

GAHC010168892023



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

Case No. : Crl.Pet./782/2023

M/S TOSHANI PREMIUM DIGITAL SERVICES PVT LTD AND 2 ORS
A COMPANY REGISTERED UNDER COMPANIES ACT, 2013 REGISTERED
OFFICE 3RD FLOOR E2,
KALKAJI, SOUTH EAST DELHI, NEW DELHI-110019.

2: MR AKASH KUMAR
MANAGING DIRECTOR OF M/S TOSHANI PREMIUM DIGITAL SERVICES
PVT. LTD. R/O PT-62/63
3RDFLOOR
SANSAD KUNJ
KALKAJI
EXTENSION
KALKAJI
NEW DELHI- 110019

3: MR. HEMANT
GENERAL MANAGER
HEAD (KIOSK) AT M/S TOSHANI PREMIUM DIGITAL SERVICES
PVT. LTD. R/O G-1153
INDIA BULLS CENTRUM PARK
DWARKA EXPRESSWAY
SECTOR 103
GURGOAN
HARYANA
12200

VERSUS

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

2:MAMATA CHOUDHARY
W/O ANGAD CHOUDHARY
DOLAIGAON

WARD NO. 14 OF BONGAIGAON TOWN
BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MR. D BANERJEE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

12.12.2023

Heard Mr. A. Banerjee, learned counsel for the petitioner and also Ms. S. Jahan, learned Additional Public Prosecutor, Assam and Mr. D. Chakraborty, learned counsel for the respondent No.2.

2. The petitioners preferred an application under Section 482 Cr.P.C. for quashing of a complaint vide No. CR. 20/2023 under Section 406/420/34 of IPC pending in the court of learned Additional Chief Judicial Magistrate, Bongaigaon.

3. The brief facts of the case is that the petitioner No.1 is a premier payment solution provider empowering banks and merchant aggregators with a comprehensive array of technology-led cash and digital payment solutions. The petitioner No.1 provides various services including the Kiosk, in which a customer can withdraw cash through any debit card and can transfer money through Adhar Card irrespective of their bank. The innovative feature of the Kiosk is that they are operated by private individuals with the help of petitioner No.1. The petitioner No.1 has over 655 franchisees of the Kiosk all over India.

The respondent No.2, being interested in obtaining the franchisee of the petitioner No.1 approached to one Bandana Das and Gautam Roy (accused Nos. 5 and 6 who were the distributors of the petitioner No.1). The respondent No.2, after obtaining all the relevant information and payment of a non-refundable fee of Rs.3,16,240/- entered into a Franchise Agreement with the petitioner No.1. The lock-in period of the Franchise Agreement is two years, while the tenure is of 9 years. It is pertinent to mention that the Franchise Agreement contains an Arbitration Clause and, in accordance, every dispute shall be referred to Arbitration. In pursuant to the terms of the Franchise Agreement, the petitioner No.1 dispatched the Kiosk machine to the respondent No.2 in the year 2021. Subsequently, the Kiosk was installed in the premises of respondent No.2 and became operational. The respondent No.2 operated the Kiosk machine from December 2021 till September, 2022. The petitioners further stated that through the supplied Kiosk, transactions worth Rs.37,57,623/- were done. During the said period the petitioner No.1 paid Rs.13,188/- as profit to the respondent No.2.

4. The respondent No.2 in the month of September, 2022 informed the officials of the petitioner No.1 that he has forgotten the password of the said Kiosk and requested assistance from the petitioner No.1. According to the learned counsel for the petitioner, the Kiosk is a highly secure machine in which cash is kept in and as such, a safe is provided in the Kiosk, which is protected by a password. It is further stated in the petition that the petitioner No.1 in an effort to assist respondent No.2 in getting the safe opened, sent an engineer from the nearest hub to the respondent No.2's premises but the respondent No.2 denied the entry to the engineer. Subsequently, the petitioner No.1 contacted Kiosk manufacturer regarding the forgotten password and it was

determined that only way to open the safe was to cut it since the Kiosk is a highly secure machine. The manufacturer quoted a service charge of Rs. 50,000/- for cutting the safe. Accordingly, the petitioner No.1 informed the respondent No.2 about the charges but the respondent No.2 out rightly refused to pay the said amount. Though the petitioner No.1 attempted to resolve this matter amicably by contacting respondent No.2 but the respondent No.2 did not respond to any of the emails sent by the petitioner No.1.

