

GAHC020004262023



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

Case No. : Crl. Pet./19/2023

SHRI AWANEESH CHANDRA JHA
S/O SHRI DEVENDRA KUMAR JHA,
AGED ABOUT 35 YEARS,
ADDRESS G-37, LOWER GROUND FLOOR,
GREEN PARK MAIN, NEW DELHI 110016

VERSUS

THE STATE OF NAGALAND AND ANR.
THROUGH THE OFFICER-IN-CHARGE,
SOVIMA POLICE STATION,
CHUMUKEDIMA, NAGALAND

2:SHRI KAHUTO ZHIM
S/O LATE KHEVISHE, RESIDENT OF H/NO 45, SHOKHUVI VILLAGE,
CHUMUKEDIMA, NAGALAND

Advocate for the Petitioner : L. IRALU

Advocate for the Respondent : GOVT ADV NL

Linked Case : Crl. Pet./11/2023

SHRI AWANEESH CHANDRA JAH

S/O SHRI DEVENDRA KUMAR JHA

ADDRESS G-37
LOWER GROUND FLOOR

GREEN PARK MAIN

NEW DELHI- 110016

VERSUS

THE STATE OF NAGALAND AND ANR
THROUGH THE OFFICER-IN-CHARGE

NIULAND POLICE STATION
NIULAND
NAGALAND

2:SHRI KHEKISHE AYE

(INFORMANT)

S/O HOZHETO AYE

R/O THAHEKHU VILLAGE
DIMAPUR

H/NO 333
BLOCK-5
DIMAPUR

NAGALAND
PRESENT ADDRESS PROJECT COLONY

NIULAND TOWN
NIULAND

Advocate for : L. IRALU
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND
ANR

Linked Case : CrI. Pet./10/2023

SHRI AWANEESH CHANDRA JHA

S/O SHRI DEVENDRA KUMAR JHA

ADDRESS G-37
LOWER GROUND FLOOR

GREEN PARK MAIN

NEW DELHI- 110016

VERSUS

THE STATE OF NAGALAND AND ANR
THROUGH THE OFFICER-IN-CHARGE

URBAN POLICE STATION
DIMAPUR
NAGALAND

2:SHRI PULOTO SWU

(INFORMANT)

S/O HOVISHE SWU

R/O THAHEKHU VILLAGE
BLOCK 1

DIMAPUR
NAGALAND

Advocate for : L. IRALU

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND
ANR

BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG

ORDER

03.10.2023

Heard Mr. L. Iralu, learned counsel for the petitioner along with Mr. K. Angami, learned Public Prosecutor for the State respondents and Mr. Pfosekho Pfotte, learned counsel for the private respondents.

2. The instant Criminal Petitions Crl.Pet./10 of 2023, Crl.Pet./11 of 2023 and Crl.Pet./19 of 2023 are analogous in nature and are

therefore clubbed together and disposed of by a common order. The Criminal Petitions are filed under Section 482 of the Criminal Procedure Code, 1973 for quashing the FIRs instituted against the petitioner, all registered and pending before the learned Chief Judicial Magistrate, Dimapur.

3. In Crl. Pet.No.19 of 2023 an FIR No.0016/2023 dated 04.08.2023 was registered before the Sovima Police Station for the offences under Section 409/417/420/34 IPC and the consequential GR case No.514/2023, the complaint is said to have invested a sum of Rs. 25 lakhs with a guarantee of a return of Rs.35 lakhs returned on 2 (two) years in terms of the agreement dated 09.03.2021.

In Crl. Pet.No.10 of 2023 an FIR No.29/23 was registered under Sub-Urban Police Station for the offences u/s 409/420/34 IPC and the consequential GR case N.302/2023 the complaint is said to have invested a sum of invested Rs.14 crores with a guaranteed to return to 20 crores within 2 (two) years as per the agreement executed on 09.03.2021

In Crl. Pet. No.11 of 2023 an FIR No.0020/2023 was registered under Niuland Police Station for the offences u/s 420/406/471 IPC,1860 and the consequential GR Case No.396/2023, the Complainant is said to have invested a sum of Rs.11 crores with the Company with the Company would returned Rs.15 crores

4. Mr. L. Iralu, the learned counsel for the petitioner submits that the said FIRs are identically drafted and filed by 3 (three) different complainants, based on identically draft agreements whereby monetary investments were purportedly made by the

complainants to the Company (Lake House St.Pvt. Ltd), where the petitioner is one of the Directors along with the co-accused Shri Varun Kumar Gandhi.

