

GAHC010015412014



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

**Case No. : Crl.Pet./768/2014**

NEXTENDERS INDIA PRIVATE LIMITED  
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HEAVING  
ITS REGISTERED OFFICE AT "YUCHIT", JUHU TARA ROAD, MUMBAI-  
4000049 DIST. MAHARASTRA AND ITS CAMP OFFICE AT THE OFFICE OF  
THE CHIEF ENGINEER, P.W.D. BUILDING CAMPUS, CHANDMARI,  
GUWAHATI-3, REP.B Y IMPLEMENTATION HEAD OF NORTH EAST AND  
WEST BENGAL REGION, SRI HIMANGSHU KARMAKAR, S/O SHRI  
HARADHAN KARMAKAR R/O 2-D SUBANSHIRI APARTMENT,  
BAMUNIMAIDAN, GUWAHATI-21, DIST. KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR  
REP. BY THE DEPUTY SUPERINTENDENT OF POLICE, HQ., CID, POLICE  
STATION, ASSAM, GUWAHATI.

2:SHRI PRABIR KALITA  
S/O BAGARAM KALITA R/O HOUSE NO. 3  
HEM BARUAH PATH  
ZOO NARENGI ROAD  
GUWAHATI-24  
DIST.KAMRUP M  
ASSAM

**Advocate for the Petitioner : MR.H K SARMA**

**Advocate for the Respondent :**

Linked Case : Crl.Pet./722/2014

NRIPENDRA NATH DEKA and 2 ORS.  
S/O LT. GOLOK CHANDRA DEKA R/O RUKMINI GAON P.O. BELTOLA

GUWAHATI-28  
DIS.T KAMRUP M  
ASSAM.

2: SRI RANJIT GOSWAMI  
S/OLT. CHANDRADHAR GOSWAMI R/OLACHIT NAGAR  
P.O. ULUBARI  
GUWAHATI-7. DIST. KAMRUP M  
ASSAM.

3: SRINIRMAL NUNISA  
S/O LT. ANAIRAM NUNISA R/O BISHNURABHA PATH  
BELTOLA GUWAHATI-28  
DIST. KAMRUP M  
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR  
REP.BY THE DEPUTY SUPERINTENDENT OF POLICE  
HQ  
CID  
POLICE STATION  
ASSAM  
GUWAHATI

2:SHRI PRABIR KALITA  
S/O BAGARAM KALITA R/O HOUSE NO. 3  
HEM BARUAH PATH  
ZOO NARENGI ROAD  
GUWAHATI-24  
DIST.KAMRUP M  
ASSAM.

-----  
Advocate for : MR. D NATH  
Advocate for : MR.A M BORA appearing for THE STATE OF ASSAM AND ANR

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**JUDGMENT**

**Date : 29-05-2023**

-

Heard Mr. B.D. Das, learned Senior Counsel being assisted by Ms. R. Deka, learned

counsel for the petitioners in both the petitions. Also heard Mr. P.S. Lahkar, learned Addl. P.P., Assam, appearing for the State respondent as well as Mr. K. Kalita, learned counsel appearing for the respondent No.2 of Criminal Petition No.722/2014.

**2.** By this common judgment and order, it is proposed to dispose of two criminal petitions, being Crl. Petition No.768/2014 and Crl. Petition No.722/2014, as the petitioners of both the petitions have prayed for quashing of the proceeding of Complaint Case No.466<sup>C</sup>/2014, under Section 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000, pending in the Court of Judicial Magistrate, First Class, Kamrup at Guwahati, corresponding CID P.S. Case No.13/2014, under Section 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000, on the basis of the complaint lodged by one Prabir Kalita/respondent No.2, and the order of the learned Judicial Magistrate, First Class, Kamrup (M) at Guwahati dated 18.02.2014, passed in Complaint Case No.466<sup>C</sup>/2014, as a common question of law is involved in the same.

