

Tezpur P.S Case No-2050 of 2020
G.R No-3315 of 2020, U/S-454/380/506/34 of IPC

Present:- Sri. N.J Hoque, AJS
Chief Judicial Magistrate
Sonitpur, Tezpur

ORDER

19.11.2020

Petitioner, named, Sri Abhinav Dugar is represented by his Ld. Counsel.

Case diary as called earlier is received today.

By this order I proposed to dispose the petition No-738/20 filed by the petitioner –cum-petitioner Sri Abhinav Dugar u/s- 156(3) of Cr.P.C praying for monitoring the investigation and also to issue direction including change of investigating officer by a superior in rank to the Superintendent of Police.

Petition No-738/20 filed before this court on 17.11.2020 and considering the contentions, the court on 17.11.2020 called for the case diary and accordingly, today the case diary is received.

I have carefully perused the case diary in the light of the petition No-738/20. It disclosed from the petition No-738/20 that the petitioner being the informant lodged an ejarah before the O/C of Tezpur P.S on 29.10.2020 alleging inter-alia that he had purchased a plot of land measuring 1 katha 10 lessas covered under Dag No- 541 of Periodic Patta No-43 situated at 1st part Tezpur Town, Mouza Mahabhairab, P.O & P.S- Tezpur and an Assam type house standing on the said land covered under Municipal Holding No-5258. That informant purchased the same through an E auction of Punjab National Bank on 02.06.2015 at a consideration of Rs. 25,70,000/- only and since then he has been in peaceful possession of the property. It is further stated that he opened a restaurant in the name and style of M/S Kettle Café and electric connection was also obtained in the name of the petitioner. It is further stated that the said property purchased by the petitioner originally belonged to one Sri Manash Lahakar, who had bought the same from one Sri Surjya Kamal Baruah vide Sale Deed No- 2325 dated 14th October, 2009 and Manash Lahakar obtained a loan but defaulted in repayment of the same for which the land and property was e-auctioned by Punjab National Bank and peaceful possession who

Tezpur P.S Case No-2050 of 2020
G.R No-3315 of 2020, U/S-454/380/506/34 of IPC

19.11.2020

also delivered to the petitioner. It is also pleaded that Mandal and officials in the office of the Circle Office in collusion with the wife and son of Late Surjya Baruah mutated their names despite the fact that he was in possession and running his restaurant. He has been trying through officials procedures to get their names removed; they in connivance with the land grabbers have grabbed his property. He has been running the whole day but everyone be it in the Circle Office and even at law enforcing agencies are shirking their responsibility. The manner in which during the board day light act of land grabbing and theft has been carried out and when he approached them to stop, Sri Rishi Sharma as he heard his name even threatened him to kill claiming that he has undergone jail many times and would not hesitate to go to any extent. He and his companions claimed that they have managed the revenue officials at the Circle office and even one superior official at the district level in police department to steal his valuable property. Accordingly, Tezpur PS Case No. 2050 of 2020 was registered u/s 454/380/506/34 of IPC against the accused persons, namely, Sri Rishi Sharma and the wife and son of Late Surjya Kanta Baruah.

Now, coming to the petition No-738/20 which filed u/s- 156(3) of Cr.P.C, it disclosed that the petitioner/informant pleaded the following dissatisfactions against the investigation of the I.O:-

1. That the property had been sold by the bank in an e auction after invoking the provision of SARFAESI Act and then District Magistrate, Sonitpur had issued necessary order for physical possession of the property. The predecessor in interest of the two accused persons, namely, Smt. Raktima Baruah and her son Sri Bikram Baruah had challenged the same before the Hon'ble High Court by way of writ petition (WP C No-1366/16) where they could get interim stay and it was only after dismissal of the writ petition on 24.03.2017 the physical possession could be taken after six months. If the accused were evicted when and how they could re-enter the property and what happened to the assets and articles of this petitioner lying inside the property after their re-entry and what police has done in that regard till date, whether any sort of enquiry with the neighbors, Darrang College, staffs vendors who used to supply orders to M/s Kettle, etc.
2. That Smt. Raktima Baruah claims that she has always been in the possession of the property. If Smt. Raktima Baruah @ Ranjima and her son were in possession of the property in question all

Tezpur P.S Case No-2050 of 2020
G.R No-3315 of 2020, U/S-454/380/506/34 of IPC

19.11.2020

these years the electrical connection must be in her name and there should be continuous consumption of electricity against regular bill at least between the period Oct 2017 till Oct 2020.

Whether the Police made attempts to find out the same, seize such documents, verify the same from the APDCL, etc. On the other hand, this petitioner got two electrical connections in the property in his name- one domestic and another commercial and there was continuous electrical consumption with decline in consumption during the post lockdown due to no economic activities. The Police neither collected the electricity bills of this petitioner neither collected from him nor there arise question of its verification by the Police.

