

GAHC030000462022



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

Case No. : Crl.Pet./1/2022

Beikrystkypacha Hlychho and Anr.
S/o Chholai Hlychho
R/o New Colony I, Saiha, Mizoram 2: Laldusaki Khawlhring
New Colony I
Saiha
Mizora

VERSUS

State of Mizoram and 5 Ors.
Aizawl, Mizoram

Advocate for the Petitioner : Mr. T Lalnunsiana

Advocate for the Respondent : Mr C Zoramchhana (P.P., Mizoram) for R1 - R5

-BEFORE-

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

29.09.2023

1. Heard Mr. T. Lalnunsiana, learned counsel for the petitioners. Also heard Mr. C. Zoramchhana, learned Public Prosecutor for the State of Mizoram. Also heard Mr. J. C. Lalnunsanga, learned counsel for the respondent No. 6/informant.

2. The present application is filed under section 482 Cr.P.C., 1973 for setting aside and quashing an FIR filed by the respondent No. 6, which was registered as Aizawl PS Case No.491/2021 under sections 406/420 IPC 1860 against the petitioners.
3. The principle of exercise of power under section 482Cr.P.C. to quash FIR and charge sheet on the basis of different pronouncement of the hon'ble apex court can be summarized in the following manner.
 - I. When the allegations made in the FIR or in a complaint is taken at their face value and accepted, it does not prima facie constitute any offence or do not make out a case against the accused. The court is to see that if the complaint/FIR is taken at their face value, no cognizable offence is made out.
 - II. Such power can also be exercised when the facts narrated are absurd and inherently improbable, or manifestly attended with malafide or with an ulterior motive.
 - III. However, while exercising its power the court is not to embark upon an enquiry as to the reliability or genuineness of the allegation made in the FIR/complaint.
 - IV. It is also well settled that such power is to be sparingly exercised and in exceptional cases, so as to avoid miscarriage of justice and also in a situation where there is abuse of process of the court.
 - V. The power under section 482 Cr.P.C being wide that while

exercising such extra ordinary power the court must be cautious and need to be very diligent.

4. Now let this court consider the factum of the present challenge based on the aforesaid principles of the law. For proper appreciation of the issue in hand the FIR is quoted herein below:

*“To,
The Officer In-charge,
Aizawl Police Station,
Aizawl, Mizoram*

Sub – First Information Report.

Sir,

Around November 2019 Beikristakypacha Hlychho, New Colony-I, Siaha said that he acquired a work at Gamon India NH-54 Package-2 from Khumtung to Keitum and I invest a sum of Rs. 74,00,000/- (seventy four lakhs). I was told to transfer the said money to M/s Zeliexhu & Sons from Mizoram Rural Bank Chandmari Branch in the name of Khawlhiring Agency, Proprietor Laldusaki, Lawngtlai, L-3. The owner of Khawlhiring Agency Laldusaki is the wife of Beikristakypacha Hlychoo. However he did not get the said work and he told us that the money given to Khawlhiring Agency is "You have deposited it, we are going to have another contract". Mr. Beikristakypacha Hlychho established Andrea Enterprise and that Andrea Enterprise got a work order from Bhartia Infra Projects Ltd on 22.7.2020 for widening & upgradation 2 lane, Aizawl- Tuipang.

Then he let me work in this contract work. I completed road making work on May, 2021. I know that BIPL has released the bill, however, Beikristakypacha Hlychho refused to pay me the said bill. That the total amount of my money along with the amount deposited previously to

Khawlhing Agency Rs. 74,00,000/- (seventy four lakhs) and my working bill under BIPL amounting Rs. 142,00,000/- (one hundred and forty two lakhs) making the full amount to Rs. 200,00,016/- (Two hundred lakhs and sixteen). I made several request to pay me the said sum of money, however, he made several excuse and did not pay me till now. I therefore, request you to take actions so that I can get my money and take actions according to law for cheating me.

