

GAHC020003332023



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

Case No. : Crl. Pet./13/2023

SRI. JITUMONI TALUKDAR
S/O LATE AJIT TALUKDAR, R/O NAHARKATIA, KALYAN NAGAR,
P.O. AND P.S. NAHARKATIA, DIBRUGARH ASSAM-786610

VERSUS

THE STATE OF NAGALAND AND ANR
KOHIMA NAGALAND

2:MR AHMED HUSSAIN CHOUDHURY
S/O MR. GOLAM AKBAR
CHOUDHURY
R/O PURANA BAZAR
DIMAPUR. P.S. DIMAPUR
NAGALAND

Advocate for the Petitioner : MEDO VERO

Advocate for the Respondent : P.P, NAGALAND

**Advocate for the Respondent No. 2 : SARIF AHNMED
: KITOKA SUMI
: FARAHNA AHMED**

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

12.12.2023

The instant application has been filed by the petitioner for quashing of the complaint case being C.R. Case No. 02/2023 pending before the Court of

the Learned Judicial Magistrate First Class, Dimapur, as well as the order of taking cognizance dated 14.02.2023.

2. The learned counsel appearing on behalf of the petitioner/Accused-2 in C.R. case No. 02/2023 submits the following contentions. The learned counsel submitted that from a perusal of the said complaint, it would reveal that the complainant and the Accused-1 had some business transactions and the Accused-1 was supposed to make certain payments to the complainant. He further submits that from a perusal of the complaint, there is nothing mentioned that the petitioner/Accused-2 had any debt to be paid to the complainant and as such even if the petitioner/Accused-2 had issued the cheque in question but there being no enforceable debt against the petitioner/Accused-2, the initiation of the said proceedings against the petitioner/Accused-2 is totally misconceived.

3. The second line of submission of the learned counsel for the petitioner is that admittedly, from a perusal of the complaint it would show that both Accused-1 and Accused-2 are residents outside the jurisdiction of the said learned Judicial Magistrate First Class, Dimapur and under such circumstances it is the mandate of Section 202 of the Code of Criminal Procedure, 1973 that an inquiry was required to be made before issuance of the process. Referring to the order dated 14.02.2023, the learned counsel submitted that the process was issued without the mandatory inquiry that was required to be carried out in terms with Section 202 of the CrPC, for which the order dated 14.02.2023 is liable to be interfered with.

4. Per contra, Mr. S. Ahmed, learned counsel appearing on behalf of the complainant submits that the question as to whether there is an enforceable debt or not is a question which can only be decided by the Trial court and not proceedings under Section 482, and as such, the question of quashing the complaint against the petitioner/Accused-2 does not arise in as much as admittedly, the petitioner/Accused-2 had issued the cheque in question. On the question of the compliance to Section 202 of the CrPC, the learned counsel for the respondent/complainant has submitted that the Court, before issuance of process must have carried out such inquiry as mandated under Section 202. He, however, fairly submitted that the order dated 14.02.2023 does not reflect

about such inquiry.

5. I have heard the learned counsels appearing on behalf of the parties and have also perused the materials on record. The learned counsel appearing on behalf of the petitioner, had placed reliance on the judgment of the Hon'ble Supreme Court in M/S Indus Airways Pvt. Ltd. and Ors. –Versus- M/s Magnum Aviation Pvt Ltd And Anr, reported in (2014) 12 SCC 539 and has referred to Paragraph-9 of the said judgment to advance his contention that there has to be a legally enforceable debt for bringing an offence under Section 138 of the Negotiable Instruments Act, 1881. The judgment in the case of Indus Airways Pvt. Ltd. (Supra) and more particularly, the proposition in Paragraph-9 of the said judgment is well-settled. However, the question arises as to whether the proposition can be made applicable to the present facts. In the case of Indus Airways Pvt. Ltd. (Supra), the cheque was issued as an advance payment for supply of certain goods. It was admitted fact in the said case that the supplier received letter dated 22.03.2007 from the purchasers cancelling the purchase order and requesting the supplier to return both the cheques. It is, therefore, under such circumstances the Supreme Court, taking into account that it was an advance payment and there was no supply made, observed that there was no enforceable debt. However, in the instant case, the facts would show that the Accused-1 and Accused-2 were partners of a firm and the Accused-1 was liable to pay certain amount of money to the complainant. It is not known under what circumstances the said cheque was issued by the petitioner/Accused-2 but the fact remains that the said cheque was issued by the petitioner/Accused-2. Under such circumstances, the question as to whether the petitioner/Accused-2 had issued the cheque against the enforceable debt is a question of fact to be decided by the Trial Court. As such, the question of quashing of the complaint against the petitioner/Accused-2 does not arise.

6. Be that as it may, the second submission so made by the learned counsel for the petitioner appears to be tenable, in as much as the order dated 14.02.2023 is silent as regards compliance to Section 202 of the CrPC, which mandates that if the accused are residents outside the jurisdiction of the said court, the court has to make a mandatory inquiry. As the same was not done and the process was issued vide impugned order dated 14.02.2023, the same amounts to an

infraction to Section 202 of the Code. This Court, therefore sets aside the order dated 14.02.2023 passed by the Court of the learned Judicial magistrate (First Class) Dimapur in C.R. Case no. 02/2023 as well as the consequential orders passed thereafter.

7. This Court further directs the learned Judicial Magistrate First Class, Dimapur to take up the said complaint and carry out the inquiry which is required to be made in terms with Section 202 and if it deem fit, shall proceed in accordance with law.

8. With the above directions, the Crl.Pet./13/2023 stands disposed of.

Sd/-
JUDGE

Comparing Assistant