

**HIGH COURT OF TRIPURA
A G A R T A L A**

CrL Petn. No.40 of 2024

Shri Bratyabrata Basu,

son of late Bishnu Basu, residing at P-65
Kalindi Housing, P.S. Kalinidi Out Post, West
Bengal, PIN-700089

..... Petitioner(s)

- V e r s u s -

1. The State of Tripura

2. Inspector, Manoranjan Debnath,

Officer-in-Charge of Khowai Police Station,
P.O., Sub-Division and District- Khowai, Tripura

.....Respondent(s)

For the Petitioner (s) : Mr. Sankar Lodh, Adv.
Mr. Agnish Basu, Adv.

For the Respondent(s) : Mr. Raju Datta, P.P

Date of hearing : 20.02.2026

Date of hearing and delivery
of judgment and order : **13.04.2026**

Whether fit for reporting :

Yes	No
✓	

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

On 08.08.2021, the police authority of Khowai Police Station (P.S.) entered the facts into the GDE book vide GDE No.002 of 2021 dated 08.08.2021 that on 07.08.2021 at around 2030 hours, when a group of leaders and supporters of All India Trinamool Congress [for short, TMC], a political party, reached at Dhalabil Chowmuhani, some unknown miscreants pelted stones on their two vehicles, causing injuries to one TSR personnel and immediately, said TMC group were taken to Baijalbari outpost for their safety.

[2] Thereafter, against GDE No.004 dated 08.08.2021, fourteen TMC leaders and supporters including two drivers were taken to the safe place of Dhalabil police line. Amongst them, there were three women political leaders. The police tried to accommodate them in a public hotel but they denied it and desired to remain at the Dhalabil police line.

[3] The GDE No.12 dated 08.08.2021 of Khowai P.S. shows that later on the Inspector, Gobinda Das of Teliamura PS along with other officers of Khowai P.S. and SDPO, Khowai returned to the police station with some arrested accused persons, namely Debangshu Bhattacharjee and 13 others from Dhalabil police line who were arrested in connection with Teliamura P.S. case No.99 of 2021 registered under Section 188 of IPC and Section 3 of Epidemic Diseases Act, 1897.

[4] It is also seen from the GDE Nos.16,19 and 20 dated 08.08.2021 that the Education Minister of West Bengal and other party members visited Khowai P.S. at that time. Thereafter, Sri Abhishek Banerjee, MP also entered in the chamber of O/C, Khowai P.S. for discussion with the O/C and SDPO, Khowai about the arrest of said TMC leaders and the O/C requested the TMC Minister and leaders to leave and P.S. to allow them to forward the accused persons to the Court but they did not allow to do so and allegedly, misbehaved with Additional S.P and SDPO, Khowai and started shouting in the chamber of O/C of Khowai P.S. It is also noted in the GDE No.20 that they created obstructions to the said police officials in the discharge of their government duty.

[5] In that backdrop, the Inspector, Manoranjan Debbarma, the then O/C of Khowai P.S. lodged the complaint in the court of the learned Chief Judicial Magistrate, Khowai for registering a case against the present petitioner and 5 others with the allegations that those persons had demanded the police authority for release of the arrested persons from the police station and to change the provisions of law put in the FIR against them. On refusal, they misbehaved with the Addl. S.P, SDPO, Khowai and started shouting in the chamber of the O/C that all police personnel were the brokers of BJP political party. Thereafter, the O/C and other officers requested them to leave the police station and to allow them to forward the arrested persons before the court but they did not. From 1300 hours to 1400 hours, they created such problem in the chamber of the O/C and in front of the police station and there was a huge gathering of TMC supporters and media persons there. It was further alleged that for more than one hours they created obstruction in the police duty and due to their such obstruction, the police could not produce the arrested persons before the court in time and ultimately, at around 1440 hours, said 14 arrested persons of the above said Teliamura P.S. Case No.99 of 2021 were forwarded to the Court of the learned Judicial Magistrate, First Class, Khowai by the investigating officer, S.I., Gobinda Das of Teliamura P.S.