5. The allegation is that the petitioner had convinced the complainants to make the monetary investments to the Company (Lake House St.Pvt. Ltd) and the petitioner had also issued a post-dated, advance cheque of the same amount to be received by them to lure the complainants into investing in his company with an intention to cheat them. However, the amount deposited with the interest amount was not be paid within the stipulated time and the post dated cheque was also dishonoured was the banks, hence the FIRs.

6. Mr. Iralu, the learned counsel for the petitioner submits that the private respondents/complainants have made out a false case against him which is apparent from reading of the contents of the FIRs. The FIRs are almost identical filed by three different complainants dated 08.03.2021. On the strength of the false FIRs, the petitioner was arrested and remanded to police custody and later to judicial custody.

7. The learned counsel submits that the FIRs have all been instituted with ulterior motive to wreak vengeance on the petitioner by the co. accused Shri Varun Kumar Gandhi since there was some misunderstanding between both of them. The learned counsel for the petitioner submits that the said FIRs are all proxy and vexatious FIRs with absolutely no criminal implication, but only to harass and threaten the petitioner to make him submit to the monetary demands made through extortion. When the petitioner was in police

as well as judicial custody, he was occasionally visited by the associates of the complainants, namely, Shri Varun Kumar Gandhi (the co-accused in both the FIRs), one Shri Danny Singh, and an advocate. These persons threatened the petitioner that if he does not do a monetary settlement, more FIRs will be filed in other districts of the States as well as outside the State of Nagaland. Threats of bodily harm and injury were also meted out to the petitioner. That in view of the continued and unwarranted visits made by the associates of the complainants coupled with the harassment and threats meted out to the petitioner, the petitioner filed another Criminal Petition before this Hon'ble Court seeking, inter alia, protection from such visits coupled with threats during his custody.

8. The learned counsel submits that the Agreement dated 09.03.2021 was never executed by the petitioner nor was the cheque issued by the petitioner. The cheque book is being misused by the co-accused Varun Kumar Gandhi even now, by issuing cheques to anybody, in order to frame the petitioner.

9. The learned counsel for the petitioner further submits that that even assuming, but not admitting, that the impugned FIR was taken to be as correct on its face value, no criminal liability can be drawn towards the petitioner for committing any offence. For that none of the ingredients of sections 409 or 417 or 420 of the IPC are made out in the FIR. The basis for the FIR being the breach of the Agreement dated 09.03.2021, a perusal of the Agreement nowhere indicate the existence of any fraudulent or dishonest intention at the

time the promise to return the purported guaranteed return was made in the Agreement. No mens rea can be shown towards the petitioner in the Agreement. As such, the purported failure of the Company to return the said investment with interest within the stated time-period would merely be a breach of contract, and hence the dispute, if any, with the respondent No.2 would be civil in nature.

10. The learned counsel for the petitioner also submits that on perusal of the bank account of the Company, it can be seen that the account of the Company was opened only on 15.3.2021 whereas the said cheque were issued on 8.3.2021 and 9.3.2021 which clearly indicates that the accusation made against the petitioner false and frivolous

11. The learned counsel further submits that the petitioner has not signed on the purported agreements dated 09.03.202, however since the purported agreement is between the company and the complainants, the principle of vicariously liability would applied and therefore, the Company should also be made an accused in the instant case. The learned counsel for the petitioner thus submits that the false FIRs are file with a malicious intent and the criminal proceedings instituted against the petitioner ought to be quashed and set aside since the FIRs do not disclose any cognizable offence that justifies the investigation of the allegations which are of civil nature, by the police.

12. In support of his submissions the learned counsel for the petitioner has relied on the following authorities: **Salib @ Shalu @**

Salim Vs. State of UP & Ors. reported in in Criminal Appeal No.2344 of 2023, **Mitesh Kumar J. Sha Vs. State of Karnataka and Others** reported in 2021 SCC Online SC 976, **Vijay Kumar Ghgai and Others Vs. State of West Bengal and others** reported in (2022) 7 SCC 124, **Vir Prakash Sharma Vs. Anil Kumar Agarwal and Anr.** reported in (2007) 7 SCC 373, **Satishchandra Ratanlal Shah Vs. State of Gujarat and Anr.** reported in (2019) 9 SCC 148, **Vinod Natesan Vs. State of Kerela and Ors.** reported in (2019) 2 SCC 401, **Sharad Kumar Sanghi Vs. Sangita Rane** reported in (2015) 12 SCC 781, **Sushil Sethi and Anr. Vs. State of Arunachal Pradesh and Ors.** reported in (2020) 3 SCC 240.

