

GAHC040002712023



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH

Crl.Pet/29/2023

1. Jit Chabukdhara
S/o Lt. Babul Chabukdhara, Permanent
resident of Ganakdoloni,
P.O and P.S Lakhimpur,
Assam-784165.
2. Goutam Bhattacharya
S/o Jagat Bandhu Bhattacharya
11DDharmatala Road Kasba
Kasba S.O, Kolkata
West Bengal-700042.
3. Sumit Agarwal
S/o Suresh Agarwal
Upper Bazar
Sitarampur
Opposite Tiberwal
Decorator Station Road
Kulti M. Barddaman
West Bengal-713359.

Petitioners

-Versus-

1. The State of AP
Represented through the Public Prosecutor,

Government of Arunachal Pradesh.

2. Tana Pekhi
S/o Late Tana Chima
Village Midpu-I, P.O/P.S Doimukh
District Papum-Pare
Arunachal Pradesh and proprietor of
M/s Yayo Enterprise

Respondents

For Petitioner(s) : Mr. T. T. Tara, Advocate

For Respondent(s) : Ms. L. Hage, Additional Public Prosecutor (R.1)
Mr. T. Taison, Advocate, (R.2)

Date of hearing : 05.09.2023

Date of judgment : 08.09.2023

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER

1. Heard Mr. T. T. Tara, learned counsel for the petitioners. Also heard Ms. L. Hage, learned Additional Public Prosecutor, for the respondent no. 1 as well as Mr. T. Taison, learned counsel for the respondent no.2.

2. This criminal petition has been registered on filing of an application under Section 482 of the Code of Criminal Procedure, 1973, by the petitioners, namely, (1) Sri Jit Chabukdhara, (2) Sri

Goutam Bhattacharya, and (3) Sri Sumit Agarwal, praying for quashing of the proceeding of the CR Case No. 69/2022 under Sections 420/465/34 of the Indian Penal Code, which is pending before the Court of learned Judicial Magistrate, 1st Class, Capital Complex, Yupia, Arunachal Pradesh.

3. The facts relevant for consideration of the instant criminal petition, in brief, are as follow:-

- (i)** That the present petitioners, namely, (1) Sri Jit Chabukdhara, is working as Sales Manager, (2) Sri Goutam Bhattacharya, is working as Senior General Manager, and (3) Sri Sumit Agarwal, is working as Sales Accountant in a company called M/s Maithan Steel and Power Limited, having its registered office at 9 A J C Bose Road, 6th Floor, Kolkata, West Bengal.

In the year 2019, the petitioner nos. 2 & 3 contacted respondent no. 2 and informed him about their Company M/s Maithan Steel and Power Limited which is manufacturing TMT bar (Iron rods and wires) and expressed their willingness to establish wholesale dealership company in the Arunachal Pradesh. After threadbare discussion and on good faith both the parties agreed to enter into the business relationship and for that purpose respondent no. 2 had submitted his Aadhar Card, GST Registration, Trading License and PAN Card. The petitioners' company after verification and authentication of

the documents furnished by respondent no. 2 started supplying and delivering TMT bars and wires to the firm of respondent no. 2 namely, M/s Yayo Enterprise from time to time. The respondent no. 2 also made regular payment to the company as per the goods received from the company.

(ii) However, as per the ledger account of M/s Yayo Enterprise maintained by petitioners' company from 01.04.2018 to 31.03.2022, an outstanding liability of the firm of the respondent No. 2 was shown in the closing balance of the account of the ledger account as Rs.11,48,651/- only. The petitioners, on behalf of their company, made several communications over telephone to the respondent no. 2 about non-payment of the legally enforceable debt of Rs.11,48,651/-. However, as the respondent no. 2 did not respond to the said telephonic calls, a legal notice dated 01.04.2022 was issued to the respondent no. 2 which was received by the respondent no. 2 on 13.04.2022 as per the courier track status. In pursuant to the said legal notice dated 01.04.2022, the respondent no. 2 issued a cheque bearing no. 678866 dated 01.06.2022 amounting to Rs. 11,48,651/- in favour of the petitioners' company which was duly signed by the respondent no. 2.