[6] The allegation as levelled was mainly that those accused persons had created obstruction in discharging government duty by government servant, so they were liable for prosecution under Sections 186/34 of the IPC which was a non-cognizable offence. Therefore, the prayer was made to pass necessary order by the Court to register a case against the present accused petitioner and others for their prosecution under Sections 186/34 of the IPC.

[7] Learned Chief Judicial Magistrate, Khowai vide order dated 10.08.2021 passed an order under Section 155 of the Cr.P.C. for investigation of the case by O/C, Khowai P.S. or by any other officer entrusted by him after registration of a specific case in this regard.

[8] Accordingly, the first information report lodged by Manoranjan Debbarma, O/C of Khowai P.S. was registered as Khowai P.S. FIR No.77 of 2021 under Sections 186/34 of the IPC and on completion of the investigation by the investigating officer, namely Sri Samaresh Chakma, the charge-sheet was forwarded by O/C, Khowai P.S. under Sections 186/34 of the IPC against the accused petitioner and others. The charge-sheet was also signed by said S.I. Samaresh Chakma as investigating officer.

[9] Thereafter, by an order dated 17.02.2022, learned Chief Judicial Magistrate took cognizance of offences under Sections 186/34 of the IPC against the present petitioner and others based on said charge-sheet. Then, vide order dated 28.02.2022, the learned Judicial Magistrate, First Class, Court No.1, Khowai directed to issue fresh summons upon the present petitioner and others and on 02.09.2024, another order was passed by said learned Judicial Magistrate, First Class, Court No.1, Khowai for issuing fresh summons upon the present petitioner and other accused persons.

[10] Challenging the said order of taking cognizance and orders relating to the issuance of summons upon the present petitioner, this criminal petition is filed for quashing the same.

[11] Mr. S. Lodh, learned counsel appearing for the petitioner, submits that they are not disputing the correctness of the order passed by the learned Chief Judicial Magistrate directing investigation of the matter by the police under Section 155 of the Cr.P.C., but taking of cognizance of offence and issuance of summons against the present petitioner are bad at law for violation of Section 195 of the Cr.P.C. Learned counsel submits that no court can take cognizance except on the complaint in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate in respect of the commission of offence under Sections 172 and 188 of the IPC (both inclusive), but here in this case, the victim-cum-informant was Inspector Manoranjan Debbarma, whereas the charge-sheet has been submitted by Sub-Inspector, Samaresh Chakma, who was lower in the rank of said O/C. Therefore, according to learned counsel, the prosecution against the present petitioner is barred under Section 195 of the Cr.P.C.

[12] In support of his contention, he relies on the decisions of the Hon'ble Supreme Court rendered in the case of **Kuldip Singh vs. the State of Punjab and another, AIR 1956 SC 391; Daulat Ram vs. State of Punjab, AIR 1962 SC 1206; Sudalaimadam and another vs. the State, 1985 CRI.L.J. 1310; Bajranglal Parikh and others vs. State of Assam, (2008) 4 GLR 150; Devendra Kumar vs. State (NCT of Delhi) and another, 2025 SCC OnLine SC 1753 and C. Muniappan and others vs. State of Tamil Nadu, (2010) 9 SCC 567.**

[13] Mr. Lodh, learned counsel also submits that earlier another co-accused, namely Sri Subal Bhowmik filed a criminal petition No.35 of 2021, challenging the registration of the FIR which was withdrawn by him on

04.03.2022 with a liberty to file a fresh petition and accordingly, thereafter, he filed Criminal Petition No.15 of 2022 challenging both the registration of FIR as well as the submission of the charge-sheet by police against him and by order dated 25.03.2022, said petition was dismissed by a Coordinate Bench of this Court. Learned counsel submits that such rejection will not bar the present petition.

[14] In support of his such contention, he further relies on the decisions of Hon'ble Supreme Court in the case of **Superintendent and Remembrancer of Legal Affairs, W.B. vs. Mohan Singh and others, AIR 1975 SC 1002; Vasudev Dani vs. Purushottam Das Khandelwal and another, (2004) 13 SCC 506, S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another, (2007) 4 SCC 70; Anil Khadkiwala vs. State (Government of NCT of Delhi) and another, (2019) 17 SCC 294 and Vinod Kumar, IAS vs. Union of India and others, 2021 SCC OnLine SC 559.**

[15] Mr. Lodh, learned counsel referring to Sections 161, 167, 168 and 173 of the Cr.P.C, read with Section 2(d) of the same, submits that the forwarding of the charge-sheet by the O/C of Khowai P.S. cannot, in any way, be treated as the submission of charge-sheet by him and that for all purposes, the person who conducted the investigation and led the charge-sheet should be treated as the complainant.