**3.** The factual background, leading to filing of the present petitions, is adumbrated herein below :-

“One Prabir Kalita (respondent No.2) lodged a complaint on 18.02.2014, before the learned Chief Judicial Magistrate, Kamrup at Guwahati, being numbered as Complaint Case No.466<sup>C</sup>/2014, under Section 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000, against Mr. Nripendra Nath Deka, the then Chief Engineer, PWD (NH Works), Mr. Ranjit Goswami, the then Superintending Engineer, PWD (NH Works) and Mr. Nirmal Nunisa, the then Executive Engineer, PWD (NH Works) and Nextenders (India) Pvt. Limited, stating inter alia that the PWD (N.H.) had issued the Information For Bid (IFB) dated 16.12.2013, in connection with collection of tolls from Gangadhar Bridge and Koliabhomora Bridge. It is alleged in the complaint that the complainant had submitted bid for both the bridges by way of E-tender as well as manual submission. It is stated that in respect of Koliabhomora Bridge, he was invited to attend at the time of opening of the financial bid on 05.02.2014 but his technical bid in respect of Gangadhar Bridge was rejected. The complainant suspected

foul play in rejection of his technical bid in respect of Gangadhar Bridge and the same was unreasonable and he believed that the petitioner company in collusion with officials of the PWD (N.H.) had manipulated the E-portal of the tender and committed forgery in the E-tenders.

After registration of the Complaint Case No.466<sup>C</sup>/2014, the learned Judicial Magistrate, First Class, Kamrup at Guwahati, by the order dated 18.08.2014, directed the SSP, CID, Assam to register a case and submit F/F after completion of investigation. Accordingly, the CID, Assam had registered the CID P.S. Case No.13/2014, under Section 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000, against the petitioner company along with the Chief Engineer, Superintending Engineer and Executive Engineer of the PWD (NH), Assam.

**4.** Being highly aggrieved by lodging of the Complaint Case No.466<sup>C</sup>/2014, the learned Judicial Magistrate, First Class, Kamrup at Guwahati, followed by registration of CID P.S. Case No.13/2014, under Section 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000, the petitioners have preferred the present petitions, inter alia, amongst others, on the following grounds:-

- (i) For that the Complaint Case No.466<sup>C</sup>/2014, pending before the learned Judicial Magistrate, First Class, Kamrup at Guwahati does not disclose any cognizable offence u/s.409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000 in as much as the issue raised in the Complaint Case has already been decided by the Hon'ble High Court in its judgment and order dated 25.03.2014, passed in WP(C) Nos.871/14, 872/14 and 873/14 and the judgment and order dated 25.07.2014, passed in W.A. Nos.113/14, 118/14 and 122/14 and therefore, the proceeding of the Complaint Case is liable to be set aside and quashed.
- (ii) For that the ingredients of offence u/s.409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000 in the Complaint Case No.466<sup>C</sup>/2014 in as much as, if the complaint petition is read as a whole the same clearly reveals a misuse of process of law in as much as the possibility of manipulation of E-tendering system

in PWD of the Govt. of Assam is technically not possible, as per the report dated 16.4.11 given by the Director and Professor, Department of Computer Science and Engineering, IIT, Guwahati and therefore the proceeding of Complaint Case No.466<sup>C</sup>/2014 along with the CID P.S. Case No.13/2014 pending before the learned Judicial Magistrate, First Class, Kamrup at Guwahati is liable to be set aside and quashed.

(iii) For that circumstances under which the respondent No.2 has filed a Complaint Case No.466<sup>C</sup>/2014 and the learned Court below after taking cognizance of the same u/s.409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000, by an order dated 18.2.2014 directed to register a case and subsequent registration of CID P.S. Case No.13/2014 u/s.409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000, against the petitioners is exfacie, illegal and in violation of the provision of law in as much as the allegation leveled against the petitioners are false and baseless as the same does not constitute a cognizable offence and the complaint case has been filed only to frustrate the E-tendering process after declaring respondent No.2 as technically non-responsive bidder and therefore the Complaint Case No.466<sup>C</sup>/2014 is liable to be set aside and quashed.

