

GAHC010014912023



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

Case No. : Crl.Pet./67/2023

M/S GOPIRAM CHETRAM
A PARTNERSHIP FIRM HAVING ITS OFFICE AND PLACE OF BUSINESS AT
SIDING BAZAAR, TINSUKIA, REP. BY ONE OF ITS PARTNER/POWER OF
ATTORNEY HOLDER, NAMELY SRI SANWARMAL AGARWAL,
SON OF LATE CHETRAM AGARWAL,
R/O SIDING BAZAAR, TINSUKIA TOWN, P.O. AND DIST. TINSUKIA, ASSAM,
PIN-786125

VERSUS

KEJRIWAL SUGAR AGENCIES PVT. LTD. AND 2 ORS.
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT VINAYAK COMPLEX 55/1A STRAND
ROAD, 3RD FLOOR, OPPOSITE MAYO HOSPITAL, KOLKATA-700006 AND
ALSO HAVING ITS OFFICES AT (A) STRAND ROAD, BUILDING NO. 57, 3RD
FLOOR, OPPOSITE MAYO HOSPITAL, KOLKATA-700006 AND (B) 618,
DAKSHINDARI ROAD, VI TERRACE, FLAT NO. 403, 4TH FLOOR, KOLKATA-
700048, REP. BY ITS DIRECTORS, NAMELY (1), SRI SURYA PRAKASH
KEJRIWAL, AND (2) SMTI SANGEETA KEJRIWAL.

2:SRI SUYA PRAKASH KEJRIWAL

DIRECTOR OF KEJRIWAL SUGAR AGENCIES PVT. LTD.

3:SMTI. SANGEETA KEJRIWAL
DIRECTOR OF KEJRIWAL SUGAR AGENCIES PVT. LTD.
SL. NO. 2 AND 3 HAVING THEIR OFFICE AT VINAYAK COMPLEX 55/1A
STRAND ROAD
3RD FLOOR
OPPOSITE MAYO HOSPITAL
KOLKATA-700006 AND ALSO AT-
(A) STRAND ROAD

BUILDING NO. 57
3RD FLOOR
OPPOSITE MAYO HOSPITAL
KOLKATA-700006.
(B) 618
DAKSHINDARI ROAD
VIP TERRACE
FLAT NO. 403
4TH FLOOR
KOLKATA-700048 AND
(C) SARWANMANI APARTMENT
23RD FLOOR
4C AND 4D
MANIKTALA MAIN ROAD
KADAPARA
BAGAN
KOLKATA-70005

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 25.01.2023

Heard Mr. B. Dutta, learned senior counsel assisted by Mr. S. Deka, learned counsel for the petitioner.

2. This application under Section 482 of the CrPC praying for passing appropriate direction to the learned Chief Judicial Magistrate, Tinsukia to dispose of the N.I. Case No. 12/2019 expeditiously.

3. It is submitted that the petitioner is a partnership firm constituted under the provision of Indian Partnership Act, 1932 having its principal place of business at Siding Bazar, Tinsukia.

4. The brief facts leading to the present application is that the petitioner being a registered partnership firm is engaged in the business of wholesale of edible oil and various grocery items including sugar.

5. The respondent no.1 is a company, duly incorporated under the Companies Act, 1956 of which the respondent nos. 2 & 3 are the Directors. The respondent no. 2 namely, Surya Prakash Kejriwal @ Mr. Prakash Kejriwal also made correspondence in the name of Mr. Prakash Kejriwal, who is not only the Director of respondent no. 1 company, but is also the proprietor of M/s Subham Sugar Agencies, Kolkata and deals as commission agent.

6. Accordingly, there was a discussion with the respondent nos. 2 & 3 being Directors of the company with the petitioner before starting the business and accordingly, business norms also being fixed.

7. During the course of business, the petitioner paid huge amount of money to the respondents as advance payment for supply of sugar from time to time at the request of the respondents, and finally it has calculated that the outstanding dues of the petitioner and accordingly after discussion the respondents agreed to settle the account at Rs. 10 Crores and agreed to make the full payment and accordingly respondent no. 2 had issued two numbers of cheques for an amount of Rs. 5 Crores both are drawn on HDFC Bank, Kolkata but both the cheques were dishonored due to insufficient fund and thereafter observing all necessary formalities, the present petitioner lodged a case under Section 138 of the N.I. Act which has been registered and numbered as N.I. Case No. 12/2019 and the learned CJM, Tinsukia was pleased to take

cognizance vide order dated 18.01.2019 and also was pleased to issue summons to the respondent accordingly.

8. In the meantime, the respondent has filed four numbers of Criminal Petitions before this Court, challenging the order of taking cognizance by the learned CJM, Tinsukia and hearing the petitioners, this Court was pleased to dismiss all the Criminal Petitions filed by the respondents and after the disposal of the Criminal petitions by this Court, the learned CJM, Tinsukia vide order dated 31.03.2022, issued notice to the respondents for their appearance fixing next date on 02.05.2022. On 02.05.2022 and on subsequent dates prayed adjourned on various grounds which were allowed by the learned Court below.