[16] Mr. R. Datta, learned PP on the other hand, appearing for the State submits that this criminal petition is not maintainable for the reason that on similar grounds another criminal petition filed by the co-accused was rejected by this Court. In support of his contention, he also relies on **Shiba Shankar**

Mohapatra and others vs. State of Orissa and others, (2010) 12 SCC 471
and **Bhisam Lal Verma vs. State of Uttar Pradesh and another, 2023 SCC**
OnLine SC 1399.

[17] Learned P.P. referring to provisions of Clause 27(ii) of Police Regulations, Bengal read with Sections 168 & 173 of Cr.P.C. submits that it is not the investigating officer but rather the O/C of the Police Station who has submitted the complaint/charge-sheet and therefore, it should be treated as a complaint submitted by the O/C of the police station, not by the said Sub-Inspector who has investigated the case. According to learned P.P. therefore, the present criminal petition is liable to be dismissed in limine.

[18] He further relies on two decisions of Allahabad High Court in the case of **Santosh Kumar and others vs. State of U.P. and another, 2019 SCC OnLine Allahabad 3541** and **Arjun Yadav and others vs. State of U.P. and another, Neutral Citation No.2016:AHC:167643** and the order dated 04.07.2022 passed by the High Court of Madhya Pradesh in the case of **Ramesh Mendola vs. the State of Madhya Pradesh Station House Officer through Police Station Sanwer, Indoor (Madhya Pradesh)** [Misc. Criminal Case No.32126 of 2022].

[19] Regarding the challenge made by Mr. Lodh, learned counsel that the alleged victim, who was the O/C of Khowai P.S., at the relevant point of time was not the person, who had forwarded the charge-sheet, learned P.P. also submits that such a plea was not taken in the criminal petition and also not in the written argument submitted from the side of the petitioner.

[20] Mr. Lodh, learned counsel in reply, submits that in the cases of **Kuldip** and **Daulatram** (supra) it is already held by the Hon'ble Supreme Court that if the victim officer is not the person lodging the complaint, rather another officer of similar rank files the complaint, such complaint will not be maintainable. He further replies that despite a specific plea being taken that the victim-informant should be the complainant in the case, no counter-reply has been submitted by the State in their two counter affidavits to the effect that as the Officer-in-Charge has forwarded the charge-sheet, he should be treated as the complainant. Rather, their defence is that the person who lodged the said alleged complaint before the Chief Judicial Magistrate should be treated as the complainant in this case.

[21] On query made by the Court and under instructions, learned P.P. further submits that the O.C. who was the victim did not forward the said charge-sheet. The name of the officer who forwarded the charge-sheet is S.I. Lalzuithara Darlong [in-charge O.C.] and the victim-complainant was the Inspector, Manoranjan Debbarma who was one of the victims.

[22] On consideration of the rival submissions of both the sides, following 2[two] points are emerged out for decision in this case:

[I] Whether the present criminal petition is maintainable?

[II] Whether the cognizance taken by the order dated 17.02.2022 by the learned Chief Judicial Magistrate, Khowai against the present petitioner and subsequent issue of summons to the petitioner are bad in law?

DISCUSSIONS & FINDINGS

Point No.1

[23] As indicated earlier, on the maintainability of proceeding, Mr. Lodh, learned counsel relies on some decisions:

[i] **In Superintendent and Remembrancer of Legal Affairs, W.B.** (supra), one of the accused persons filed an application in the High Court for quashing of the proceeding on the ground that it constituted an abuse of the process of the Court and the Division Bench of the High Court rejected the same on the ground that the points raised depended on certain questions of facts which was to be ascertained on evidence by the Court of facts. Thereafter, no progress was made in the trial for about one and half years. Then said accused person along with another co-accused again filed again another application in the High Court for quashing the proceeding. High Court this time quashed the proceeding on the ground that no prima facie case was made out. Matter was challenged before the Hon'ble Supreme Court on the ground that the second application was not maintainable. The Apex Court held as the case did not witness any progress for one and half years after passing of the previous order by the High Court, the High Court then proceeded to consider the subsequent application for the purpose of deciding whether it should exercise its inherent jurisdiction under Section 561A. Therefore, High Court was perfectly justified to do such exercise and there was no infirmity in the order of the High Court.