(d) For that the petitioners respectfully submits that the allegation in the Complaint Case has also been raised in the writ petition before the Hon'ble High Court being numbered as WP(C) Nos.872/14 and same has been duly deliberated upon by the learned Single Judge by the judgment and order dated 25.3.14 at Annexure-4, above while rejecting the contention so raised and same having been duly upheld by the Division Bench in the Writ Appeal No.122/14, as stated above, the action on the part of the respondent No.2 in filing the Complaint Case in reference after rejection of his tender on technical ground and therefore taking recourse to the writ proceeding on the same allegation clearly shows that the respondent No.2 misuses the process of the Court to ventilate their grievances against the petitioners who have validly and legally rejected his technical bid, which has been upheld by the Hon'ble High Court as stated above.

- (e) For that the contents of the Complaint Case and the judgment passed in WP(C) Nos.872/14 and Writ Appeal No.122/14 is taken into consideration, the same does not make out a case of Section 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000.
- (f) For that, the order dated 18.02.14, passed by the learned Judicial Magistrate, First Class, Kamrup, Guwahati, directing to register a case by CID is on the face of the order without any application of mind and on this ground itself the order dated 18.2.14 passed by the learned Judicial Magistrate, First Class, Kamrup at Guwahati and Complaint Case No.466<sup>C</sup>/2014 is liable to be set aside and quashed.
- (g) For that, in any view of the matter in the facts and circumstances of the case, the Complaint Case No.466<sup>C</sup>/2014 u/s.409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000 pending before the learned Court of Judicial Magistrate First Class, Kamrup at Guwahati and the CID P.S. Case No.13/2014 u/s.409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000, against the petitioners is liable to be set aside and quashed as there is no ingredients of Section 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000 if the complaint is read as a whole.

**5.** Mr. B.D. Das, learned Senior Counsel appearing for the petitioners submits that the petitioner No.3 - Nripendra Nath Deka has already suffered demise and the petitioner No.2 - Ranjit Goswami and the petitioner No.3 - Nirmal Nunisa have already retired from their service. Further Mr. Das submits that the case has been filed with *mala-fide* intention and none of the ingredients of the offence under Sections 409/420/468/471 of the IPC is attracted here-in-this case and it is a clear example of abuse of the process of the Court, in view of the fact that the petitioner has preferred one Writ Petition before this Court on 17.02.2014, and the same was dismissed by a Single Bench of this Court and thereafter the petitioner has preferred a Writ Appeal before this Court and the same was also dismissed. Thereafter the petitioner has preferred one Special Leave Petition before the Hon'ble Supreme Court and the same also came to be dismissed and the Hon'ble Supreme Court had imposed a cost of Rs.5 lacs upon the complainant of this case, vide order dated 30.10.2014, in I.A. 1/2014, in

Special Leave to Appeal (C) No.20399/2014 and since the question that has been put in the FIR has already been adjudicated by all the Forums and since the report of the IIT, Guwahati, indicates that the software used by the Assam State PWD for E-tendering cannot be manipulated so that a bid submitted electronically by a bidder is changed without such a change being detected. As such the case of the present petitioner clearly covered by the decision of the Hon'ble Supreme Court in the case of **State of Haryana and Others vs. Ch. Bhajan Lal and Others**, reported in **1992 Supp (1) SCC 335** in paragraph 102, and therefore, Mr. Das contended to dismiss the petition.

**6.** On the other hand, Mr. P.S. Lahkar, learned Addl. P.P., Assam, appearing for the State respondent submits that the case is at the stage of investigation and the same has already been stayed by this Court.