(iii) On receipt of the said cheque, the authorized persons of the company presented to same to their banker State Bank of India, Asansol Branch for encashment. However, the

bank had issued a memorandum dated 07.06.2022 to the applicant company, whereby it was intimated that the cheque was not honored due to "*drawer refused to confirm issuance of cheque and asked not to debit his account + the account had insufficient funds*". It is averted by the petitioners in their petition that when the authorized persons of company contacted the respondent no. 2 and informed him about dishonor of cheque bearing no. 678866, he requested the authorized persons to present the cheque in Bank once again and accordingly, the cheque was again presented to their banker Punjab National Bank, Larj Corporate Branch on 10.06.2022 for encashment. However, this time also the cheque was dishonored on the ground of insufficiency of fund. Thereafter, the applicants' company issued a demand notice to the respondent for the legally enforceable amount of Rs.11,48,651/- within a period of fifteen(15) days from the receipt of the said notice. However, when the respondent no.2 failed to pay the outstanding debt of Rs. 11,48,651/-. The petitioners' company thereafter filed a complaint case under Section 138 of the Negotiable Instrument Act, 1988, which was registered a Complaint Case No. 1110/2022 in the Court of learned Chief Judicial Magistrate, Paschim Bardhaman, West Bengal.

(iv) In the meanwhile, the respondent no. 2 instituted the CR Case no. 69/2022 under Sections 420/465/34 of the Indian Penal Code against the present petitioners alleging that the petitioner no. 3 Sri Sumit Agarwal had fraudulently obtained the cheque bearing No. 678866 and forged the signature of the complainant (respondent no.2) with illegal intention to cheat and harass the respondent no. 2.

4. Mr. T. T. Tara, learned counsel for the petitioners has submitted that the respondent no. 2 instead of discharging his outstanding liabilities towards the company where the petitioners were employed, filed the CR Case No. 69/2022 in the Court of learned Judicial Magistrate, 1st Class, Yupia, out of vengeance and tried to make out a criminal case out of a commercial dispute between the parties.

5. Learned counsel for the petitioners has also submitted that the present petitioners are employees of the M/s Maithan Steel and Power Limited Company working there in different capacities. It is also submitted by learned counsel for the petitioners that it is the M/s Maithan Steel and Power Limited Company which has instituted the complaint case bearing registration no. 1110/2022 in the Court of learned Chief Judicial Magistrate, Paschim Bardhaman, West Bengal, against the respondent no.2, for dishonor of cheque bearing no. 678866. It is further submitted by learned counsel for the petitioners that when respondent no. 2 has alleged in his complaint petition that

the aforementioned cheque has forged, but he did not made the company, which is the complainant in complaint case filed against him, (CR Case No. 1110/2022) an accused in the complaint case instituted by him (CR Case No. 69/2022), the complaint case filed by respondent no. 2 is not maintainable. In support of his submission, learned counsel for the petitioners has cited a ruling of Hon'ble Supreme Court of India in "***Sushil Sethi and Another Vs. State of Arunachal Pradesh and Others***", reported in "***(2020) 3 SCC 240***", as well as in "***Himanshu Vs. B. Shivamurthy and Another***" reported in "***(2019) 3 SCC 397***".

6. Learned counsel for the petitioners has also submitted that as the cheque bearing no. 678866 was presented for encashment before the State Bank of India, Asansol Branch and thereafter, the complaint case No. 1110/2022 which was filed by the above mentioned company, for dishonor of cheque bearing no. 678866, which is alleged to have been forged, has been instituted in Paschim Bardhaman in West Bengal, the cause of action, if any, for respondent no. 2 to file a complaint case may only be in West Bengal either in Asansol, West Bengal or in Bardhaman, West Bengal and hence, it is submitted that as per Section 177 of the Code of Criminal Procedure, 1973, the Court at Yupia does not have jurisdiction to inquire into and try the CR Case No. 69/2022.