[ii] In the case of **Vasudev Dani** (supra), the High Court dismissed the petition under Section 482 Cr. P.C. with the observations that after having

carefully gone through the material on record and the facts and circumstance, the court did not find any ground for any further interference, more so in view in of the fact that the petition under Section 482 Cr.P.C filed by other accused against the same order was already been dismissed by the same court. In those contexts, Hon'ble Supreme Court observed that it would be just and proper for the High Court to dispose of the petition filed by the appellant under Section 482 Cr.P.C on its own merits and after hearing the parties. Therefore, keeping all contentions of the parties open, the matter was remanded by the Apex Court for decision of the High Court including the maintainability of the petition itself. This judgment will be of no assistance to the present petitioner inasmuch as the decision in the matter of maintainability of the second proceeding was left open.

[iii] In the case of **S.M.S. Pharmaceuticals Ltd.** (supra), the respondent no.1 initially filed a petition for discharge from a case under Section 138 of N.I. Act which was rejected by the trial court. Revisional court also affirmed the order. An application under Section 482 Cr.P.C was then preferred questioning said orders which were later on withdrawn by said respondent with liberty to avail remedies if any, as per law. Then she again filed another discharge petition in the trial court which was also dismissed and then in an application for quashing of the proceeding, the High Court disposed of the matter with observation that the allegation contained in the complaint against said respondent no.1 were vague and indefinite and did not satisfy the requirements of law as contained in Section 141 of the N.I. Act and no case was made out for issuing summons against her. In a challenge to said order, Hon'ble Supreme

Court at paragraph no.28 observed that the challenge that the second application was not maintainable, was not raised in the High Court and even otherwise, the High Court was not denuded from exercising its inherent jurisdiction in a matter of this nature. The principle of res judicata was not attracted in that situation.

[iv] In the case of **Anil Khadkiwala** (supra), the second application of the appellant filed under Section 482, Cr.P.C. for quashing the summons issued in a case under Section 138 of N.I. Act, was dismissed by the High Court on the ground that his previous application seeking same relief was earlier dismissed. In the first application, it was asserted by the appellant that he had resigned from the post of Director of the company but the application was dismissed after noticing that cheques were issued by him. Hon'ble Supreme Court in that contexts observed that Form no.32 issued by the Registrar of Companies in support of said resignation was not brought into record in the first application and therefore, there was difference between the earlier application and the subsequent one as Form no.32 did not fall for consideration in the earlier application. Thus, the subsequent application could not be said to a repeat application squarely on the same facts and circumstances.

[v] In the case of **Vinode Kumar, IAS** (supra), it was reiterated that dismissal of an earlier petition filed under section 482, CrPC does not bar filing of subsequent petition under same provision, in case the facts so justify.

[24] On the contrary, as stated earlier, learned P.P. relies on the following decisions:

[i] In the case of **Bhisham Lal Verma** (supra), it was also similarly held that there can be no blanket rule that a second petition under Section 482 Cr.P.C would not lie in any situation and it would depend upon the facts and circumstances of the individual case, however it is not open for a aggrieved person to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482 Cr.P.C though all such pleas were very much available event at the first instance. Permitting filling of successive petitions under Section 482 Cr.P.C ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience by filing repeated applications.

[ii] In the case of **Shiba Shankar Mohapatra** (supra), a delayed challenge was made regarding the seniority in service and in that contexts, Hon'ble Supreme Court referring to a Constitution Bench decision in case of **Ramchandra Shankar Deodhar vs. state of Maharashtra, (1974) 1 SCC 317**, observed that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. As it appears, the ratio of this judgment is not applicable in the present case in hand and it was rendered completely in a different situation.

