

GAHC010022122023



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

Case No. : Crl.Pet./117/2023

AVISHEK CHOUDHURY AND 2 ORS.

S/O- LATE K. MANDAL, R/O- ARATI PLAZA, FLAT NO. 3C, P.S. CHANDMARI,
GUWAHATI-781038, DIST. KAMRUP(M), ASSAM

2: SHIKHA TALUKDAR

W/O- AVISHEK CHOUDHURY

R/O- ARATI PLAZA

FLAT NO. 3C

P.S. CHANDMARI

GUWAHATI-781038

DIST. KAMRUP(M)

ASSAM

3: MINA KUMARI DAS

W/O- SRI PRASANNA DAS

R/O- NAOJAN GAON

NEAR CINE HOTEL

P.S. SIVASAGAR

DIST. SIVASAGAR

ASSAM

PIN- 785650

VERSUS

THE STATE OF ASSAM AND ANR.

REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:JITENDRA KUMAR JAIN

S/O- LATE BIMAL KUMAR JAIN

4TH FLOOR

AVANTIKA NILOY

ULUBARI BAZAR ROAD

GUWAHATI-781007

DIST. KAMRUP(M)

ASSA

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : PP, ASSAM

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. M.K. Choudhury,
Senior Advocate.

For the Respondents : Mr. A.M. Bora,
Senior Advocate.

Date of Hearing : 25.07.2023.

Date of Judgment : 09.08.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. M.K. Choudhury, the learned senior counsel appearing for the petitioners. Also heard Mr. A.M. Bora, the learned senior counsel representing the respondent no.2. Mr. P. Borthakur, learned Addl. Public Prosecutor represents the State of Assam (respondent no.1).

2. This is an application under Section 482 of the CrPC praying for quashing the proceedings of PRC Case No.2657/2022 arising out of Paltan Bazar P.S. Case No.455/2014 under Sections 120-B/420/406 of the Indian Penal Code.

3. The informant Jitendra Kr. Jain, Smti. Sithal Jain, Avishek Choudhury, Smti. Sikha Talukdar and Meena Kumari Das are the Directors of M/S. Saroj Realtors and Developers Pvt. Ltd. On 24.05.2013, the aforesaid Directors had entered into a memorandum of understanding whereby

they agreed that the Bank Account of the Company shall be operated jointly by the informant and Avishek Choudhury. It was also agreed that Smti Meena Kumari Das would resign from the Company within next two months. After execution of the memorandum of understanding, the informant had pumped large investment in the project of the Company at Borbari.

4. Subsequently, in the first part of March, 2014, the informant discovered that the cheques received from the customers were singlehandedly honoured by Sri Avishek Choudhury. It was also discovered that the money received from customers of the Borbari project, were not deposited in the Bank Account maintained at IDBI Bank. Rather, those were deposited in the personal Bank Account of Avishek Choudhury maintained with State Bank of India.

5. The informant has alleged that the petitioners Avishek Choudhury, Sikha Talukdar and Meena Kumari Das had cheated him and also misappropriated the money belonging to the Company. According to the informant, when he confronted with Avishek Choudhury, he was threatened with dire consequences.

6. The informant further alleged that as agreed by them, Meena Kumari Das did not resign from the Company.

7. The present petitioners have admitted the memorandum of understanding dated 24.05.2013. But they did not answer the allegations brought against them.

8. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

9. In *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 the Supreme Court has laid down the guidelines as to when the power under Section 482 of the CrPC can be exercised by the High Court. Paragraph 102 of the judgment reads 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."

10. The power to quash proceeding under Section 482 of the CrPC is exercised when there are no materials to proceed against the petitioners even if the allegations in the complaint are *prima facie* accepted as true. In the present case, the allegations in the FIR constitute a *prima facie* case against the petitioners. This Court is of the opinion that this is not a fit case for exercising the power under Section 482 of the CrPC. Therefore, the present petition is found to be devoid of merit and stands dismissed accordingly.

The criminal petition is disposed of.

JUDGE

Comparing Assistant