

GAHC010015162022



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

Case No. : Crl.Pet./78/2022

RAVI AGARWAL
S/O HARICHAND AGARWAL
R/O HOUSE NO. 31, 3RD FLOOR, VISHAL ENCLAVE, KANAKLATA ROAD,
NARAYAN NAGAR, KUMARPARA, P.O. AND P.S. BHARALUMUKH,
GUWAHATI-09, KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PP, ASSAM

2:SRI INDRONIL AGARWALLA
S/O SRI RATAN AGARWALLA
R/O ANAMIKA APARTMENT
KANAKLATA ROAD
NARAYAN NAGAR
KUMARPARA
P.O.AND P.S. BHARALUMUKH
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN-781009

3:SRI MAHENDRA AGARWAL
S/O LATE SATYA NARAYAN AGARWALLA
R/O ANAMIKA APARTMENT
KANAKLATA ROAD
NARAYAN NAGAR
KUMARPARA
P.O.AND P.S. BHARALUMUKH
GUWAHATI
KAMRUP (METRO)

ASSAM
PIN-7881009

4:THE BRANCH MANAGER
AXIS BANK
ZOO ROAD BRANCH
ZOO ROAD TINIALI
ZOO ROAD
GUWAHATI-781024
KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. A GOYAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 09-08-2023

1. Heard Mr. A Goyal, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Addl. PP, Assam appearing for respondent No.1, Mr. C.S. Ray for respondent Nos.2 and 3 and Mr. M Sarma for respondent No.4.
2. The present application is filed under section 482 Cr.P.C., 1973 for setting aside and quashing an FIR which was registered as Bharalumukh PS Case No.1009/2021 under section 406/420/506 IPC 1860, corresponding to GR Case No.19546/2021.
3. During the pendency of the present petition, the investigating authority filed charge sheet and such charge sheet was brought on record by way of an additional affidavit. Relying on the judgment of the hon'ble Apex Court in the case of **Anand Kr. Mohatta and**

another Vs. State (NCT of Delhi), Department of Home and Another reported in **(2019) 11 SCC 706**. Such prayer was allowed by this court under its order dated 31.03.2023.

4. The principle of exercise of power under section 482 Cr.P.C. to quash FIR and charge sheet on the basis of different pronouncement of the hon'ble apex court can be summarized in the following manner.

I. When the allegations made in the FIR or in a complaint is taken at their face value and accepted, it does not prima facie constitute any offence or do not make out a case against the accused. The court is to see that if the complaint/FIR is taken at their face value, no cognizable offence is made out.

II. Such power can also be exercised when the facts narrated are absurd and inherently improbable, or manifestly attended with malafide or with an ulterior motive.

III. However, while exercising its power the court is not embark upon an enquiry as to the reliability or genuineness of the allegation made in the FIR/complaint.

IV. It is also well settled that such power is to be sparingly exercised and in exceptional cases, so as to avoid miscarriage of justice and also in a situation where there is abuse of process of the court.

V. The power under section 482 Cr.P.C being

wide that while exercising such extra ordinary power the court must be cautious and need to be very diligent.

5. Now let this court consider the factum of the present challenge based on the principles of the aforesaid law. For proper appreciation of the issue in hand the FIR is quoted herein below:

*“To,
The Officer In-charge,
Bharalumukh Police Station
Bharalumukh, Assam, Guwahati – 09*

Sub – FIR against SEVERE REPEATED CHEATING, HARRASMENT, THREATENING, BREACH OF TRUST & DIGITAL BANKING FRAUD BY RAVI AGARWALLA

Respected Sir,

Humbly hereby we state that Ravi Agarwalla S/o Hari Chandra Agarwalla resident of 3rd Floor, House No.31, Kanaklata Road, P.O/P.S – Bharalumukh, Guwahati – 09 has been repeatedly cheating, harassing, threatening and breaching trust with us.

Please note we have completed a government contract of PHE Department under Tangla Division vide deed of agreement dated 18.03.2021 and deed of agreement dated 17.08.2021 a photocopy of both is enclosed here with for your ready reference.

Sir also please note that we have wholly and solely executed the work making 100% investment since 10.03.2021 to the full satisfaction of the concern department and Ravi Agarwalla which is properly acknowledged by Ravi Agarwalla in deed of agreement dated 17.08.2021. But contrary to this Ravi Agarwalla has breach our trust and the terms of agreement on the very 1st day of execution of deed of agreement of dated 18.03.2021 by diverting fund transfer to his proprietorship concern Pihu Enterprise for his other selfish purpose he kept on cheating and breaching out trust by telling lie that he had made full payment of Rs.17,00,000 (Rupees seventeen lakhs only) to concern vendor

against purchase of UPVC Pipe and GRP Tank but Ravi Agarwalla paid only Rs.9,00,000/- (Rupees Nine lakhs only) to concern vendor and diverted Rs.8,00,000/- (rupees eight lakhs only) for his other selfish gains we came to know about his cheating and breaching act on 9th May 2021. With extreme pain and shock we drive to his native home Udalguri to know why he cheated and breached the trust we had on him but we couldn't meet him as he tested corona positive on that very day after that we meet on 7th June 2021 and asked him why he cheated and breached our trust and that because of his heinous act we are in very fearful state that we have unfortunately chosen a cheater and fraud person to work with and expressed our fear that on receipt of payment from PHE Department he may further cheat us, Ravi Agarwalla verbally assured and promised not to cheat and breach our trust in future, contrary to this only after 7 days of promise not cheat further, on 14th June 2021 he repeated his habit of cheating, ditching and breaching of trust by not paying Rs.3,00,000/- (Rupees Three Lakhs) which he got transfer from us by assuring and promising to return the same within one hour by telling lie that his staff is carrying this amount from Beltola to his office. But adding to our shock and pain he did not return the money and severely harassed us by not responding to our hundreds of calls, messages and frequent visit to his home and office. Moreover, his 1st floor neighbor most of the time did not allow us to go to the 3rd floor to Ravi Agarwalla residence as precaution against corona pandemic. Even though Ravi Agarwalla kept on cheating and breaching our trust and harassing us we completed the project very sincerely on 31st July, 2021.