3. That petitioner has the Municipal Holding of the house transferred in his name and has also got Trade License. The Municipal authorities will confirm about the same if any enquiry done in that regard.
4. There are lot of Facebook and on other social media updates by different customers showing having enjoyed the evening of M/s Kettle, restaurants and whether the police tried to verify the same.
5. The present occupants, Smti Raktima Baruah and her son, Sri Bikram Baruah, had been evicted from the property in Sep 2017 by the bank officials accompanied and assisted by the police and the officials from the circle Officer, Tezpur Revenue Circle and as to whether any of the documents from the bank, Circle Office or the Tezpur Police Station or office of the S.P., Sonitpur, collected or anyone examined.
6. The bank is supposed to be in possession of the original Sale Deed (No.2325/2009) as also the original rent agreement between Sri Manash Lahkar and Smti Raktima Baruah entered into on 16/10/2009. She herself had been in the property after the sale as a tenant with her family. Now, she is trying to portray that she and her son after demise of her husband are the owners of the property. This piece of important document belies her tall claim.
7. The bank is supposed to further documents taken while mortgaging the property. Any investigation if is to be carried out in true sense will definitely lead such agency to the doorstep of the bank asking for all such documents and those are to be seized from the bank in order to carry out full, honest and detailed investigation. Presently, the police are terming the whole incident as a civil dispute land and shirking its responsibility.

Before passing any order under section-156(3) of Cr.P.C as prayed by the informant let have a discussion on the fact as to whether this court is empowered to monitor the investigation of I.O or has any jurisdiction for passing direction to change the I.O of a case in exercising power u/s 156(3) of Cr.P.C.

Hon'ble Supreme Court in **Sakiri Vasu v/s State of U.P. reported in 2008(2) SCC 409** held that the power to direct investigation u/s-

Tezpur P.S Case No-2050 of 2020
G.R No-3315 of 2020, U/S-454/380/506/34 of IPC

19.11.2020

156(3) of the Cr.P.C is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation and the Magistrate can also under the same provision **monitor** the investigation to ensure a proper investigation. Therefore, in appropriate cases, the victim, complainant or a witness can approach the court seeking necessary directions to the police and supervision of investigation.

The same view was taken by this Court in **Dilwar Singh v/s state of Delhi JT 2007(10) SC 585 at para 17**, "we would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such as person can approach the Magistrate u/s 156(3) of Cr.P.C and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such other orders as he thinks necessary for ensuring a proper investigation. All these powers a magistrate enjoys under section 156(3) of Cr.P.C Sec 156(3) Cr.P.C provides for a check by the Magistrate on the police performing its duties under chapter of Cr.P.C. In cases where the magistrate finds that the police has not done its duty of investigating the case at all, or as not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same and sec 156(3) of Cr.P.C is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done Or is not being done by the police. The said ratio has been followed in **Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage & others** in which it is observed the **Magistrate** can also under the same provision monitor the investigation to ensure a proper **investigation**.

Hon'ble Supreme Court in a very recent judgment styled as M. Subramaniam vs S. Janaki, decided on 20 March, 2020, held that the Magistrate concerned is directed to ensure

Tezpur P.S Case No-2050 of 2020
G.R No-3315 of 2020, U/S-454/380/506/34 of IPC

19.11.2020

proper **investigation** into the alleged offence under Section 156(3) Cr.P.C and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper **investigation** is done.

The **Magistrate** can also **monitor** the **investigation**, though he cannot himself investigate (as **investigation** is the job of the police). Parties may produce any material they wish before the **Magistrate** concerned. The learned **Magistrate** shall be uninfluenced by any observation in the impugned order of the High Court.

Hence, from the common understanding of the aforesaid settled propositions of law that a Magistrate ought not to remain a mute spectator to the inadequacies of investigations but make meaningful interventions and magistrate is empowered to monitor the investigation, with a view to ensure that it is free and fair. The power may be used to protect witnesses, check disregard of vital evidence, non-examination of witnesses, deliberate shielding of some accused, or the investigating officer being interested in the case. In such cases, a magistrate ought to push the envelope and actively monitor the investigation, while avoiding investigating himself, or directing investigation by a specific agency, with respect to which there is a specific embargo on the powers of the magistrate.

Monitoring of investigation by the magistrate is, therefore, of vital importance to protect the integrity of prosecution. In this regard, the Magistrate has to walk a tightrope and balance, on one side – the separation of executive from judiciary and the investigative autonomy of the police and on the other, the imperatives of a fair, free and impartial investigation and to ensure that the search for truth is not muddled by police lapses, whether innocent or blameworthy. Finally, it concludes that U/S- 156 of Cr.P.C, a magistrate has whole sole authority to monitor the investigation and in case the investigation is not going on proper or in a fair manner, the magistrate has the authority to interfere in it.

