

GAHC010268832018



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

Case No. : WP(C)/8411/2018

BIJIT RAJKHOWA
S/O AMBESWAR RAJKHOWA
R/O MELACHAKRA, JUGMAYA
PATH, SIVASAGAR, DIST. SIVASAGAR, ASSAM, PIN - 785640.

VERSUS

THE STATE OF WEST BENGAL AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF WEST
BENGAL, DEPARTMENT OF HOME (POLICE),
NABANA, 325, SARAT CHATTERJEE ROAD, SHIBPUR, HOWRAH- 711102,
KOLKATA.

2:SRI RADHA KRISHAN GUPTA
MANAGER OF M/S A A PLASTOWORLD BODAI PANCHAYAT ROAD

P.O. JUGBERIA
P.S. NEW BARRACKPORE
DIST. NORTH 24
PARGANAS

KOLKATA- 700010.

3:SRI RANJIT CHOWDHURY
S/O SRI SYAM SUNDER CHOWDHURY
PROPRIETOR
OF M/S A. A PLASTOWORLD

BODAI PANCHAYAT ROAD

P.O. JUGBERIA
P.S. NEW BARRACKPORE

DIST. NORTH 24
PARGANAS
KOLKATA- 700010.

4:M/S A.A. PLASTOWORLD
REP. BY ITS PROPRIETOR

SRI RANJIT CHOWDHURY
BODAI PANCHAYAT ROAD

P.O. JUGBERIA
P.S. NEW BARRACKPORE
DIST. NORTH 24
PARGANAS
KOLKATA- 700010.

5:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI -6

For the Petitioner(s) : Mr. S. Borthakur, Advocate.

For the Respondent(s) : Mrs. P. Bhattacharya, Advocate.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing & Judgment : 11.10.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the Petitioner for quashing the FIR dated 06.07.2018 which was registered as New Barrackpore Police Station Case No. 167/2018 under Sections 420/406/506 of the Indian Penal Code corresponding to G.R. Case No. 167/2018 against the Petitioner. The said FIR has been enclosed as Annexure –V to the writ petition. From a

perusal of the said FIR, it reveals that the Respondent No. 2 is the Manager of the Respondent No. 4 and had on behalf of the Respondent No. 3 alleged interalia that around 5 years prior to the submission of the FIR, the said Respondents had started a business with the Petitioner who is the proprietor of M/S Ambika Associates. During the course of the said business, the Private Respondents had given HDPE Geomembrane Liner of an amount of Rs. 2,46,25,523/- and there is an outstanding amount of Rs.1,03,75,523/-. It was further mentioned that against the said amount of Rs.1,03,75,523/- the Private Respondents have received 3 security cheques. However, admittedly the said security cheques were not deposited. It is further alleged in the FIR that the Petitioner herein was asked about the remaining outstanding by the Respondent Company, the Petitioner refused to pay for which the Respondent Company's condition became worst and would result in becoming insolvent. It was further alleged in the said FIR that the Petitioner had cheated another Company in the name and style of M/S JMJ Shelter of Rs. 14,00,000/- and the Petitioner had also come to Kolkata to cheat someone again. Under such circumstances, the said FIR was lodged to take stringent action against the Petitioner and to recover the remaining outstanding of Rs.1,03,75,523/- with tax invoice and confirmation of accounts from the Petitioner. The said FIR so filed was registered as New Barrackpore P.S. Case No. 167/2018 under Sections 420/406/506 of the Indian Penal Code.

2. It is the specific case of the Petitioner that a perusal of the said FIR would clearly show that no case is made out for commission of any offence, not to speak of offence under Sections 420/406/506 of the Indian Penal Code.

It is also the case of the Petitioner that this is purely a civil dispute and filing of the FIR by the Respondent No. 2 on behalf of the Respondent No. 3 was nothing but an abuse of the process of law. On the basis of the above contentions, the instant writ petition was filed on 03.12.2018.

3. This Court vide an order dated 17.12.2018 issued notice and stayed further proceedings in New Barrackpore P.S. Case No. 167/2018. The records further reveals that on the basis of the order dated 01.09.2023 of the Lawazima Court, this Court vide an order dated 29.09.2023 observed that the service upon the Respondent Nos. 2, 3 & 4 was complete. It is also relevant to take note of that there is also another report from the District Judges' Court, North Parganas, Barsat, wherein the Respondent No. 2 had duly received the notice under his signature.

4. This Court have duly perused the materials on record and have heard the learned counsels for the parties as well as Mrs. P. Bhattacharya, the learned counsel appearing on behalf of the State of West Bengal.

5. A perusal of the FIR would show that the cause of action which have been alleged was partly at Kolkata and partly at Sivasagar. Under such circumstances, in view of the judgment of the Supreme Court in the case of **Navinchandra N. Majithia Vs. State of Maharashtra** reported in (2000) 7 SCC 640, this Court has the jurisdiction under Article 226(2) of the Constitution to entertain the instant writ petition.

6. This Court further from a perusal of the FIR is of the opinion that the dispute between the Private Respondents and the Petitioner relates to certain

supplies being made by the Private Respondents to the Petitioner and the Petitioner had failed to make certain payments. Under such circumstances, the allegations made in the FIR do not constitute any offence within the ambit of Sections 420/406/506 of the Indian Penal Code. The reference to the security cheques had also no relevance taking into account that the same were not deposited to come within the ambit of an offence under the Indian Penal Code.

7. Under such circumstances, this Court is of the opinion that as from the allegations made in the FIR, no offence is made out, the filing of the First Information Report therefore to put the criminal process in motion is an abuse of the process of the Court as well as law. Accordingly, the said FIR dated 06.07.2018 which was registered as New Barrackpore Police Station Case No. 167/2018 under Sections 420/406/506 of the Indian Penal Code stands set aside and quashed.

8. With the above observations and directions, the petition stands disposed of.

JUDGE

Comparing Assistant