

GAHC010230962022



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

Case No. : Crl.Pet./1165/2022

SHIKHA DEY
W/O SRI DURGESH RANJAN DEY
R/O VILL- NAKHOLA
P.O. AND P.S. JAGIROAD,
DIST. MORIGAON, ASSAM

VERSUS

ABHIJIT INTERNATIONAL
SITUATED AT 4TH FLOOR, V.K. TRADE
CENTER, OPPOSITE DOWNTOWN HOSPITAL, G.S. ROAD,
GUWAHATI-781022
DIST. KAMRUP (M), ASSAM
REP. BY ITS MANAGER
SRI SATYANARAYAN JHA
S/O LATE JIBACH JHA

Advocate for the Petitioner : MR. D P BORAH, Id. Adv.

Advocate for the Respondent : MR. N ANIX SINGH , Id. Adv.

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 17.07.2023
Date of Judgment & Order : 25.08.2023

JUDGMENT & ORDER (CAV)

Heard Mr. D. P. Borah, learned counsel for the petitioner. Also heard Mr. N. Anix Singh, learned counsel for the respondent.

2. This petition is filed under Section 482 of the code of Criminal Procedure, 1973, *read with* Sections 401/397, challenging the legality and maintainability of the proceedings of C. R. Case No. 1825/2021, registered under Section 138 of the Negotiable Instruments Act (in short N.I. Act), 1881, which is pending before the Court of the learned Additional Chief Judicial Magistrate, Kamrup(M), Assam.

3. The brief facts leading to the filing of the present petition is that;

3.1. The petitioner is the Managing Director of a private limited company, named as "Chu-Khumur Wine Pvt. Ltd." which is the holder of an IMFL "OFF" Shop license. The respondent is a Partnership Firm, which carries the business of Wholesale of Liquor (IMFL & Beer). During the course of business, the Company of the petitioner used to purchase liquor from the respondent. While purchasing liquor from the respondent, the petitioner always used to transfer the amount to the respondent by way of the RTGS/NEFT bank transactions, and only after transfer of the amount, the respondent Firm used to issue transport pass and sent the liquor to the petitioner. The petitioner never purchased liquor from the respondent on credit. As a matter of fact, the petitioner issued a letter

dated 10.07.2007 to the respondent *inter alia* requesting not to issue any IMFL/Beer transport pass against any excise permit in respect of the Company of the petitioner on credit. It was further intimated by the said letter that, if the same were issued on credit basis, for that the company of the petitioner would not be liable.

3.2. The business transaction of the petitioner with the respondent continued till June, 2020, and after that the petitioner Company had not purchased liquor from the respondent. However, the petitioner received a Legal Notice dated 29.04.2021 only on 12.08.2021 issued by the Advocate of the respondent addressed to 'Smti. Sikha Dey' by stating that in pursuance to liquidate some legally enforceable debt, the said 'Sikha Dey' issued a cheque dated 23.03.2021, bearing No.334960 amounting to Rs.5,95,006/-(Rupees Five lakhs ninety-five thousand six) only drawn on Corporation Bank, Jagiroad. Thereafter, when the respondent presented the said cheque in his account at HDFC Bank Ltd. Khanapara, for collection of the amount, the said cheque returned unpaid due to "Other Reasons (Invalid Account)". Accordingly, by the said Notice served under Section 138 of the N.I. Act, 1881, the respondent called upon the petitioner to make payment of the previously mentioned cheque amount within 15 days from the date of receipt of the said notice. The said notice was sent by registered post vide Article No.RS563935476IN. The petitioner had received the notice on 09.08.2021, though the notice was issued on 29.04.2021.

3.3. On receiving the said notice, the petitioner sent a reply dated 19.08.2021, through his Advocate denying all the statements made in the notice dated 29.04.2021 and stated that she had not issued the cheque bearing No.334960 dated 23.03.2021, drawn on Corporation Bank, Jagiroad Branch. Further, it was

also stated that the petitioner is the Director of Chu-Khumur Wine (P) Ltd, which is a Company incorporated under the Companies Act, and not a Proprietor of Chukhumur Wine (P) Ltd. It is further stated, that the petitioner does not have any account in the Corporation Bank. More so, the notice dated 29.04.2021 was addressed to 'Smti. Sikha Dey', Proprietor of ChuKhumur Wine (P) Ltd., whereas, the name of the present petitioner is "Smti. Shikha Dey" and not 'Sikha Dey'. It is further categorically stated in the reply that, if someone has issued the aforesaid cheque in the name of the petitioner, in that case the seal and signature of the petitioner has been forged by someone with ulterior motive and the petitioner is no way connected with the issuance of the said cheque. Thereafter, she filed an FIR before the Officer-in-Charge of the Jagiroad Police Station on 19.08.2021 in respect of the aforesaid matter by enclosing a copy of the aforesaid pleader Notice dated 29.04.2021.