Tezpur P.S Case No-2050 of 2020
G.R No-3315 of 2020, U/S-454/380/506/34 of IPC

19.11.2020

This court has perused the Case Diary in the backdrop of the contentions raised by the informant and it finds that I/O during investigation recorded the statement of witnesses, namely, Sri Sushil Kumar Gosla, Smt. Purnima Baruah, Sri Dilip Saikia, including the informant named Sri Abhinav Dugar u/s- 161 of Cr.P.C and since from 30.10.2020 the I/O has failed to make any investigation in connection with this case. The investigation pursued by the I.O till date not appears to be satisfactory.

Therefore, on being dissatisfied with nature of investigation conducted by I/O this court in exercising the power provided u/s 156 (3) of Cr.P.C passed the following directions to monitor the investigation:-

1. The natures of the offences as registered in this case justify painstaking investigation. The investigating officer has not investigated the indictments of theft of articles as contended by the informant in his ejahar. The I/O has not made any endeavor to unearth the truth behind allegations in respect of theft from the property as alleged by the informant. Hence, to protect imperatives of a fair, free and impartial investigation, the I.O needs to investigate the material allegations of theft more attentively.
2. The Ld. Counsel appearing on behalf of the informant during the time of hearing vehemently argued that no statement of the informant was recorded by the investigating officer and the informant is ready to submit an affidavit in that effect. The allegations presented before this court by the Ld. Counsel appears to be serious and the same requires a fair intercession by the investigating agency;
3. The informant in his ejahar also entreated that articles like air conditioners with compressors, one deep freezer, computers, printers, coffee machine, tables, chairs, utensils, and other valuable articles amounting to Rs. 10,00,000/- stolen from his restaurant called M/s Kettle situated on the Darrang College Road, West and the case diary does not disclose anything upon which it may be presume that the I/O had made any single endeavor for

Tezpur P.S Case No-2050 of 2020
G.R No-3315 of 2020, U/S-454/380/506/34 of IPC

19.11.2020

recovery of those alleged stolen articles knowing that the said facts closely associated with the offence of section-380 of I.P.C. At least the I/O ought to have made some effort to ascertain the fact as to **whether there is any restaurant called M/s Kettle and there were some articles like air conditioners with compressors, one deep freezer, computers, printers, coffee machine, tables, chairs, utensils, and other valuable articles** in the restaurant by examining the peoples of surroundings.

4. The informant in his ejahar claimed that he had been ejected vigorously by the accused persons on the date of alleged incident and to determine the reliability of that part of allegations the I/O ought to have made a thorough investigation by way of asking the Revenue authority to submit detail report of land in question.
5. Furthermore, in the ejahar itself the informant claimed that he is the owner of Holding No-5258 and thereby he was dispossessed from that holding number. To ascertain the correctness and truthfulness of that part of allegation the I/O ought to have investigate the said part of allegation for ascertaining as to whether the informant actually holds that particular holding No-5258 or whether the accused persons forcefully obtained the possession of shop of informant. More also, such facts needs to be investigated to ascertain the pertinent fact as to whether there is any house breaking or lurking house trespass in the light of offence under section-454 of I.P.C.
6. The informant further alleged that he obtained Trade License in the name of his firm and further got electric connection in that firm both domestic and commercial. To ascertain the truthfulness of that allegations, the I/O ought to have investigate the same from authority concerned as to whether the informant actually have any Trade License and electric connection pertaining to Holding No-5258. It is not that the I/O shall ascertain the actual ownership of the disputed property upon which the alleged offences have committed. For ascertaining the rightness and

Tezpur P.S Case No-2050 of 2020
G.R No-3315 of 2020, U/S-454/380/506/34 of IPC

19.11.2020

faithfulness of the allegations or for the sake of proper winding up of investigation, the I/O ought to have made endeavor or clutch a thorough investigation pertaining to those facts. The investigating agency can't move away from the accountability considering the same to be dispute of civil nature. The every facts pleaded in the ejahar deserves a fair investigation.

7. The allegations regarding forceful eviction from the property and if so, the prima-facie allegations point out that the offence of land grabbing may have committed but the ejahar was not registered under Land Grabbing Act instead of having the allegation of land grabbing and as such that point also needs to be considered by the concerned investigating officer.
8. The O.C of Tezpur, P.S shall personally monitor the investigation and submit status report after 15 days before this court.

Return back the case diary to the I/O.

Fixing 03.12.2020 for Report.

Sri N. J. Haque
Chief Judicial Magistrate
Sonitpur, Tezpur