

GAHC010008842020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./122/2020

GYASUDDIN AHMED
S/O LATE ANWARUDDIN AHMED, R/O RATANPUR, P.O. C.R. BUILDING, P.S.-
DIBRUGARH, DIST-DIBRUGARH

VERSUS

NIZAMUDDIN AHMED
S/O LATE ANWARUDDIN AHMED, R/O C/O LEKHI TEA ESTATE RATANPUR,
P.O.-C.R. BUILDING, P.S.-DIBRUGARH, DIST-DIBRUGARH

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : MR. S S S RAHMAN

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner	:	Mr. P.J. Saikia, Sr. Advocate.
For the Respondent	:	Mr. P. Katak, Advocate.
Date of Hearing	:	16.05.2023.
Date of Judgment	:	05.06.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. P.J. Saikia, the learned senior counsel appearing for the petitioner. Also heard Mr. P. Kataki, the learned counsel representing the respondent.

2. This is an application under Section 482 of the CrPC challenging the order dated 16.11.2019 passed by the learned Addl. Chief Judicial Magistrate, Dibrugarh in C.R. Case No.24^C/2017 framing charge against the petitioner under Sections 406/468/420 and 417 of the Indian Penal Code.

3. The petitioner and the respondent are brothers. They have a sister called Mrs. Shahana Islam Dombeck who resides abroad. The two brothers and sister are the partners of a firm, named Ranu Tea Estate. The two brothers had 35% share and the sister had 30% share in the said Tea Estate.

4. In the meantime, the two brothers and their wives formed a company names, M/S. Enver Plantation Pvt. Ltd. Each of the brothers had 50% share in the company. The present petitioner Gyasuddin Ahmed is the Managing Director of the company whereas the respondent Nizamuddin Ahmed is the Joint Managing Director.

5. Apart from all those, Nizamuddin Ahmed owned a Tea Garden, called Leik Tea Estate and Gyasuddin Ahmed owned Dulia Tea Estate.

6. M/S. Enver Tea Plantation Pvt. Ltd. has a tea factory and it processed tea leaves of Dulia Tea Estate, Leik Tea Estate and Ranu Tea Estate.

7. Nizamuddin Ahmed has alleged that his brother Gyasuddin Ahmed being the Managing Director of M/S. Enver Tea Plantation Pvt. Ltd. and being the Managing Partner of Raun Tea Estate, misappropriated huge sums of money by committing fraud after keeping him in dark. Gyasuddin Ahmed allegedly took advantage of the fact that Mrs. Shahana Islam Dombeck lived abroad

and in that way, till 2015, he took the said advantage.

8. Nizamuddin Ahmed has alleged that his brother sold some parts of Ranu Tea Estate to someone but he never received his share of the sale price though he is entitled to 50% of the sale.

9. In the meantime, Shahana Islam Dombeck executed a Power of Attorney in favour of Nizamuddin Ahmed and therefore, Nizamuddin Ahmed wanted to look after the financial aspect of the company on her behalf. He found many anomalies. He found that Dulia Tea Estate was run by the income of Leik Tea Estate and Ranu Tea Estate, thereby causing financial loss to him.

10. Nizamuddin Ahmed further alleged that he has not been paid his salary. According to Nizamuddin Ahmed, his brother Gyasuddin Ahmed has caused anomalies in the balance-sheet of the company.

11. Alleging the aforesaid facts, Nizamuddin Ahmed filed the complaint case against Gyasuddin Ahmed. The trial court framed the charges under Sections 406/468/420 and 417 of the Indian Penal Code against Gyasuddin Ahmed.

12. The learned senior counsel Mr. Saikia has claimed that the trial court has no jurisdiction to entertain the compliant case. He has claimed that the allegations relate to company affairs and therefore, the case is maintainable in a special court established under Section 435 of the Companies Act, 2013.

13. *Per contra*, Mr. Kataki submits that the allegations brought by Nizamuddin Ahmed constitutes criminal offences under the Indian Penal Code and therefore, the criminal proceeding is maintainable in law.

14. I have considered the submissions made by the learned counsels of both sides.

15. I have decided to agree with Mr. Kataki that the provisions of the Companies Act is applicable to criminal acts committed by companies. In the

case in hand, the allegations pertain to acts committed by an individual.

16. The power under Section 482 of the CrPC is the inherent power of the High Court for preventing the abuse of the process of the Court. The guidelines for exercising the power under Section 482 of the CrPC has been laid down by the Supreme Court in the *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. Para 102 of the said judgment is quoted as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. Reverting to the case in hand, I find that Nizamuddin Ahmed has brought allegation against Gyasuddin Ahmed accusing that he has committed criminal offences. The learned trial court found a *prima facie* case against Gyasuddin Ahmed.

18. I have no doubt that the plea of the learned counsel for the petitioner that this matter should be dealt with by the special court constituted under Section 435 of the Companies Act, is not acceptable.

19. The power of the High Court under Section 482 CrPC is not an appellate power. This power is a supervisory one for prevention of the abuse of the process of the court. The trial court has framed the charges against the

petitioner. I am of the opinion that this is not a fit case for exercising the power under Section 482 CrPC.

20. The criminal petition is devoid of merit and hence dismissed accordingly.

JUDGE

Comparing Assistant