3.4. The petitioner had received a notice dated 27.07.2022 issued by the Court of the learned Additional Chief Judicial Magistrate, Kamrup(M), Guwahati, whereby asking the petitioner to appear before the said Court on 22.11.2022, in connection with C.R. Case No.1825/2021, under Section 138 of the N.I. Act, 1881. After receipt of the said Notice, the petitioner obtained the certified copy of the said C.R. Case No. 1825/2021 along with the order sheet of the case. Upon perusal of the complaint petition, it is found that the said case has been filed prior to receipt of the pleader notice inasmuch as the case was filed on 06.07.2021, whereas, the petitioner received the notice only on 09.08.2021. It has been alleged that the petitioner had issued a cheque No.334960 dated 23.03.2021, amounting to Rs.5,95,006/-(Rupees Five lakhs ninety-five thousand six) only to be drawn on Corporation Bank, Jagiroad Branch in favour of the respondent Firm against the outstanding dues. The petitioner states that her

Company has not purchased liquor from the respondent after June, 2020 and in letter dated 10.07.2007 requested the respondent not to issue any IMFL/Beer transport pass against any excise permit in respect of the Company of the petitioner on credit. It is further stated, that the C.R. Case No.1825/2021, has been filed by the respondent, by violating the provision of Section 138 of the N.I. Act, 1881, inasmuch as the petitioner received the notice issued by the Advocate of the respondent on 09.08.2021 whereas the respondent filed the complaint case on 06.07.2021 i.e. much prior to the date of receipt of the notice by the petitioner.

3.5. In this regard, the petitioner had submitted an application dated 03.11.2022 before the concerned Postmaster, Jhargaon seeking for delivery report of the said Article No.RS563935476IN. Accordingly, the Postmaster of the concerned Jhargaon P.O. had issued a certificate dated 04.11.2022, certifying that he had delivered the same on 09.08.2021. The petitioner also states that she had not issued any cheque in favour of the respondent. The name of the petitioner is "Shikha Dey" and she is the Managing Director of Chu-Khumur Wine (P) Ltd. However, the cheque had been issued in the name of the "Sikha Dey" showing her to be the Proprietor of Chukhumur Wine (P) Ltd. Neither the petitioner has issued the cheque nor she has any account in the Corporation Bank, Jagiroad Branch. The seal and signature of the petitioner had been forged by the person (s) to use it for unlawful gain.

4. Being highly aggrieved, this instant petition has been preferred by the petitioner mainly on the following grounds:-

4.1. The petitioner received the notice issued by the Advocate of the respondent only on 09.08.2021, whereas, the respondent filed the complaint

case on 06.07.2021, i.e. much prior to the date of receipt of the notice by the petitioner. Hence, the entire proceedings of the C.R. Case No. 1825/2021, pending before the Court of learned Additional CJM, Kamrup(M), Guwahati as well as the order of issuance of notice dated 27.07.2021 are liable to be set aside and quashed.

4.2. The name of the petitioner is "Shikha Dey" and she is the Managing Director of Chu-Khumur Wine (P) Ltd., however, the cheque, which was issued in favour of the respondent firm issued by the name of "Sikha Dey" showing her to be the Proprietor of Chukhumur Wine (P) Ltd. Neither the petitioner had issued the cheque nor does she has any account in the Corporation Bank, Jagiroad Branch. The seal and signature of the petitioner has been forged by the persons to use it for their unlawful gain.

4.3. The petitioner vide letter dated 10.07.2007 requested the respondent not to issue any IMFL/Beer transport pass against any excise permit in respect of the Company of the petitioner on credit. Further, there was no any outstanding amount to be paid by the petitioner to the respondent.

4.4. Before taking cognizance in any case under N.I. Act, 1881, it is necessary to examine as to whether the pre-requisites before filing the case have been complied with or not as per the provisions. However, the learned Trial Court without considering the same had taken cognizance and issued notice to the petitioner in a mechanical manner. Thus, the entire proceedings in C.R. Case No.1825/2021, is illegal, unjustified, perverse and are liable to be set aside and quashed.

5. Mr. D. P. Borah, learned counsel for the petitioner has submitted that the

petitioner has never made any signature in the name of "Shikha Dey". He also submitted that the petitioner is "Shikha Dey" and not 'Sikha Dey' as mentioned in all the documents as alleged by the respondent. In respect of the plea, the petitioner submitted in Annexure-10, wherein, it has been clearly mentioned that the name of the petitioner as "Shikha Dey" and she is a Managing Director of Chu-Khumur Wine(P) Ltd. More so, it is very much evident that the petitioner has not maintained any account in Corporation Bank, Jagiroad Branch. Thus, the petitioner has not issued any cheque. More so, after receipt of the Legal Notice from the respondent side, the petitioner immediately filed the FIR before the Officer-in-Charge, Jagiroad, Police Station alleging that someone has forged her signature and issued the cheque in question with fake signature indicating as 'Sikha Dey' showing to be given by the present petitioner.