[iii] In **Santosh Kumar** (supra), challenge was made that as the charge-sheet was submitted for non-cognizable offence (Sections 323/504 IPC), it should be deemed to be complaint under explanation to

Section 2(d) of Cr.P.C. and hence the order of cognizance and summoning of accused person, as state case, was not proper and such order was liable to be quashed. Finally the High Court accepted such contention and quashed the order of taking of cognizance as State case and directed the trial court to proceed with the case as a complaint case under Chapter XV of Cr.P.C. This judgment is also rendered in a different context and cannot be applied in the instant case.

[25] While taking note of all these decisions, it appears that in case of **Superintendent and Remembrancer of Legal Affairs, W.B.** (supra), it was held that even the same accused person can maintain a subsequent petition under Section 482 of Cr.P.C. due to change circumstances, despite rejection of his earlier petition by the High Court. Similarly, in **Anil Khadkiwala** (supra) and **Vinode Kumar** (supra), also the said principle was reiterated by the Apex Court that second application under Section 482 of the Cr.P.C. by the same accused person was entertainable on justifiable grounds even if the previous one was rejected. Even in **Bhisam Lal Verma** (supra) also, as relied on by the learned P.P., it was observed that there was no blanket rule that a second petition under Section 482 of Cr.P.C. would not lie in any situation.

[26] In the instant case, the present accused petitioner, Sri Bratyabrata Basu did not file any previous application before the High Court under Section 482 of the Cr.P.C. rather it was another co-accused, namely Sri Subal Bhowmik who filed the petition for invoking inherent power by the High Court by challenging the FIR which resulted in registration of Khowai P.S. Case No.77 of 2021 under Sections 186/34 of the I.P.C. with further challenge to the order dated 10.08.2021 passed by the learned Chief

Judicial Magistrate, Khowai whereby said learned Court granted permission for investigation of said FIR and also to the submission of the charge-sheet by the police authority in the said case. After exhaustive discussions, the said petition was rejected by this Court. In fact, Section 195, Cr.P.C bars taking of cognizance and not the registration of FIR or the investigation carried thereupon by police. In that case, the said co-accused did not challenge the order of the learned Chief Judicial Magistrate dated 17.02.2022 taking cognizance of the offence against the accused person under Sections 186/34 of the IPC and subsequent order dated 28.02.2022 and 02.09.2022 by summoning the present petitioner. Therefore, the nature of challenges in the previous petition and in the present petition, are quite different. Above all, said petition was not filed by the present accused petitioner. Therefore, it is held that the present petition is maintainable. The Point No.I is answered accordingly.

Point No.II

[27] Regarding the bar of Section 195(1), Cr.P.C, Mr. Lodh relies on a decision of Hon'ble Supreme Court in **C. Muniappan** (supra) and the relevant paragraph no.28 is extracted hereunder for better appreciation:

28. Section 195(1)(a)(i) CrPC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC that any person can set the law in motion by making a complaint, as it prohibits the court from taking

cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in CrPC like Sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those sections. (Vide Govind Mehta v. State of Bihar [(1971) 3 SCC 329 : 1971 SCC (Cri) 608 : AIR 1971 SC 1708] , Patel Laljibhai Somabhai v. State of Gujarat [(1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935] , Surjit Singh v. Balbir Singh [(1996) 3 SCC 533 : 1996 SCC (Cri) 521] , State of Punjab v. Raj Singh [(1998) 2 SCC 391 : 1998 SCC (Cri) 642] , K. Vengadachalam v. K.C. Palanisamy [(2005) 7 SCC 352 : 2005 SCC (Cri) 1673] and Iqbal Singh Marwah v. Meenakshi Marwah [(2005) 4 SCC 370 : 2005 SCC (Cri) 1101] .)

[28] In the case of **Devendra Kumar** (supra), as further relied on by Mr. Lodh, Ld. Counsel, Hon'ble Supreme Court exhaustively examined the applicability of bar of Section 195 Cr.P.C. and finally concluded in the following terms-

“59. We may summarize our final conclusion as under:

(i) Section 195(1)(a)(i) of the Cr. P.C. bars the court from taking cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.C., unless there is a written complaint by the public servant concerned or his administrative superior, for voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of offences enumerated therein.

