially the same. In *Om Prakash Gupta v. MANU/SC/0130/1957* : *State of UP, 1957CriLJ575* and *The State of Madhya Pradesh v. Veereshwar Rao MANU/SC/0102/1957* , it was held that prosecution and conviction or acquittal Under Section 409 of IPC do not debar the accused being tried on a charge Under Section 5(2) of the Prevention of Corruption Act, 1947 because the two offences are not

identical in sense, import and content. In *Roshan Lal and Ors. v. MANU/SC/0089/1964* : State of Punjab 1965CriLJ426 , the accused had caused disappearance of the evidence of two offences. Under Section 330 and 348 IPC and, therefore, he was alleged to have committed two separate Under Section 201 IPC. It was held that neither Section 71 IPC nor Section 26 of the General Clauses Act came to the rescue of the accused and the accused was liable to be convicted for two sets of offences Under Section 201 IPC though it would be appropriate not to pass two separate sentences.'

12. On the other hand, the learned Senior Counsel seriously objected the contention advanced by the learned Special P.P. According to the learned Senior Counsel, the learned Judicial Magistrate First Class rightly interpreted in the light of the provision of Section 26 of the General Clauses Act, 1987 that Sections 506 and 507 of IPC cannot be charged against the petitioner together with Section 66A (a) & (b) IT Act, 2000 on the ground of IT Act, a special Act, and that Article 20(2) of the Constitution will be violated. To support his stand, the learned Senior Counsel quoted para 28 of the decision rendered by the Gauhati High Court in Ramchandra Rabidas alias Ratan Rabidas v. State of Tripura 2009 (1) GLT 90

'28. As is evident, Motor Vehicles Act is a new legislation and later in point of time in comparison to the Indian Penal Code. Hence, it can be safely inferred that the legislatures were well posted and cognizant about various provisions of the Indian Penal Code and having realized the IPC provisions did not adequately take care of the road traffic offences, the special law was enacted. It is true that at the time of enactment of M. V. Act it would have been proper to delete Section 279 in the same manner as Sections 161 to 165A IPC have been deleted after enactment of Prevention of Corruption Act, 1988, even then, I am of the view that if the road traffic

offences, which can be regulated and adequately dealt with under the provisions of M.V. Act, resort to the provisions of the general law i.e. IPC should be avoided.'

13. I have perused the whole decision of the Apex Court in State of Rajasthan v. Hat Singh & Ors (2003) 2 SCC, 152. I find in the judgment that if the offences are distinct, there is no question of the rule as to double jeopardy. The decision of the Apex Court does not help the case of the State. If court finds that the facts disclose commission of a serious offence, for which the punishment provided under a General Law, is not sufficient, it is open to the court to charge the accused under the Special Law where a more severe punishment is adequately provided for the same kind of offence. If the ingredients which constitute offences are identical, the offence shall be dealt with under provisions of special law, resort to the provisions of the general law i.e. IPC should be avoided. Hence, the citation quoted by the learned Senior Counsel helps the respondent's case. The discharge of Sections 506 and 507 of IPC is therefore upheld.

14. In view of the discussion stated above, I find that the order passed by the learned Judicial Magistrate First Class requires interference. Hence, the impugned order is set aside. The learned Trial Court shall frame charges against the respondent under Sections 201, 204 of IPC and 66A (a) & (b) of IT Act, 2000.

15. The criminal revision is therefore partly allowed as indicated above.

16. No order as to cost.

17. Send back the Case Record to Judicial Magistrate First Class, Aizawl.

Order is pronounced in open Court on this 23rd day of February, 2015 under my hand and seal of this Court.

Sd/- VANLALENMAWIA
Addl. Sessions Judge,
Aizawl Judicial District,
Aizawl, Mizoram

Memo No._____/ASJ(A)/2015 : Dated Aizawl, the 23rd February, 2015

Copy to: -

1. State of Mizoram through Mr. R.C. Thanga, Special Public Prosecutor.
2. K. Chhawnthuama through Mr. L.H. Lianhrima, Senior Advocate.
3. District & Sessions Judge, Aizawl Judicial District, Aizawl.
4. Judicial Magistrate First Class, Aizawl.
5. DSP (Prosecution), District Court, Aizawl.
6. Registration Section.
7. Guard File.
8. Case Record.
9. Calendar Judgment.

P E S H K A R