13. Mr. K. Angami, learned Public Prosecutor for the State respondents on the other hand submits that the FIRs filed by the complainants is under active investigation and the investigation is still at the initial stage. He submits that there are no grounds to quash the FIRs at this initial stage. He further submits that on investigation, if it is found that the FIR are actually without any basis, then petitioner will be discharge of the offences charged against him.

14. The learned Public Prosecutor further submits that on perusal of the Status Report in the Case Dairy, it shows that the petitioner is also having other such cases at different places and therefore, the matter needs to be investigated into to verify whether the petitioner is actually habitually offender under the sections which has been charge against him. He submits that from the nature of the FIR filed, the offences under sections 409/ 417 /420 of

the IPC are made out.

15. The learned PP further submits that the power of the Court under Section 482 Cr.P.C. should be exercised sparingly and the case I/O may be given a chance to the duly investigation into the matter. In support of his submission, he has cited the decision of the Apex Court in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors.** reported in **2021 SCC Online SC 315.**

16. Mr. Pfosekho Pfotte, learned counsel for the complainants/respondents submits that the complainants were cheated of their money with false promises made by the petitioner to invest their money in the Company which would be returned with high interest within a gap of 2(two) years and accordingly they had signed on the agreement dated 09.03.2021. That the instant petitioner had the intention to cheat and deceive the respondents /complainants by giving them post-dated bank cheques of the said amount invested by them, however the bank cheques were dishonored by the Bank. That there is a clear case of the petitioner committing the offence under sections 419/420 IPC since the petitioner had wrongly deceived the complainants with the intention to cheat them of huge sums of money by dubbing them to invest in the Company, where the petitioner is the Director. Accordingly the learned counsel submits that since the petitioner has committed a cognizable offence, the matter may be investigated into by the investigation officer as per law.

17. The learned counsel has relied on the folloeing authorities in support of his submissions : **Neeharika Infrastructure Pvt. Ltd.**

Vs. State of Maharastra and Ors. (supra), RAJESH BAJAJ VS. STATE NCT OF DELHI AND OTHERS reported in **(1993) 3 SCC 259 para 9, PRITI SARAF AND ANOTHER VS. STATE OF NCT OF DELHI AND ANOTHER** reported in **2021 SCC Online SC 206 para 36.**

18. I have heard the submissions made by both the parties and I have perused the FIRs submitted by the complainants wherein it states that the complainants have invested huge amounts of money in the Company where the petitioner is the Director on the assurance given by the petitioner that the money invested would be returned with high interest in 2 (two years) and a post dated Bank cheque was also given to the Petitioners which perhaps persuaded them to sign the agreements dated 09.03.2021. However till date the money invested with the assured interest is not returned.

19. The status report in the Case Dairy produced by the learned PP is perused and reproduced as under :

"The Status Report Status report "During the course of investigation, it was that the accused A 1 Aweenesh Chandra Jha is a habitual fraudster who approach innocent victim who are in disputed with their properties to provide financial as well as legal help/assistance and after gaining their trust he will cheat them and take over their properties. In this instant case he duped the complainant with 14 crores by luring him to invest in properties and real estate and instead of investing the money in properties in the name of Lake House St. Pvt. Ltd accused A 1 Aweenesh Chandra Jha has purchased properties in his own name."

20. The Apex Court in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors.** (supra), has also laid down an exhaustive list of the points to be considered by the High Court in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr. P.C. and in what circumstances in the powers under Section 482 Cr. P.C. is to be exercised.

The Apex Court held that ;

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

.....

xii) The first information report is not an encyclopaedia which must

disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the Conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application the learned made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

.....

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR; "

21. Thus in view of the above observations of the Apex Court and from the contents of the FIR and the Case Diary, this court is not inclined to interfere with the investigation said to have commenced regarding the allegations made in the FIRs submitted by the complainants/respondents.

22. This court also finds that the claim of the petitioner that the said FIRs are all proxy and vexatious in nature, only to harass and threaten the petitioner to make him submit to the monetary

demands made through extortion, can also be addressed to during the investigation along with all the other contentions made.

23. Thus for the aforesaid reasons the court is not inclined to exercise its powers under section 482 Cr.P.C and accordingly the Crl. Pet. 10 of 2023, Crl. Petn. No.11 of 2023 & Crl.Petn. No.19 of 2023 stands dismissed and disposed of.

Sd/-
JUDGE

Comparing Assistant