7. Learned counsel for the petitioners has also submitted that on bare perusal of the averments made in the complaint petition filed by the respondent no.2, it appears that it lacks the ingredients of

offence of cheating and forgery under Sections 420/465/34 of the Indian Penal Code against the present petitioners as the Complaint Case No. 1110/2022 has been filed against the respondent no.2 by the M/s Maithan Steel and Power Limited Company and not by the present petitioners in their individual capacity.

8. It is also submitted by learned counsel for the petitioners that admittedly the dispute between the respondent no.2 and the company in which the present petitioners are employed is essentially of civil nature and the CR Case No. 69/2022 has been filed against the present petitioners, who are only employees of the company only to wreck vengeance against them.

9. Learned counsel for the petitioners has also submitted that in the instant case as CR Case No. 69/2022 has been maliciously instituted with an ulterior motive only to harass the petitioners and the same is liable to be quashed.

10. On the other hand, Mr. T. Taisen, learned counsel for the respondent no.2 has submitted that the complaint case filed by the respondent no.2 in its early stage as the said case is fixed for evidence before charge and it would be premature for this Court to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, at this stage, to quash the said proceeding. It is also submitted by learned counsel for respondent no. 2 that the respondent no.2 had issued only a blank cheque bearing no. 678866 to the petitioner nos.1 & 2 for confirmation of the bank account of the firm of respondent no.2. It is also submitted by learned counsel

for the respondent no.2 that the respondent no.2 had business transaction with M/s Maithan Steel and Power Limited, however, he never issued the cheque bearing no. 676688 to the petitioner no. 3 personally who had fraudulently obtained the said cheque and forged the signature of the respondent no.2 with an intention to cheat and harass him.

11. Ms. L. Hage, learned Additional Public Prosecutor has submitted that in the instant case the question of ascertainment of disputed facts is involved, where one party is claiming to have issued only a blank cheque which is alleged to have been forged later on and the other party is claiming to have received the said cheque from the respondent no. 2 in discharge of his outstanding debt of Rs. 11,48,651/-, hence, she submits that the veracity of said disputed facts may best be ascertained only in the trial by the Trial Court and it would not be proper for this Court to invoke its extraordinary jurisdiction in quashing the proceeding of CR Case No. 69/2022 at its inception. To support her contention, learned Additional Public Prosecutor has cited a ruling of Hon'ble Supreme Court of India in ***"Priti Saraf and Another Vs. State of NCT of Delhi and Another"*** reported in ***"2021 0 Supreme (SC) 139"*** wherein the Hon'ble Apex Court has observed that the inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize the complaint/FIR/Charge-sheet in deciding whether the case is of rarest of rare case to scuffle the prosecution at its inception. Learned

Additional Public Prosecutor has also submitted that various provisions in Chapter XV of the Code of Criminal Procedure, 1973 provides sufficient procedural protection to ensure that the process of the Court is not abused by filing false complaint and as the CR Case No. 69/2022 is in its initial stage, the petitioners may agitate and raise their defence before learned Trial Court in the said proceeding. In support her contention, learned Additional Public Prosecutor has cited a ruling of Hon'ble Supreme Court of India in "**S. R. Sukumar Vs. Sunaad Raghuram**" reported in "**2015 0 Supreme (SC) 693**".

12. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record carefully.

13. Though, it is no *res-integra* that while exercising powers under Section 482 of the Code of Criminal Procedure, 1973, the Court has to be cautious as it casts an onerous and diligent duty of the Court, however, the Court has also the duty to ensure that the criminal proceedings are not permitted to be used as weapons of harassment of innocent persons against whom no case is made out. It may also look into as to whether before issuing processes against a person who is arraigned as an accused in a criminal complaint, mandatory statutory requirements, as provided in Chapter XV of the Code of Criminal Procedure, 1973, were followed or not by the Magistrate taking cognizance of an offence on complaint.