Sincerely Yours

(Sd/ (ZIRSANGPUII)

W/O Zothanpuia

R/o Seling, Champhai Road"

5. From the aforesaid FIR the following facts can be ascertained
 - I. That there was an agreement between the informant and the accused for execution of some contract
 - II. In terms of the said contract the accused are required to pay some money to the informant.
 - III. It is the further case as reflected in the FIR that the FIR has been lodged for the reason that after trying her level best, the informant has failed to get her money back, then she completed the work in terms of their agreement.
6. Section 405 IPC defines the criminal breach of trust. A reading of the aforesaid provision of law, the essential ingredients of criminal breach of trust can be summarized as below:
 - A. There must be an entrustment of property or dominion over it upon

the accused.

- B. The accused upon whom such property is entrusted has dishonestly used or disposed of the property in violation of any provision of law which prescribed the mode in which such trust is to be discharged or of any contract made defining the discharge of such trust.

7. In the case of ***R K Dalmia Vs Delhi Administration*** reported in ***1963 1 SCR 253***, the Hon'ble Apex Court held that the definition as given under Section 405 Cr.P.C. does not restrict the property to be movable or immovable one and the property used in the Cr.P.C. is having a much wider sense than expression movable property. Accordingly, the Hon'ble Apex Court in ***RK Dalmia (supra)*** concluded that there is no good reason to restrict the meaning of word 'property' to movable property only when it is used without any qualification under Section 405 IPC.
8. Section 415 IPC defines cheating. The essential ingredients of cheating are deception of any person, fraudulent and dishonest inducement with intent to deliver any property or to have consent to retain any property and also an intention whereby an inducement is made to a person to do or omit to do anything which he would not or omit if he was so deceived.
9. The Hon'ble Apex Court in the case of ***Hriday Ranjan Prasad Verma Vs. State of Bihar and Anr.*** reported in ***2000 4 SCC 168*** clarified that there is a very fine line while making a distinction between mere breach of contract and cheating, which is criminal one and breach of contract. Law is by now well settled that breach of contract cannot give rise to criminal

prosecution of cheating until and unless the fraudulent or dishonest intention of cheating is made out in the complaint itself.

10. From the allegations made in the FIR, in the considered opinion of this court even the allegation are taken at their face value and accepted in entirety, do not make out any prima facie case to constitute an offence under section 406/420 IPC rather the matter is totally civil in nature and it is nothing but a claim of money due arising out of contract for execution of work between the informant and the accused and relates to contractual liability and payment of due arising out of such contract and breach of terms of contract. Further, this court is unable to find out any statement/averment or whisper, which shows that the accused was having an initial deception in mind to cheat the informant at the stage of entering into the contract/agreement.
11. This Court also perused the case diary produced which reflects that there is no material available on record and / or collected by the Investigating Authority to proceed against the petitioners for commission of the offence under Section 406/420 of IPC. What the Investigating Authority did is first, arrested the accused persons, secondly, seized their bank accounts and started enquiry about their entitlement of the bill for execution of the contract by them. The Investigating Authority has not been able to collect any materials even to remotely indicate that there was some entrustment of property or dominion over it upon the accused persons and that the accused persons have dishonestly used or disposed of such property entrusted upon them in violation of any provision of law.
12. There is also no material in the case diary to suggest any initial deception,

fraudulent and dishonest and inducement on the part of the accused persons rather from the material collected, it is clear that the case is nothing but a breach of contract.

13. Therefore, in view of the aforesaid, this court finds that no case under Section 406/420/ IPC is made out on a bare reading of the FIR as well as the materials so far collected by the Investigating Authority.
14. In view of the aforesaid the present petition stands allowed by setting aside and quashing the FIR which was registered as Aizawl PS Case No.491/2021 under sections 406/420 IPC 1860.
15. While parting with the record, it is made clear that quashing of the FIR shall not debar the informant for recovery of money, if any, by following due process available under law.

JUDGE

Comparing Assistant