5. The petitioner No.1 in his petition also alleged that due to non-operational Kiosk machine he was incurring huge losses. Both the petitioner No.1 and respondent No.2 earn when the Kiosk was operational. Further, the petitioner No.1 has spent a significant amount while acquiring Kiosks, which costs about Rs.7,00,000/- per Kiosk which was then provided to Franchisees at a subsidized cost, not to mention the other costs of Software and Maintenance.

6. The petitioners further stated that in June, 2023 they received summons from the court of Additional Chief Judicial Magistrate, Bongaigaon for institution of the case vide CR No. 20/2023. Subsequently, the Court issued summons against the present petitioners without holding any police inquiry.

7. The learned counsel for the petitioners has submitted that the complaint case filed by the respondent No.2 is totally frivolous and is motivated in nature so as to pressurize the petitioner No.1 to get refund of Franchise money. It is further submitted that the respondent No.2 in her complaint has concealed that they had forgotten the password of the Kiosk due to which the Kiosk was not working. Further, the respondent No.2 has concealed that they have done transactions worth Rs.37,57,623/- and earned a profit of Rs.13,118/- through the said Kiosk.

8. It is also the submission of the learned counsel for the petitioner that the allegation made by the respondent No.2 is totally a civil in nature and the respondent No.2 is trying to disguise a civil dispute as a criminal offence. In a catena of judgments passed by the Hon'ble Supreme Court that in order to prove an offence under Section 420 IPC there should be an intention from the very inception to cheat a person. But in the present factual scenario, there is no intention on the part of the petitioners to defraud or cheat the respondent No.2. Furthermore, the petitioners have been acting in good faith and in accordance with the terms of the Franchise agreement. If the intention of the petitioners was to cheat the respondent No.2, they would not have delivered the Kiosk machine or made payments of profits to the respondent No.2.

9. Learned counsel for the petitioner also contended that the respondent No.2 has falsely implicated the managing directors of the company i.e. the petitioner Nos. 2 and 3 as accused in the complaint. There is no specific allegation against the petitioner Nos.2 and 3 in their private capacity. Furthermore, the Indian Penal Code does not contain any provision regarding the vicarious liability of the Directors cum officials when the accused is the company. In support of his submissions, learned counsel for the petitioner has placed reliance on the following case laws:

(1) Usha Chakraborty and another vs State of West Bengal and another, reported in 2023 SCC online SC 90

(ii) Vesa Holdings Private Limited and another vs State of Kerala and others, reported in (2015) 8 SCC 293

(iii) Maksud Saiyed Vs State of Gujarat and others reported in (2008) 5 SCC 668

10. In response, the learned counsel for the respondent No.2 has argued that

the learned counsel for the petitioner has prayed to quash the proceeding basically on two points i.e. the case is of civil nature and there is an arbitral clause in the agreement that if any dispute arises that will be taken up by the Arbitral Court. It is an admitted fact that the respondent No.2 purchased the Kiosk machine from the petitioners which was not functioning after 8 to 9 months of installation of the same in the premises of the respondent No.2. In spite of repeated requests to repair the same, the petitioners did not send any person or engineer to repair such defects in the machine. Whatever stated by the learned counsel for the petitioner that the respondent No.2 has forgotten the password of the Kiosk machine is totally false.

11. Learned Additional Public Prosecutor has submitted that though the High court has inherent power and its scope is very wide but it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sought of reminder to the High Court that they are not merely courts of law but also courts of justice and posses inherent powers to remove injustice. In a proceeding under Section 482 Cr.P.C., the High Court will not enter into any finding of facts; such power can be exercised to secure ends of justice and to prevent abuse of process of any court.