6. In the same time, it is also submitted that the petitioner put her signature in the letter dated 10.07.2021 as "Shikha Dey" but in the cheque dated 23.03.2021, her signature has been shown as "Sikha Dey". Further, it is seen, from the documents submitted by the petitioner that she is not a proprietor of Chukhumur Wine(P) Ltd., however, she is the Managing Director of the Chu-Khumur Wine (P) Ltd, which is incorporating under the Company Act. She also has drawn the attention of this Court that the cheque was dishonored due to "Other Reasons (Invalid Account)".

7. Further, it is submitted by the learned counsel for the petitioner that the Legal Notice was issued by the respondent on 29.04.2021 only on 09.08.2021 she received the same. Accordingly, she filed her reply on 19.08.2021. He also submitted that there is a violation of the N.I. Act at the time of filing of the case, as the petitioner had received the notice on 09.08.2021, but prior to

receipt of the notice, the case has been instituted before the Court of learned CJM, Kamrup (M) on 06.07.2021, which is violation of the provision of law. Hence, the said Criminal proceeding is not at all maintainable and is liable to be set aside and quashed.

8. In this context, Mr. N. Anix Singh, learned counsel for the respondent has submitted that, in pursuance to the discharge of liability, the petitioner had issued a cheque bearing No.334960 drawn of Corporation Bank, Jagiroad amounting to Rs.5,95,006/-(Rupees Five lakhs ninety-five thousand six) only. However, when the said cheque was deposited by the respondent firm, the same was dishonored showing as "Other Reasons (Invalid Account)". Thereafter only, the respondent firm had issued Legal Notice under Section 138 of N.I. Act, 1881 on 29.04.2021, and accordingly, the said notice was delivered to the petitioner on 25.05.2021, which has been clearly demonstrated by the track report, though the petitioner had stated that she had received the same only on 09.08.2021.

9. He also submitted that the delivery report dated 04.11.2022, which is annexed by the petitioner as Annexure-8 is a mere handwritten note and the same, in no manner be construed as the delivery report of the notice dated 29.04.2021 which was been sent by the registered post vide Article No.RS563935476IN.

10. It is further submitted that the respondent firm had not violated the N.I. Act, as the case was filed on 06.07.2021 which was very much within the time frame inasmuch as the notice was received on 25.05.2021, and after expiry of 15 days and within the period of 30 days, the C.R. Case No. 1825/2021 was filed. Hence, the cognizance taken by the learned Trial court is not illegal.

11. So after hearing the submission made by the learned Advocate of both sides and perusing the case records, it is seen that the Bank had returned the cheque, which was dishonored due to the "Other Reasons(Invalid Account)". The petitioner has submitted that she has not issued any cheque to the respondent firm. More so, it is seen that in the cheque in question, the petitioner has put her seal and signature as Sikha Dey, although her name is "Shikha Dey". Further, other documents of the petitioner also indicate the name of the petitioner as "Shikha Dey" and not 'Sikha Dey'. More so, the seal and signature are also seems to be different even after looking through the bare eyes.

12. It is an admitted fact that, the cheque was dishonored on 23.03.2021, and thereafter, the pleader notice was issued on 29.04.2021, however, it is seen that the notice was received by the petitioner only on 09.08.2021. Thus, without making any enquiry regarding the delivery of notice, the case was instituted on 06.07.2021, which is much prior to the delivery of the notice or receipt of notice by the petitioner. Further, it is also seen that after receipt of the said Legal Notice the petitioner lodged an FIR before the Officer-in-Charge, Jagiroad Police station alleging *inter alia* that notice was issued in her name and cheque was shown to be issued by her by forging her signature and also issued in a fake name. The matter is still pending for investigation but without making any enquiry, the learned CJM, Kamrup(M) had passed by the cognizance order and notice was issued to the present petitioner.

13. Section 138 of the N.I. Act, 1881 is read as under:-

“Section 138: Dishonour of cheque for insufficiency, etc., of funds in the account,-Where any cheque drawn by a person on an account maintained by him

with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for ²[a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both."

14. However, in the instant case, it is evident that the petitioner did not maintain any account in Corporation Bank, Jagiroad Branch, though the respondent firm has claimed that the cheque in question was issued by the petitioner to be drawn in Corporation Bank, Jagiroad Branch.

15. In view of above observations, I find that the aforementioned matter is still pending for investigation and the learned Trial Court had passed the cognizance order without making any enquiry. More so, it is seen that case is also filed at the premature stage before delivery/receipt of notice by the petitioner. As per the track consignment report the items was shown to be delivered on 25.05.2021 only at Jhargaon BO and not to the addressee and from the report of the post master the item was delivered only on 09.08.2021.

16. Accordingly, the proceedings of the C. R. Case No. 1825/2021, registered under Section 138 of the Negotiable Instruments Act, 1881, which is pending before the Court of the learned Additional Chief Judicial Magistrate, Kamrup(M), Assam, along with the order of issuance of notice dated 27.07.2022 stands set aside and quashed.

17. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant