

GAHC010266032022



IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram &
Arunachal Pradesh)
Crl. Pet. 1330/2022

Sasha Dhar Barman
S/O Sibu Barman A Nd Proprietor Of B.S. Fashion Tailoring,
Opposite Aayakar Bhawan, G.S. Road,
Guwahati, In The District Of Kamrup (Meto), Assam And
Permanent Resident Of Schoolpara, Kamakyaguri,
Kumargram
Jalpaiguri-736202, In The District Of Jalpaiguri, West Bengal

..... **Petitioner**

Versus

The State Of Assam And Anr
Rep. By The Pp, Assam
2:Smti. Gita Singh
W/O Prahlad Singh
R/O House No. 03
Panchabora Path
Kacharibasti
Gmch Link Road
Ganeshguri
In The District Of Kamrup (Metro)
Assam

..... **Respondents**
BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioner : Mr. M.K. Borah
Advocate for the Respondent : Mr. R.K. Mour (res no. 2)
Mr. K.K. Das, Addl. P.P.
Date of Hearing : 02.05.2023
Date of Judgment : **28.07.2023.**

JUDGMENT & ORDER (CAV)

1. Heard Mr. M.K. Borah, learned counsel for the petitioner as well as Mr. R.K. Mour, learned counsel for the respondent no. 2. Also heard Mr. K.K. Das, learned Addl. P.P. for the respondent no. 1.
2. The petitioner has filed this application under Section 482 of Cr.P.C. for setting aside and quashing the C.R. Case No. 1779/2019 pending in the Court of learned Judicial magistrate, First Class, Kamrup (M), Guwahati.
3. The respondent no. 2 has filed a complaint under Section 138 of Negotiable Instrument, Act, 1881 (N.I. Act for short) before the Chief Judicial Magistrate, Kamrup (M) and the case was transferred to the Judicial Magistrate 1st Class, Kamrup (M). Vide order dated 19.06.2019, learned trial Court passed an order for adjournment, as the respondent No. 2/complainant filed the petition for adjournment of the case and the next date was fixed on 15.07.2019. Another petition was filed by complainant with prayer for condonation of delay of 16 days. On 17.09.2029, the learned trial Court issued notice to the present petitioner.
4. It is averred that vide order dated 10.09.2021, the delay of 16 days was condoned and the next date was fixed on 06.012.2021 for initial deposition of the complainant but till date i.e. 19.12.2022, no deposition was recorded. The respondent no. 2 was absent on different

dates, but on 18.08.2022, the trial court took cognizance of the matter against the petitioner under Section 138 of the Negotiable Instrument Act, 1881 and issued summons to the petitioner by fixing the date on 23.11.2022. The petitioner appeared on 23.11.2022 and vakalatnama was filed, but the respondent no. 2 was again absent and the next date was fixed for appearance of the petitioner on 19.01.2023. The petitioner also received the certified copies of the case records on 12.12.2022.

5. The allegation against the petitioner is that he is the Proprietor of "B.S. Fashion Tailoring" situated opposite Aayakar Bhawan, G.S. Road, Guwahati. He has approached the respondent no. 2 for financial assistance of Rs. 1,00,000/- and promised to repay the financial assistance with interest @ 6% per month. As both the parties are family friends, the respondent no. 2 agreed to provide financial assistance to the petitioner. On 12.07.2017, the respondent no. 2 gave Rs. 1,00,000/- to the petitioner for an interest @ 6% per month and the petitioner executed one note on 13.07.2017 to repay the financial assistance. When on repeated requests, the petitioner failed to repay the financial assistance, the respondent no. 2 after intimidating the petitioner deposited the cheque No. 195670 dated 04.12.2019 for Rs. 1,00,000/- drawn on the State Bank of India, Christian Basti, G.S. Road. This cheque was issued by the petitioner to repay the financial assistance which was provided by the respondent no. 2. On 27.02.2019, the respondent no. 2 was informed that payment was stopped in favour of the respondent no. 2. The respondent no. 2 then issued a legal notice on 02.03.2019. The petition under Section 138 N.I. Act registered as C.R. Case No. 1779/2019 could not be filed during the period mandated by the N.I. Act because the documents and records of the respondent no. 2 was misplaced in the chamber of the engaged counsel, causing a delay of 16 days in filing the petition.

6. The petitioner is highly aggrieved and dissatisfied on the grounds that he issued the cheque on 04.12.2018, but it is mentioned in the petition of the proceeding of C.R. Case No. 1779/2019 that the cheque was issued on 04.12.2019, instead of 04.12.2018. This fact was ignored by the trial Court. It is averred that the pleading has vitiated the entire proceeding and cognizance was taken against him. The impugned proceedings cannot continue in the eye of law and is liable to be set aside and quashed.

7. The learned counsel for the respondent has submitted that this typographical error can be easily rectified and the application was filed by respondent no. 2 for correction of the date from 04.12.2019 to 04.12.2018.

8. On the contrary, the learned counsel for the petitioner laid stress in his argument that there is no procedure to amend a typographical error. The petitioner has relied on decision of this Court in ***WP(C) No. 238 (SH) of 2009*** and on the decision of ***High Court of judicature at Jammu & Kashmir and Ladakh in WP (Crl) No. 507/2022 (Javaid Ahmed Bhat Vs. UT of J&K and another)***.

9. The respondent has relied on decision of this Court in ***Mirnal Kumar Sarma Son of Late Kandarpa Kumar Sarma Vs. M/S Jain Agencies*** reported in ***2018 0 Supreme (Gau) 203***.

10. It has been held by this Court in ***Shri Jashor Ali Vs. State of Meghalaya (Gauhati) (Shillong Bench)*** reported in ***2011(1) NEJ 370***, that:-

“The writ petition was apparently not even revised before it was filed. There is absolutely no consideration for grammatically correct English. This Court has been left to imagine for itself for understanding the facts of the case of the petitioner. This is not the first

time. The time has come for this Court to take drastic step for ensuring proper and careful drafting of pleadings in this Court."

With the above observation, the writ petition was not entertained.

11. It has been held in *Javaid Ahmed Bhat (supra)* that:-

"7) When it came to the matter of applying mind to the issue whether to subject the petitioner to suffer preventive detention upon the basis of the dossier so served by the Superintendent of Police, Handwara before him, the District Magistrate Kupwara seems to have relieved himself from labour and effort of independent application of mind to the dossier case put up by the Superintendent of Police Kupwara and instead the District Magistrate Kupwara simply carried out re-typing of the dossier in the name of showing so called application of mind. So much so, even the typographical error/s and omission of the dossier was/were imported and repeated as it is by the District Magistrate Kupwara. In this regard, reference is made to a date given in the dossier which is 01.03.2009 vis-à-vis an incident which is then shown to be of 01.03.2019 on the basis of which FIR no. 08/2019 under section 302/307 Ranbir Penal Code, 7/27 of the Arms Act, 1959 and section 19 of the Unlawful Activities (Prevention) Act, 1967 was registered with the Police Station Karalgund. Same error of date by showing FIR no.08/2019 with respect to incident of 01.03.2009 came to be typed by the District Magistrate Kupwara in the grounds of detention to the extent of not even mentioning the date of FIR no. 08/2019 because the date of registration of said FIR was not there in the dossier and so is the case with the grounds of detention. This is the best exhibit of the mechanical application of mind on the part of the District Magistrate Kupwara in issuing the preventive detention order against the petitioner as if the matter of depriving a

person of his personal liberty, which being a fundamental right under the Constitution of India, is a matter of pleasure for the authority seeking preventive detention and the authority granting the said preventive detention. Discretion to issue non bailable warrant instead of bailable warrant against an accused in a criminal case would have much better quality of application of mind on the part of a magistrate issuing the process than the District Magistrate Kupwara in issuing the preventive detention order in reference against the petitioner.

8) Thus, this Court finds the detention order of the petitioner ex-facie bad in the eyes of law and as such is held illegal deserving to be quashed. The impugned detention order no. 17-DMK/PSA of 2022 dated 24.06.2022 of the petitioner passed by the District Magistrate Kupwara and its consequential confirmation is hereby quashed and the petitioner be restored to his personal liberty with immediate effect in the context of his detention by reference to the detention order hereby quashed."

12. It has been held by this Court in *Mirnal Kumar Sarma (supra)* that:-

" In this view of the matter every Court whether civil or criminal in the absence of any express provision to the contrary, shall be deemed to possess an inherent power in its very constitution, all such powers are necessary in discharging administration of justice. The Courts exist for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand. Even though inherent power saved under Section 482, Criminal Procedure Code is only in favour of High Courts, the subordinates criminal Courts are also not powerless to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provision provided there is no prohibition and no illegality or

miscarriage or justice is involved.

12. In view of the principle laid down as discussed above the trial court have such inherent power to allow to insert the name of the proper person representing the firm for the interest of justice and the petitioner being the proprietor of the said firm cannot be permitted to take the shield of no service of notice under section 138 NI Act in the given background of the case. It is also noted that the accused petitioner immediately after appearing before the court could have assailed the aforesaid aspect, as indicated in the order itself that the matter may be reviewed on appearance of the accused person, if the situation so warranted. But the accused petitioner neither take the opportunity to assail the order nor he denied that he is not the proprietor of the said firm.

13. Resultantly, I found no any merit in the petition and hence dismissed.”

13. Reverting back to this case, it is held that the order dated 18.08.2022 reflects that a prima facie case was found against the petitioner after the initial deposition of the respondent no. 2 was filed and, thus, cognizance was taken. The delay was condoned vide order dated 10.09.2021. The Annexure-4, is the cheque dated 04.12.2018 and the date of the cheque has been mentioned erroneously by the respondent no. 2, which is marked as Annexure-3. The scanned copies of the LCR reveals that the initial deposition, which clearly reflects that the error apparent that the date of the cheque No. 195670 is mentioned as 04.12.2019. This error was however overlooked, but the deposition and the complaint petition clearly reveals that the petitioner obtained financial assistance on 12.07.2017. The return memo marked as Exhibit-3, clearly reflects that the return memo dated 27.02.2019 reflects the dishonour of the cheque marked as Exhibit-2, which is marked as Annexure-4 in this petition. It is apparent

that the typographical error of the date on the cheque has been overlooked. It is clear that the cause of action was arose on 27.02.2019.

14. I have relied on decision of this Court in *Mirnal Kumar Sarma (supra)*, wherein, it has been observed that “the trial Court has inherent power to allow to insert the name of the proper person to representing the firm for the interest of justice.” The petitioner’s prayer under Section 482 Cr.P.C cannot be considered as this stage. The evidence or the merits of the case is not discussed at this stage. It is held that a minor typographical error will not lead to abuse of the process of the Court.

15. With the above observations, this petition stands disposed of.

JUDGE

Comparing Assistant