9. On 02.06.2022 one petition was filed for interim compensation as per provisions under Section 143 (A) of the N.I. Act and learned Court below did not pass any order to that effect rather the case was fixed on 23.06.2022 for submission of undertaking by the respondent nos. 2 & 3 for hearing on the point of compensation/offence explanation/plea of defense.

10. On 23.06.2022, the learned Court below was on leave and thus, the next date was fixed on 28.07.2022. But on 28.07.2022. the learned counsel for the respondent nos. 2 & 3 prayed for adjourned and accordingly, the same was allowed by the learned CJM and the next date was fixed on 25.08.2022.

11. On 25.08.2022, though the counsel for the respondents appeared but has not submitted any undertaking as directed by the learned Court below. However, the counsel for the respondent no.3 filed a petition stating that the respondent no. 3 preferred SLP (Criminal) No. 7102-7103/2022 before the

Hon'ble Apex Court and Hon'ble Apex Court vide order dated 22.08.2022 stayed the proceeding against the respondent no.3 and accordingly, prayed for passing necessary order.

12. Thereafter, the learned Court below fixed date for hearing on the petition and date was fixed on 17.09.2022 and thereafter, another date was fixed by the learned Court below on 17.09.2022 fixing the matter for passing necessary order on 11.10.2022. However, on 11.10.2022, the learned Court below rejected the aforesaid petition filed by the respondents praying for kept in abeyance of the proceeding and also disposed the petition no. 3045/2022.

13. The representative of respondent no. 1 did not appear on 11.10.2022 before the learned Court below and for which one BWA of Rs. 10,000/- was issued against him and accordingly, the case was fixed on 24.11.2022 for appearance of various authorized representative of respondent no. 1/ the hearing on the point of compensation under Section 143 (A) of N.I. Act. Thereafter, the Court fixed the date on 28.09.2022 and then another date was fixed on 27.01.2023 for hearing on the point of compensation.

14. Thus, it is seen that the respondents with their ulterior motive filed petition one after another seeking adjournments and thus, the case is pending since 17.01.2019 and even after lapse of four years, the case is at a very initial stage where cheque in question for which the petitioner filed the complaint petition, involved huge amount of Rs. 5 Crores and due to delay in disposal of the proceeding the petitioner is suffering huge loss in his business.

15. Speedy justice is one of the fundamental rights of person guaranteed

under the Constitution of India. Further, Section 143 (3) of the N.I. Act, 1881 provides that every trial under this Section shall be conducted as expeditiously as possible and an endeavor shall be made to conclude the trial within six (06) months from the date of filing of the complaint.

16. Thus, the case was lodged on 17.01.2019 even after the lapse of seven years, the case is at the very initial stage of hearing on the compensation and hence, the present petition is filed only with a limited prayer for a direction to the learned Court below to dispose the N.I. Case No. 12/2019 as expeditiously as possible within a specified time frame.

17. After hearing the submission made by the learned counsel, I have perused the case record and all the annexure filed along with the with petition.

18. It appears that petitioner has annexed all the orders passed by the learned Court below and also the order passed by the Hon'ble Apex Court as well as by this Court on the petitions filed by the respondents side.

19. It appears from the order passed by the learned Court below dated 11.10.2022 that the learned Court below did not consider the prayer for stay of the entire proceeding and opined that the proceeding is stayed only by the Hon'ble Apex Court only against the respondent no. 3 Sangeeta Kejriwal and there is no stay against the other respondents.

20. It is also observed that the order passed by the Hon'ble Supreme Court is very clear that the proceedings are to be stayed only against the respondent Sangeeta Kejriwal and not against the other respondents and accordingly, the

prayer for stay of the proceeding was rejected by the learned Court below and passed order for further proceeding of the case against the other two respondents.

21. Thus, it is seen that the learned Court below passed order of the disposal of this case in-spite of the stay order against respondent no. 3 and bailable warrant was also issued accordingly for none appearance of the respondents side.

22. However, it cannot be denied that the case is lodged in the year 2019 and even after the lapse of four years, no final order could be passed by the learned Court. But in the same time it cannot be denied that the case was delayed due to pendency of the several petitions before this Court as well as before Hon'ble Supreme Court. However, considering the entire circumstances of this case more particularly, the amount of money involved in this case as claimed by the petitioner, I find that for ends of justice, there should be a direction to the learned CJM, Tinsukia for expeditious disposal of the N.I. Case No. 12/2019 pending before this Court.

23. In view of the above learned CJM is hereby asked to dispose of the matter expeditiously preferably within six months.

24. With the above observations, the present Criminal Petition is disposed of accordingly.

JUDGE

Comparing Assistant