Again on receipt of 1st payment of Rs.32,40,330/- (rupees Thirty Two Lakhs Forty Thousands and Three Hundred and Thirty Only) Ravi Agarwalla has paid us only Rs.5,67,890/- (Five lakhs Sixty Seven Thousand and Eight Hundred and Ninety only) and diverted major portion of fund for his other selfish gains. Also on 12.10.2021 Ravi Agarwalla did not fear from Digital Banking Fraud by testing us fake reference id against transactions of Rs.5,00,000/- (Rupees Five Lakhs only) & Rs.8,00,000/- (Rupees Eight Lakhs Only). From this very act we lost complete trust on him and tried our level best to contract/meet him but he is very successfully avoided us by not replying our hundreds of calls, messages and frequent visit to his house and office for this full 58 long painful and fearful days till date. Now that 2nd running bill amount from concern department may be credited to his account by today or tomorrow, we are in very fearful state that he may further cheat, breach our trust by not paying us.

Exclusively it needs clear mention that Ravi Agarwalla clearly threatened us that if we place 8 nos cheque of Axis Bank issued by him amounting to total of Rs.42,60,000/- (Rupees Forty two Lakh and Sixty Thousand only) he will never pay us in life time. So we never placed this cheque but today we were left with no option and finally we deposited all these cheques with the bank and no one was honoured due to insufficient fund.

Also as a registered class one govt. contractor and businessman we could not participate in many good profit earning tenders due to his non payment and suffered huge financial losses.

After trying our level best to receive our harden invested money amounting to Rs.49,00,000/- (Rupees Forty Nine Lakhs Only) including our genuine share of profit and agreed compensation till date against delayed payment, we left with no other option had to lodge a police complaint for ends of justice. Please oblige and do the needful.

Thanking you.

Sincerely Yours

(INDRONIL AGARWALLA)

Phone : 9864279607

(MAHENDRA AGARWALLA)

Phone : 9706846655

Anamika Apartment, Kanaklata Road,

Narayanagar, kumarpara, PO/PS,

Bharalumukh, Guwahati – 09

6. From the aforesaid FIR the following facts can be ascertained

I. That there was an agreement between the informant and the accused for execution of some contract

II. In terms of the said contract the accused are

required to pay some money to the informant however, instead of giving the said money to the informant, the accused transferred the same to some other account and certain amount are due from the accused and the accused has not paid the same.

III. The FIR further discloses that the accused had issued some cheques to honour the aforesaid due, however, such cheques have not been deposited by the informant as the accused intimated the informant that if the cheques were presented he will never pay the money to the informant.

IV. It is the further case as reflected in the FIR that the FIR has been lodged for the reason that after trying their level best, the informants have failed to get their money back including their share of profit and agreed compensation.

7. Section 405 IPC defines the criminal breach of trust. A reading of the aforesaid provision of law, the essential ingredients of criminal breach of trust can be summarized as below:

A. There must be an entrustment of property or dominion over it upon the accused.

B. The accused upon whom such property is entrusted has dishonestly used or disposed of the property in violation of any provision of law which prescribed the mode in which such trust is to be discharged or of any contract made

defining the discharge of such trust.

8. In the case of ***R K Dalmia Vs Delhi Administration*** reported in ***1963 1 SCR 253***, the Hon'ble Apex Court held that the definition as given under Section 405 Cr.P.C. does not restrict the property to be movable or immovable one and the property used in the Cr.P.C. is having a much wider sense than expression movable property. Accordingly, the Hon'ble Apex Court in ***RK Dalmia (supra)*** concluded that there is no good reason to restrict the meaning of word 'property' to movable property only when it is used without any qualification under Section 405 IPC.

9. Section 415 IPC defines cheating. The essential ingredients of cheating are that deception of any person, fraudulent and dishonest inducement with intent to deliver any property or to have consent to retain any property and also an intention whereby an inducement is made to a person to do or omit to do anything which he would not or omit if he was so deceived.

10. The Hon'ble Apex Court in the case of ***Hriday Ranjan Prasad Verma Vs. State of Bihar and Anr.*** reported in ***2000 4 SCC 168*** clarified that there is a very fine line while making a distinction between mere breach of contract and cheating, which is criminal one and breach of contract. Law is by now well settled that breach of contract cannot give rise to criminal prosecution of cheating until and unless the fraudulent or dishonest intention of cheating is made out in the complaint itself.

11. From the allegations made in the FIR in the considered opinion of this court even are taken at their face value and accepted in entirety, do not make out any prima facie case to constitute an offence under section 406/420/506 IPC rather the matter is totally civil in nature and it is nothing but a claim of share of profit arising out of an written agreement between the informant and the accused and relates to compensation and payment of share of profit and breach of terms of contract. Further this court is unable to find out any statement or whisper, which shows that the accused was having an initially deception in mind to cheat the informant at the stage of entering into the contract inasmuch as there is nothing in the FIR regarding criminal intimidation.

12. Therefore, in view of the aforesaid, this court finds that no case under Section 406/420/506 IPC is made out on a bare reading of the FIR.

13. In view of the aforesaid the present petition stands allowed by setting aside and quashing the FIR which was registered as Bharalumukh PS Case No.1009/2021 under section 406/420/506 IPC 1860, corresponding to GR Case No.19546/2021.

JUDGE

Comparing Assistant