**7.** Per contra, Mr. K. Kalita, learned counsel appearing for the respondent No.2 submits that the respondent No.2 has already submitted an application before the Superintendent of Police, CID, Assam on 28.07.2022, requesting to permit him to withdraw the case and the respondent No.2 also informed the learned conducting counsel for the petitioners that the transaction was purely commercial, and that he is not willing to pursue the case, pending before the CID and therefore, it is contended to pass appropriate order, in this regard.

**8.** Having heard the submissions of learned Advocates of both the parties, I have carefully gone through the record of Complaint Case No.466<sup>C</sup>/2014, filed before the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati and also perused the order dated 18.02.2014, passed by the learned Judicial Magistrate, First Class, Kamrup at Guwahati and also perused the case law relied by Mr. B.D. Das, learned Senior Counsel for the petitioners. I am also perused the request letter filed by the complainant before the Superintendent of Police, CID, Assam and also the letter addressed to the learned conducting counsel for the petitioners.

**9.** A bare perusal of the Complaint, dated 17.02.2014, indicates that the complainant had participated in the tender process initiated by the respondent No.1 in connection with collection of tolls at Gangadhar Bridge in the State of Assam and his bid was rejected by the

State respondent No.1, on the ground that his technical bid was found wrong. Thereafter, the petitioner has filed one Writ Petition before this Court, being numbered as the WP(C) No.872/2014 and the same came to be dismissed vide judgment and order dated 25.03.2014. Thereafter the petitioner had preferred one Writ Appeal being Writ Appeal No.122/2014, which came to be dismissed, vide judgment and order dated 25.07.2014. Further, it appears that thereafter the petitioner preferred one Special Leave of Appeal with one Miscellaneous Application before the Hon'ble Supreme Court, being I.A. 1/2014, in Special Leave to Appeal (C) No.20399/2014 and the same also came to be dismissed, vide order dated 30.10.2014 and further the Hon'ble Supreme Court was pleased to impose a cost of Rs.5 lacs upon the complainant/respondent No.2 for wasting the valuable time of the High Court and also of the Supreme Court and utilizing the legal process for extraneous purpose.

**10.** A careful perusal of the allegation made in the complaint reveals that the respondent No.2 was forced to believe that the petitioner No.1 Mr. Nripendra Nath Deka, the then Chief Engineer, PWD (NH Works), the petitioner No.2 Ranjit Goswami, the then Superintending Engineer, PWD (NH Works) and the petitioner No.3 Nirmal Nunisa, the then Executive Engineer, PWD (NH Works) as well as Nextenders (India) Pvt. Limited, manipulated the e-portal of the PWD and have committed forgery in the e-tenders of the complainant along with others and the same is part of the larger conspiracy on their part, in order to facilitate the bids of other contractors, which amounts to commission of offence under Sections 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000.

**11.** However, the report submitted by the Director of IIT, Guwahati, pursuant to the order of this Court in WP(C) No.1484/2011, indicates that the software used by the Assam State PWD for E-tendering, cannot be manipulated so that a bid submitted electronically by a bidder is changed without such a change being detected. Further, it appears that the issue raised in the Complaint Case No.466<sup>C</sup>/2014, was substantially the issue in the WP(C) No.872/2014, filed before this Court and a learned Single Judge of this court has already adjudicated the same and ruled out any such manipulation in the Tender Process, and also, the same received

judicial imprimatur of a Division Bench of this court in the Writ Appeal No.122/2014, filed before this Court. In the Writ Appeal the Division Bench of this court has observed that as under:-

“29. Keeping in mind the legal position as noticed above, we are of the view that the decision making process adopted by PWD while rejecting the technical bids of the appellants as non-responsive for the grounds mentioned and referred to in paragraph 19 above cannot be termed as arbitrary, unreasonable or discriminatory. There is also no allegation of male fade against any official of PWD. If the PWD authorities have decided to strictly adhere to the terms and conditions of tender, no fault can be found with such an approach. ....”.

It is also worth mentioning in this context that against the judgment of the Writ Appeal, the petitioner approached the Hon’ble Supreme Court, which of-course came to be dismissed on withdrawal, entailing a cost of Rs.5 lacs.