(ii) If in truth and substance, an offence falls in the category of Section 195(1)(a)(i), it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences disclosed in the same set of facts. However, it also cannot be laid down as a straitjacket formula that the Court, under all circumstances, cannot undertake the exercise of splitting up. It would depend upon the facts of each case, the nature of allegations and the materials on record.

(iii) Severance of distinct offences is not permissible when it would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the Cr. P.C., which requires a complaint by a public servant for certain offences against public justice. This means that if the core of the offence falls under the purview of Section 195(1)(a)(i), it cannot be prosecuted by simply filing a general complaint for a different, but related, offence. The focus should be on whether the facts, in substance, constitute an offence requiring a public servant's complaint.

(iv) In the aforesaid context, the courts must apply twin tests. First, the courts must ascertain having regard to the nature of the allegations made in the complaint/FIR and other materials on

record whether the other distinct offences not covered by Section 195(1)(a)(i) have been invoked only with a view to evade the mandatory bar of Section 195 of the I.P.C. and secondly, whether the facts primarily and essentially disclose an offence for which a complaint of the court or a public servant is required.

(v) Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr. P.C. This would all depend on the facts of each case.

(vi) Sections 195 (1) (b) (i) (ii) & (iii) and 340 of the Cr.P.C. respectively do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation, provided the procedure laid down in Section 340 of the Cr. P.C. is followed.”

[29] Mr. Lodh, Ld. Counsel also relies on a decision of Madras High Court in **Sudalaimadam** (supra). In this case also the High Court observes that the victim officer (special duty Tahsildar) who was obstructed in discharging official duties lodged the complaint in writing to the police station and after investigation police laid the charge sheet. In that context, it is observed by the court that as per Section 195 Cr.P.C a complaint means a complaint before the Court and not to the police and complainant before the court must be the officer concerned. Inasmuch as the complaint in said case for an offence under Section 186 of IPC has not been preferred before the court by the concerned special duty Tahsildar, the prosecution under Section 186, IPC was barred.

[30] The Gauhati High Court similarly in **Bajranglal Parikh** (supra), as referred by Mr. Lodh, observes that if a ‘complaint’, as envisaged in Section 195(1)(a), is not received by a Magistrate in respect of an offence under Section

188, IPC the Magistrate cannot, on the basis of a 'police report' submitted under Section 173(2), take cognizance, for, the 'police report' cannot be treated as the 'complaint', in writing, of the 'public servant concerned'.

[31] Learned P.P. on the other hand, relies on a decision of M.P. High Court in case of **Ramesh Mendola** (supra). In this case, the registration of an FIR (not an order taking cognizance by Court) under Section 188 of IPC was challenged before the High Court. In said case, the applicant and the co-accused being election controller and organizer respectively of a meeting of BJP candidate hold such meeting in violation of Covid-19 guidelines and condition of an order passed under Section 144 of Cr.P.C. Therefore, concerned FST In-charge made a written complaint to Retuning Officer who forwarded it to SHO, Sanwer and accordingly an FIR was registered. In that background, the High Court observes that Section 195(1) of CrPC only says that no Court shall take cognizance of any offence punishable under Sections 172 to 188 of IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. There is nothing in the said provision which debars registration of FIR and it has nowhere stated that the aforesaid written complaint should be filed before the Court. Moreso, in said case, as the Court observes, written complaint was made by the public servant FST In-charge and the same was forwarded by his superior officer, therefore, it cannot be said that the provision of Section 195(1) Cr.P.C was not complied with.

[32] Ld. P.P. also relies on another decision of Allahabad High Court in case of **Arjun Yadav** (supra). In this case, prayer was made under Section 482 Cr.P.C for quashing the related order passed by JMFC taking cognizance of offence as well as the entire criminal proceeding relating to the offences under Sections 323 and 504 of IPC and it was contended on behalf of the applicant that charged sections were bailable sections and the Magistrate might pass order taking cognizance following the chapter XV of CrPC. In consideration of said submissions, the High Court set aside the cognizance order of the Magistrate with further observation that the Magistrate may pass an order taking cognizance if, he so chooses, by proceeding in this matter as a complaint case under Chapter XV of the Cr.P.C. This case thus appears to have been decided in a different context.