14. In the instant case, the respondent no. 2 has admitted that he had business relationship with M/s Maithan Steel and Power Limited.

It is also admitted by the respondent no.2 that in the year 2020, the petitioner no. 1 and the petitioner no. 2 in their capacities as Sales Manager and Assistant General Manager, respectively of M/s Maithan Steel and Power Limited met the respondent no. 2 and had business discussion for establishing a wholesale dealership of TMT Bar (Iron rod and wires) of M/s Maithan Steel and Power Limited in the State of Arunachal Pradesh. It is also admitted that there was business transaction between the firm of respondent no. 2, namely, M/s Yayo Enterprise and the M/s Maithan Steel and Power Limited and possibility of outstanding liabilities, in connection with business transaction is also not denied. The respondent no. 2 has also admitted the receipt of the legal notice dated 28.06.2022 which he has annexed as Annexure no. 2 to the complaint petition in CR Case No. 69/2022. A bare perusal of the said legal notice would show that said legal notice was sent on behalf of petitioner no. 3 in his capacity as an authorized representative of M/s Maithan Steel and Power Limited while he was working in the post of Manager (Sales Account) in the said company. It also appears that though the respondent no.2 has alleged in his complaint, in CR Case No. 69/2022, that the blank cheque issued by him was fraudulently obtained by petitioner no. 3 and he has forged the same, however, neither the cheque in question which is alleged to have been forged nor any copy of the same has been annexed along with the complaint petition. Though, the copy of the said cheque in question has not been annexed along with the complaint petition, same is annexed as Annexure No. 4 at page 32 of

the instant criminal petition and a bare perusal of the same would reveal that same has been issued in the name M/s Maithan Steel and Power Limited by the proprietor of M/s Yayo Enterprise. Further, it also appears that the CR Case No. 1110/2022, under Section 138 of the Negotiable Instrument Act, 1988, has been instituted by the company M/s Maithan Steel and Power Limited against the respondent no. 2 and under such circumstances, any criminal complaint, by the respondent no.2, only against the employees of the said company without making the company itself an accused in the said complaint is not maintainable in law.

15. It is also important to note that though on perusal of the scanned copy of the case record of CR Case No. 69/2022, it appears that all the three accused persons named in the said complaint (i.e., the present petitioners No. 1, 2 & 3) were shown to be resident of Paschim Bardhaman District in West Bengal, which is beyond the area in which the learned Judicial Magistrate, 1st Class, Yupia exercises his jurisdiction, however, it appears that the learned Magistrate did not take recourse to Section 202 of the Code of Criminal Procedure, 1973, before issuing the processes against the present petitioners in CR Case No. 69/2022. Learned Judicial Magistrate, 1st Class, Yupia examined the complainant Tana Pekhi (Respondent no.2) under Section 200 of the Code of Criminal Procedure, 1973, on 01.11.2022, and on the same day he issued the summons to the present petitioners without taking any recourse to mandatory provision under Section 202 of the Code of Criminal

Procedure, 1973, by conducting an enquiry or directing an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding against the present petitioners. The haste with which learned Judicial Magistrate, 1st Class, Yupia issued the processes against the present petitioners without complying with the mandatory provision of Section 202 of the Code of Criminal Procedure, 1973, has denied the benefit of statutory protection engrained therein to the present petitioners and that in itself is sufficient to quash the proceeding of CR Case No. 69/2022 against the present petitioners.

16. In view of above circumstances, this Court has no hesitation to hold that permitting continuance of the proceeding in CR Case No. 69/2022 against the present petitioners would result in abuse of process of Court and also in miscarriage of justice. Hence, the proceedings in CR Case No. 69/2022 pending before the Court of learned Judicial Magistrate, 1st Class, Yupia is hereby quashed and set aside and this Criminal Petition is accordingly disposed of.

JUDGE

Comparing Assistant