**12.** In view of above, the belief of the complainant/respondent No.2, that accused Nos.1, 2 and 3 (the petitioner Nos.1, 2 and 3 of the Criminal Petition No.722/2014), in collusion with the accused No.4 (the petitioner of the Criminal Petition No.768/2014), have committed forgery in the e-tender of the complainant along with others, by hatching a conspiracy with other officials to facilitate the bid of certain other contractors, and as alleged by him, in the Complaint Case, which is annexed with the petition as Annexure-8, appears to be unfounded and the same fails to made out even a prima facie case under Section 409/420/468/471 of the IPC, read with Section 65/66 of the I.T. Act, 2000. It is to be mentioned here that the Hon’ble Supreme Court in its order dated 30.10.2014, in I.A. No.1/2014 arising out of Special Leave to Appeal (C) No.20399/2014 (Prabir Kalita vs. State of Assam and others) has categorically held that the petitioner/complainant was in no position to make good his offer of Rs.4.85 crores, and the entire effort made by him before the High Court and even before this Court was to somehow question the process of award of the contract on a fake and wholly exaggerated figure which he know cannot be made good by him. It is further observed that -

it is in that view not unreasonable to hold that the petitioner had utilized the legal process for an extraneous purpose, for all we know that the award of contract in favour of respondent No.7 may have been assailed only with a view to arm-twist the said respondent to part with consideration outside the Court.

**13.** It is to be mentioned here that in paragraph No.102, in the case of **Bhajan Lal (supra)** Hon'ble Supreme Court has held 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 exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 guide 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 F.I.R. do not disclose a cognizable offence, justifying an investi[1]gation 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 265 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.**

**14.** In view of the observation, so made by the Hon'ble Supreme Court in I.A. No.1/2014 arising out of Special Leave to Appeal (C) No.20399/2014 (Prabir Kalita vs. State of Assam and others) and by this Court in WP(C) No.872/2014 and in Writ Appeal No.122/2014, and in view of the observation made in the case **Bhajan Lal (supra)** specially in point No 1 of paragraph No.102, as discussed herein above, and also considering the materials available on the record, specially paragraph 9 of the Complaint Petition, this Court is of the view that the allegations made therein, even if taken at their face value, fails to disclose even a prima facie case against the two petitioners in Criminal Petition No.722/2014 and the petitioner of Criminal Petition No.768/2014.

**15.** It is to be noted here that the complainant/respondent No.2 has made one request to the Superintendent of Police, CID, Assam on 28.07.2022, for allowing him to withdraw the FIR of CID P.S. Case No.13/2014 and he also intimated his lawyer in the High Court to appraise this Court that he is not willing to pursue the CID P.S. Case No.13/2014 and also the Complaint Case No.466<sup>C</sup>/2014, pending in the Court of learned Judicial Magistrate, First Class, Kamrup (M) at Guwahati.

**16.** The above being the factual position, this Court left with no other option but to record concurrence to the submissions of Mr. B.D. Das, learned Senior Counsel for the petitioners that the present case is squarely covered by the decision of Hon'ble Supreme Court in the case of **Bhajan Lal and Others (Supra)**, in paragraph No.102.1 and 102.5 and in that view of the matter, this Court is of the view that the order dated 18.02.2014, passed by the learned Judicial Magistrate, First Class, Kamrup (M) at Guwahati in Complaint Case No.466<sup>C</sup>/2014, failed to withstand the test of correctness and accordingly the same deserved to be quashed.

**17.** In the result, I find sufficient merit in these petitions, and accordingly, the same are allowed. The impugned order, dated 18.02.2014, passed by the learned Judicial Magistrate, First Class, Kamrup (M) at Guwahati in Complaint Case No.466<sup>C</sup>/2014 and the FIR of CID P.S. Case No.13/2014 stands quashed.

**18.** The parties have to bear their own costs.

**JUDGE**

**Comparing Assistant**