[33] As per the materials placed in the records and as discussed earlier, on 09.08.2021, Inspector Sri Manoranjan Debbarma forwarded one FIR to the learned Chief Judicial Magistrate, Khowai praying for a necessary order for allowing them to register the case against the present petitioner and other accused persons with the allegations of creating obstructions in their official duties.

[34] The learned Chief Judicial Magistrate, Khowai, thereafter, vide order dated 10.08.2021 allowed the said application of O/C, Khowai P.S. by giving permission to the police authority in terms of Section 155 of the Cr.P.C. for registration of the said FIR and the investigation thereof by the

O/C, Khowai P.S. himself or by any other officer entrusted by him for the said purpose. Accordingly, Khowai P.S. case No.77 of 2021 was registered under Sections 186/34 of the I.P.C. against the present petitioner and others and finally, the investigating officer, namely, SI Samaresh Chakma laid the charge-sheet under Sections 186/34 of the IPC against the accused persons vide charge-sheet No.6/22 dated 28.01.2022. The said charge-sheet was forwarded by the in-charge O/C of Khowai PS, namely, S.I. Lalzuithara Darlong.

[35] Upon receipt of the charge-sheet, learned Chief Judicial Magistrate vide order dated 17.02.2022 took cognizance of the offence punishable under Sections 186/34 of the IPC against the accused persons and the case was made over to the learned Judicial Magistrate, First Class, Khowai for disposal in accordance with law. Learned Judicial Magistrate, First Class, Khowai vide order dated 28.02.2022 issued summons to the accused persons and again, vide order dated 02.09.2024, another summon was directed to be issued to the present accused petitioner and three other accused persons.

[36] Section 186 of the Indian Penal Code is a non-cognizable offence. Section 195 of the Cr.P.C. clearly provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 of the both inclusive of IPC, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is

administratively subordinate. In Section 2(d) of the Cr.P.C., the definition of complaint has been envisaged in the following manner:

2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

[37] As per the above said explanation of Section 2(d) of Cr.P.C. a report made by a police officer in case which discloses after investigation, the commission of non-cognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be complainant.

[38] As per sub Section 2(i) of Section 173 of the Cr.P.C. as soon as the investigation is complete, the officer-in-charge of the police station shall forward to the Magistrate empowered to take cognizance of the offence on a police report, a report in the formant prescribed by the State Government stating that:

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;

(g)whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, or 376E of the Indian Penal Code.

.....

[39] Thus, on conjoint reading of above said two provisions, it appears that after the investigation is completed by the Investigating Officer, he prepares a report of such investigation and thereafter, same was forwarded by the O/C of the police station to the Court in the prescribed format. As per provision of Section 2(d), the police officer by whom such report is made is deemed to be the complaint.

[40] Here, in the instant case, the charge-sheet has been laid by investigating officer namely S.I Samarash Chakma which was forwarded by the then police officer, namely, S.I. Lalzuithara Darlong (In-charge OC). Both of these officers are neither the victims of the case nor superior to the then Inspector, namely Sri Manoranjan Debbarma, who was the victim of the instant case. The said victim, Manoranjan Debbarma, or any of his superior officer, did not submit the complaint [charge-sheet] before the Court. Therefore, Section 195 of the Cr.P.C. clearly bars taking on cognizance by the Court of the offence punishable under Section 186/34 of the I.P.C. against the present petitioner. Consequently, the orders passed by the learned trial court taking cognizance of offence and issuing summons to the present petitioner are bad in law.

[41] In view of above, the criminal petition is allowed. The cognizance as taken by the learned Chief Judicial Magistrate, Khowai on

17.02.2022 against the present petitioner, Sri Bratyabrata Basu and the orders dated 28.02.2022 and 02.09.2024 issuing summons to him are hereby quashed.

Accordingly, this criminal petition is disposed of.

Re-consign the records of the learned trial Court along with a copy of this order.

Pending application(s), if any, also stand disposed of.



JUDGE

सत्यमेव जयते