

GAHC010251842022



IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram &
Arunachal Pradesh)
Crl. Pet 1248/2022

Muchiar Rahman Mallik
S/O Lt. Nur Mohammad Mallik,
Drandha, Sixmile, House No. 15,
P.O. Khanapara, P.S. Dispur,
Dist. Kamrup (M), Assam, 781022

..... Petitioner

Versus

THE STATE OF ASSAM AND 2 ORS.
THROUGH THE PP, ASSAM, GUWAHATI-1.
2:SAKHAWAT HUSSAIN @ SEKHAWAT HUSSAIN
S/O LT. MAHMUD ALI
R/O R.P. ROAD
GANESHGURI
HOUSE NO. 19900
NEAR UCO BANK
P.O. AND P.S. DISPUR
DIST. KAMRUP (M)
GUWAHATI
ASSAM
PIN- 781005
3:IMRAN HUSSAIN
S/O SHAKWAT HUSSAIN
R/O R.P. ROAD
GANESHGURI
HOUSE NO. 1900
NEAR UCO BANK
P.O. AND P.S. DISPUR
DIST. KAMRUP (M)

GUWAHATI
ASSAM
PIN-78100

..... Respondents

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioner : Mr. A. Islam
Advocate for the Respondent : Mr. B. Sarma, Addl. P.P.
Mr. S. Hussain, res Nos. 2 & 3
Date of Hearing : 27.07.2023
Date of Judgment : **27.07.2023.**

JUDGMENT & ORDER (Oral)

1. Heard Mr. A. Islam, learned counsel for the petitioner as well as Mr. B. Sarma, learned Addl. P.P. for the respondent no. 1. Also heard Mr. S. Hussain, learned counsel for the respondent nos. 2 and 3.
2. The petitioner has filed this application under Section 482 Cr.P.C with prayer for quashing of the impugned FIR dated 02.11.2014 registered as Dispur P.S. Case No. 2372/2014, charge-sheet No. 290/2021 dated 11.09.2021, the order of cognizance dated 09.05.2022 passed in PRC Case No. 1353/2022 by the learned Judicial Magistrate 1st Class, Kamrup (M) Guwahati.
3. The FIR unfolds that the respondent no. 2 had taken on rent two rooms for business purpose from the petitioner and an amount of Rs. 14.50 Lakhs was paid by the respondent no. 2 to the petitioner and a money agreement was executed. The petitioner however, did not hand over the rooms to the respondent no. 2 as agreed and the same rooms were let out on

rent to another tenant. On the basis of this FIR, the Dispur P.S. 2372/2024 was registered against the petitioner. The deed of agreement is marked as Annexure-1. It is submitted that the respondent no. 2, is the informant and the respondent no. 3 is the informant's father. When the respondent no. 3 failed to pay the entire amount of consideration of Rs. 50 Lakhs within one year, the petitioner who was facing financial difficulties to continue the construction of the building let out the room to another tenant and this fact was in the knowledge of the respondent.

4. However, the respondents filed the Title Suit being the T.S. No. 355/2014 with prayer for specific performance of contract and recovery of possession and permanent injunction. The Title suit was also withdrawn later by the respondent. During the continuation of the title suit, the present FIR was lodged against the petitioner. Now, the petitioner and the respondent have jointly filed an agreement of settlement, which is marked as Annexure-4. The respondents have acknowledged the money returned by the petitioner through Annexure-4, money receipt. Rs. 14.50 Lakhs was returned by the petitioner to the respondents. At present, the respondents are also not willing to proceed with the present case being T.S. 355/2014. Both the parties have amicably settled their disputes. Possibility of conviction appears to be remote and bleak, and further proceedings will indeed be an abuse of the process of the Court. It has been observed by the Hon'ble Supreme Court in ***Parbatbhai Aahir @ Parbatbhai Bhimsingbhai Karmur and Ors. Vs. State of Gujarat and Another*** in ***Criminal Appeal No. 1723/2017***

“ 15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as

murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

5. Reverting back to this case, it is held that this is also a case of financial dispute, which appears to be pre-dominantly private in nature. Parties have buried their hatchet and have

settled their dispute

6. In view of my foregoing discussions, the FIR dated 02.11.2014 registered as Dispur P.S. Case No. 2372/2014, charge-sheet No. 290/2021 dated 11.09.2021, the order of cognizance dated 09.05.2022 passed in PRC Case No. 1353/2022 is hereby quashed and set aside.

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

JUDGE

Comparing Assistant