

GAHC010170292023



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

Case No. : Crl.Pet./788/2023

MD. ALAMGIR ALAM
S/O- ISMAIL SHEIKH, PERMANENT RESIDENT OF MADHUNARAYANPUR,
P.S. RAJMAHAL, DIST. SAHEBGANJ, JHARKAND AND PRESENTLY
RESIDING AT C/O- MDR FRUITS COMPANY, ADABARI, BYE LANE NO. 13,
JOYMATI NAGAR, NEAR NEW HYUNDAI SHOWROOM, GUWAHATI-781012,
P.S. JALUKBARI, DIST. KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MUJAHIDUL ISLAM
S/O- LATE TAIMUR SHEIKH
ADABARI
BYE LANE NO. 13
JOYMATI NAGAR
NEAR NEW HYUNDAI SHOWROOM
GUWAHATI-781012
P.S. JALUKBARI
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MR S RAHMAN

Advocate for the Respondent : PP, ASSAM

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

20.09.2023.

Heard Mr. S. Rahman, learned counsel for the petitioner; also heard Mr. D. Das, learned Addl. P.P. for the State respondent No. 1 and Ms. R. Kour, learned counsel for the respondent No. 2.

2. This application, under Section 482 of the Cr.P.C., is preferred by applicant, namely, Md. Alamgir Alam, for quashing the FIR of Jalukbari PS Case No. 431/2023, under Sections 420/406 of the IPC.

3. The background facts, leading to filing of the present petition, is briefly stated as under:-

“The petitioner-Md. Alamgir Alam is the nephew of respondent No. 2, Md. Mujahidul Islam. The petitioner was staying with the respondent No.2 and was helping him in his business. On 24.07.2023, at about 1.10 pm. the respondent No.2 had entrusted the petitioner and one Arun Roy, to deposit a sum of Rs. 11,00,000/- at ICICI Bank, Adabari, After sometime Arun Roy came to the shop and informed the respondent No.2 that Alamgir Alam scolded him and sent him back. Then the informant went to the bank and came to know that no money has been deposited in his account. He also could not trace out Alamgir Alam and found his mobile phone switch off. Then he apprehend that Alamgir Alom had misappropriated the amount. Then, on the same day i.e. on 24.07.2023, the respondent No.2 had lodged an FIR against the petitioner. Upon the said FIR of Jalukbari PS Case No. 431/2023, under Sections 420/406 of the IPC has been registered and investigation is being carried out.

Thereafter, the matter has been settled between the parties and the petitioner had returned the amount and the respondent No.2 had acknowledged the same. As the matter has been settled amicably, and as the case is still in the stage of investigation, the petitioner has approached this court by filing the present petition."

4. Mr. Rahman, learned counsel for the petitioner submits that the petitioner is the nephew of the respondent No.2 and living in the same house and working under him. Mr. Rahman further submits that the petitioner had already returned the amount to the respondent No.2 and to that effect, one money receipt has also been issued by the respondent No.2 and the respondent No.2 and the petitioner have also sworn an affidavit and submitted the same in the court today and as such, Mr. Rahman has contended for quashing the FIR of Jalukbari PS Case No. 431/2023, under Sections 420/406 of the IPC.

5. Ms. R. Kour, learned counsel for the respondent No. 2 also adopted the submissions so advanced by Mr. Rahman and she acknowledged the receipt of the amount.

6. On the other hand, Mr. D. Das, learned Addl. P.P. has also fairly submits that since the matter has already been settled between the parties and the learned counsel for the respondent No.2 has also acknowledged the receipt of the amount, the matter may be disposed of accordingly.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the affidavit, dated 01.08.2023, and the money receipt submitted before the court today.

8. It appears that the affidavit has been sworn by the respondent No.2 and the

petitioner jointly, wherein it is stated that the petitioner has already returned the amount and as such, the respondent has no grievance against the petitioner and he has also no objection in the event of exoneration of the petitioner from all the charges.

9. It is to be noted here that while dealing with the issue of quashing of FIR in non-compoundable offences, Hon'ble Supreme Court in the case of **Gian Singh vs. State of Punjab & Anr.**, reported in **[2012] 10 SCC 303** held as under :-

“The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under [Section 320](#) of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In

this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

10. In the instant case, it appears from the money receipt, which is produced before this Court that the respondent No.2 had already received an amount of Rs. 2,00,000/- from the petitioner and further, it appears from the affidavit, dated 01.08.2023, that the matter has already been settled between the parties and the informant has no grievance against the petitioner. It is also being submitted at the bar that the petitioner is the nephew of the informant and he is working under the respondent and living in the same house. Even if the case is allowed to continue then also no purpose will be served as the respondent No.2 is unlikely to depose against the petitioner on account of amicable settlement of the matter. In the case, it would be an abuse of the process of the court, as held in the case of **Gian Singh [Supra]**.

11. In view of above discussions and findings and also drawing premises from the ratio laid down in the case of **Gian Singh [Supra]**, this Court is of the view that end of justice will be meted out if the petition is allowed.

12. In the result, the petition stands allowed. The FIR of Jalukbari PS Case No.

431/2023, under Sections 420/406 of the IPC, stands quashed. In terms of above, this Criminal Petition stands disposed of.

13. A copy of the affidavit, produced before this Court, shall be part of the record.

JUDGE

Comparing Assistant