12. By referring the case of Hon'ble Supreme Court in Kamal Shivaji Pokarnekar Vs State of Maharashtra and others reported in (2019) 14 SCC 350, the learned counsel for the respondent No.2 pointed out that in the said case it was held that the High Court ought not to have set aside the order passed by the trial court, issuing summons to the respondents . A perusal of the complaint discloses *prima facie* offences that are alleged against the respondents. At the initial stage of issuance of process it is not open to the court to stifle the proceedings by entering into the merits of the contention made on behalf of the

accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are *prima facie* made out in the complaint, the criminal proceeding shall not be interdicted.

13. In support of his contention, learned counsel for the respondent No.2 also cited some other case laws.

(i) Medchl Chemicals & Pharma (P) Ltd vs Biological E. Ltd and others reported in (2000) 3 SCC 269

(ii) Kamaladevi Agarwal Vs State of W.B. and others reported in (2002) 1 SCC 555.

(iii) Padal Venkata Rama Reddy Alias Ramu Vs Kovvuri Satyanarayana Reddy and others reported in (2011) 12 SCC 437

14. I have considered the submission of learned counsel for the parties. I have also perused the scanned copy of the record.

15. As we know that the power possessed by the High Court under Section 482 Cr.P.C. are very wide and very plentitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise this power is based on some principles. Of course, there is no hard and fast rule can be laid down in regard to cases in which the High court has exercised its extra ordinary jurisdiction of quashing the proceeding at any stage. However, the High Court being the higher court of the State, should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy. More so, when the evidence has not been collected and produced before the court and the issues involved whether factual or legal, are of magnitude and cannot be seen in true perspective without sufficient material. At this stage, we are not

prepared to enter into the merits of the case on the basis of the contentions urged by the respective counsel.

16. In a catena of decisions, Hon'ble Supreme Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 Cr.P.C. in a routine manner. It has been consistently held that the power under Section 482 Cr.P.C. must be exercised sparingly with circumspection and of the rarest of rare cases. Exercise of inherent power under Section 482 Cr.P.C. is not the rule but it is exceptional. The exception is applied only when it is brought to the notice of the court that miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when *prima facie* it appears to court that the trial would likely to end in acquittal. In other words, the inherent power of the court under Section 482 Cr.P.C. can be invoked by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice.

17. In *State of Bihar v. Murad Ali Khan* [(1988) 4 SCC 655: the Hon'ble Supreme Court held that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

18. In the case of [Indian Oil Corpn. v. NEPC India Ltd.](#), (2006) 6 SCC 736 : it was held that:

“12. The principles relating to exercise of jurisdiction under [Section 482](#) of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few-- [Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre](#)[(1988) 1 SCC 692 : 1988 SCC (Cri) 234], [State of Haryana v. Bhajan Lal](#)[1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], [Rupan Deol Bajaj v. Kanwar Pal Singh Gill](#) [(1995) 6

SCC 194 : 1995 SCC (Cri) 1059], [Central Bureau of Investigation v. Duncans Agro Industries Ltd.](#) [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], [State of Bihar v. Rajendra Agrawalla](#) [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], [Rajesh Bajaj v. State NCT of Delhi](#) [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], [Medchl Chemicals & Pharma \(P\) Ltd. v. Biological E. Ltd.](#) [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], [Hridaya Ranjan Prasad Verma v. State of Bihar](#) [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], [M. Krishnan v. Vijay Singh](#) [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque](#) [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. [In G. Sagar Suri v. State of U.P.](#) [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8) "It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under [Section 482](#) of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

16. Bearing in mind the above principles which have been laid down, this Court is of the view that the offence in which the petitioners have been charged at this stage cannot be said to be civil in nature without examining any witness before the trial court. It cannot also be said at this stage of trial that the ingredients of Section 420 IPC is not made out as there was no deception on the part of the petitioners since inception i.e. from the beginning of the agreement of transaction regarding Kiosk machine and which can be proved only in trial.

17. In view of the above, the criminal petition is dismissed.

18. Stay order, if any, be vacated accordingly.

19. The learned trial court is directed to proceed with the case in accordance with law. Parties are directed to appear before the trial court along with their respective counsels on 19.01.2024.

20. The criminal petition is disposed of accordingly at the admission stage.

JUDGE

Comparing Assistant