

GAHC010024232022



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

Case No. : Crl.Pet./94/2022

MD. GULNOOR KHAN
S/O LATE BALU KHAN
R/O DOKMOKA
P.S. DOKMAKA
DIST. KARBI ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SRI RAKESH MISHRA
S/O LATE B.B. MISHRA
R/O HOUSE O. 64
ASHRAM ROAD
SOUTH SARANIA
GUWAHATI-7

Advocate for the Petitioner : MR. S BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 05-06-2023

Heard Mr. S Bora, learned counsel for the petitioner. Also heard Mr. KK Das, learned Additional Public Prosecutor, appearing for the State

respondent No. 1.

2. The petitioner has preferred an application under Section 482 of the Cr.PC for quashing of the criminal proceeding of PRC No. 1269/2020, pending in the court of the learned Chief Judicial Magistrate, Kamrup (Metro), at Guwahati arising out of Paltanbazar P.S. Case No. 977/2019, under Sections 420/406 of IPC.

3. The case of the petitioner is that the petitioner being the Proprietor of M/s Pathan Hardware, Dokmoka, resident of the said area under Karbi Anglong Police Station approached before the respondent No. 2 for money to complete the road work from Doboka to Karbi Anglong. On good faith, he agreed and the petitioner took a sum of Rs. 27,00,000/- from the respondent No. 2 during the period from February, 2017 to July 2017 and gave assurance to return back the money within one year with appropriate profit. The said amount was transferred through NEFT, bank transfer and in cash. After receipt of money, the petitioner returned a sum of Rs. 5,00,000/- through RTGS on 05.08.2017 as part payment. Thereafter, the petitioner started to avoid the respondent No. 2 and on several visits to Dokmoka, he refused to meet the respondent No. 2 to discuss the issue. Subsequently, a cheque of Rs. 22,00,000/- was issued by the petitioner in favour of the respondent No. 2, which was dishonoured. The respondent No. 2 also alleged in the FIR that the petitioner cheated him and committed criminal breach of trust and dishonesty and fraudulently misappropriated the said amount.

4. On receipt of the FIR, a case was registered vide Paltanbazar P.S. Case No. 977/2019, under Sections 420/406 of the IPC and subsequently after completion of investigation, charge-sheet was submitted against the present petitioner under the said Sections of law. The case is now pending in the court

of the learned Chief Judicial Magistrate, Kamrup (Metro).

5. Subsequently, the respondent No. 2 also filed another complaint case before the learned Chief Judicial Magistrate, Kamrup (Metro) against the present petitioner under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as the "NI Act") vide CR Case No. 4436^c/2019, pending in the court of the learned Judicial Magistrate First Class, Kamrup (Metro).

6. The learned counsel for the petitioner has submitted that for an offence punishable under Section 138 of the NI Act, one cannot approach the Police by filing an FIR and rather take the recourse under Section 142 of the NI Act and for such offence, the Officer-In-Charge of the Police Station should not have entertained the FIR itself. A complaint before the Officer-In-Charge of a Police Station is an abuse of the process of the Court and therefore, all subsequent fallout pursuant to lodging of FIR for dishonouring of cheque is bad in law.

7. It is also the submission of the learned counsel for the petitioner that continuation of the parallel criminal proceeding, i.e., PRC No. 1269/2020, under Sections 420/406 of IPC, pending in the court of the learned Chief Judicial Magistrate, Kamrup (Metro) is not sustainable in law, which amounts to abuse of the process of the Court. As such, the proceeding of PRC No. 1269/2020, pending in the court of the learned Chief Judicial Magistrate, Kamrup (Metro) is liable to be quashed. In support of his submission, learned counsel for the petitioner has placed reliance on the following case law:-

Kamakhya Mahanta & Anr. Vs State of Meghalaya & Anr., reported in **2008 (4) GLT 336**.

8. None appears on behalf of the respondent No. 2. However, the learned Additional Public Prosecutor has submitted that the allegation against the

present petitioner is that he took a loan of Rs. 27,00,000/- out of which he paid Rs. 5,00,000/- to the respondent No. 2. Subsequently, a cheque was issued amounting to Rs. 22,00,000/-, which was bounced. The respondent No. 2 has filed two cases on the same issue, one is PRC No. 1269/2020 and another being CR Case No. 4436^c/2019. The learned Additional Public Prosecutor has fairly submitted that for bouncing of cheque, the petitioner is to face a criminal proceeding under Section 138 of the NI Act. The other case, i.e., PRC No. 1269/2020 cannot be proceeded against the present petitioner and he has got no objection if the said case pending in the court of the learned Chief Judicial Magistrate, Kamrup (Metro) is quashed.

9. I have considered the submissions of the learned counsels for the parties. I have also gone through the scanned copy of the records of PRC No. 1269/2020 and CR Case No. 4436^c/2019.

10. It appears from both the scanned records that on the same issue, the respondent No. 2 lodged an FIR before the Paltanbazar Police Station alleging that cheque was issued by the petitioner in his favour amounting to Rs. 22,00,000/-, which was dishonoured by the Bank and accordingly, case was registered vide Paltanbazar P.S. Case No. 977/2019 under Sections 420/406 of the IPC and on the same issue, the respondent No. 2 also filed a complaint case before the learned Chief Judicial Magistrate, Kamrup (Metro) of the NI Act.

11. In the case of ***State of Haryana vs. Bhajan Lal***, reported in **1992 Supp(1) SCC 335**, the Hon'ble Apex Court has held as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under [Article 226](#) or the inherent powers under [Section 482](#), [Cr.P.C.](#) Can be exercised by the High Court 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 complainant/respondent No.2, 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 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 specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings 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. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

12. Reverting back to the present case, a perusal of the FIR in the Paltanbazar P.S. Case No. 977/2019 does not lead to the inference that the petitioner could be proceeded against criminally for forging the cheque in question. In the present case, the cheque in question has been issued by the petitioner. So far as the bouncing of the cheque is concerned, the respondent No. 2 has already filed a complaint case under Section 138 of the NI Act. As I have already stated that the petitioner took a loan of Rs. 27,00,000/- out of which Rs. 5,00,000/- has been paid. Due to non-payment of the remaining amount of money, the dispute has arisen between the petitioner and the respondent No. 2. Subsequently, the petitioner has issued a cheque in favour of the respondent No. 2 amounting to Rs. 22,00,000/- and on presentation, the cheque has been bounced. It is not a case where allegation of forgery has been made against the petitioner. However, from the allegation levelled in the FIR, no case for proceeding against the petitioner is made out under Sections 420/406 of the IPC.

13. It is discussed in the cited case by the learned counsel for the petitioner, in ***Kamakhya Mahanta (supra)*** that when there is a special enactment, i.e., NI Act to deal with the cases related to cheque being dishonored and if a special procedure is prescribed under the special enactment, the procedure shall have to be followed and not the one prescribed by the Cr.PC.

14. In the result, the petition is allowed.

15. The proceeding of PRC No. 1269/2020, pending in the court of the learned Chief Judicial Magistrate, Kamrup (Metro), at Guwahati arising out of Paltanbazar P.S. Case No. 977/2019, under Sections 420/406 of IPC is quashed.

JUDGE

Comparing Assistant