

GAHC010044872022



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

Case No. : Crl.Pet./198/2022

PINAK PANI ROY
S/O LT. PANNA KANTI ROY
R/O HOUSE NO. 40, BASISTHA NAGAR ROAD, NATUN BAZAR, P.S.
BASISTHA, GUWAHATI, 781029, KAMRUP (M), ASSAM.

VERSUS

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

2:SRI BHUSHAN KR. JAIN
D/O LATE JHUMARMAL JAIN
R/O VILL- C/O GANGH AND SONS
LAKHIGALI
T.R. FHOOKAN ROAD

FANCY BAZAR
UNDER PANBAZAR POLICE STATION
GUWAHATI-781001
IN THE DISTRICT OF KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. M K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

24.08.2023

1. Heard Mr. M. K. Das, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam and Ms. P. Baruah, learned counsel for the respondent No. 2.
2. This present application is filed under Section 482 of the Code of Criminal Procedure, 1973 for setting aside/ quashing of the Charge-sheet being C.S. No. 137/2021, dated 20.12.2021 and order dated 24.12.2021 passed in connection with P.R. Case No. 3077/2021, whereby the learned Court of Sub Divisional Judicial Magistrate No. II, Kamrup (M) at Guwahati, has taken cognizance under Sections 420/406 of the I.P.C. against the petitioner and another person namely Panna Deb.
3. The scanned copies of the LCR as well as the Case Diary have been produced and perused by this Court.
4. The prosecution was launched on the basis of an F.I.R., by one Bhushan Kr. Jain, proprietor of Gangh & Sons before the ACP, Panbazar inter alia alleging that one Mr. Panna Deb, owner of Shiv Ganesh Traders, Shima Plaza, 4th Floor, Ulubari, Guwahati and permanent resident of Silchar, was having business relations with so many people around Guwahati since last 3-4 months and the informant has come to know that he is a fraud and defrauded so many business concerns including the firm of the informant to

the tune of Rs. 1,35,78,188/-.

5. It is further averred in the aforesaid FIR that the said accused has removed sign board of his business firm and changed and kept on changing his residential cum official address as well as mobile numbers. It was also stated in the FIR that the informant reserved his right to invoke Section 138 of the N. I. Act, in due course of time.
6. After the investigation, the Investigating Officer submitted charge sheet which is under challenged in this proceeding and in the charge-sheet, the present petitioner though was not named in the F.I.R., was charged as accused and was sent for trial.
7. The Case Diary reveals that the statement of the present petitioner was recorded by the Investigating Authority. The petitioner before the Investigating Authority stated that he is the proprietor of one M/s Actreum Construction, Paltanbazar and he knows the prime accused named in the F.I.R. i.e. Panna Deb since August, 2019. He also stated that he is having business relation with the firm of Panna Deb and he has also given on rent his godown to the said Panna Deb. He further stated before the Investigating Officer that three numbers of Cheque totaling an amount Rs. 65,00,000/- were given by the accused Panna Deb to him in connection with rent of godown as well as certain supply of rod etc. made by him to the aforesaid Panna Deb.
8. The petitioner has also annexed the copy of the rent agreement as well as the purchase order along with the present petition.
9. The Case Diary further reveals that the present petitioner has been

arrayed as accused only on the ground that the investigating authority suspects that the present petitioner might be involved with the prime accused Panna Deb for the reason that the cheque issued in respect of present petitioner was honoured whereas cheque issued in respect of other persons were dishonoured. Except the aforesaid honour of cheque issued by the prime accused in favour of the petitioner, no materials is available on record to make any case or involvement of the present petitioner under Section 406/420 of IPC.

10. 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.

11. 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.

12. 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.
13. 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.
14. 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 case to constitute an offence under section 406/420 IPC inasmuch as no material except the clearance of the cheque issued to the petitioner by accused Panna Deb, no other material are available in the case diary to implicate the present petitioner in the case. 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. In fact, there is no such allegation by the informant against the present accused either in F.I.R. or in his statement recorded under Section 161 of Cr.P.C.

15. From the aforesaid, it is absolutely clear that no case against the petitioner is made out and the learned trial Court while taking cognizance has failed to apply its mind to the materials available on record and accordingly, this Court is of the view that no case is made out against the present petitioner to proceed in the case. Accordingly, the present criminal petition stands allowed by setting aside the order dated 24.12.2021 passed in connection with P.R. Case No. 3077/2021, whereby the learned Court of Sub Divisional Judicial Magistrate No. II, Kamrup (M) at Guwahati, had taken cognizance under Sections 420/406 of the I.P.C. against the petitioner.
16. It is however, made clear that the present order shall not be treated as anything on merit connecting and involving of prime accused Panna Deb as he has not preferred any appeal before this Court.
17. Accordingly, the Charge-sheet being C.S. No. 137/2021, dated 20.12.2021 and order dated 24.12.2021 passed in connection with P.R. Case No. 3077/2021, whereby the learned Court of Sub Divisional Judicial Magistrate No. II, Kamrup (M) at Guwahati, has taken cognizance under Sections 420/406 of the I.P.C. is set aside and quashed so far the same relates to the present petitioner only.
18. This criminal petition stands disposed of.

JUDGE

Comparing Assistant