

GAHC020004782020



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

Case No. : CrI. Pet./23/2020

MD. MUZIB ALI
S/O MD. JOCHIM ALI,
VILL - BARKAJULI,
P.O. - PADMAPARA, P.S. - TAMULPUR, DIST - BAKSA

VERSUS

THE STATE OF NAGALAND AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, NAGALAND
2:RAJENDRA YADA

Advocate for the Petitioner : MOA JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 25-04-2023

Heard Mr. S. R. Rabha, learned counsel for the petitioner and Mr. Tongpang Jamir, learned counsel for respondent No. 2 also heard Mr. K. Angami, learned Public Prosecutor for the State of Nagaland.

2. This is an application under Sections 482 read with Section 397 of the Cr.PC, 1973 for quashing of the FIR being Zunheboto P.S.

Case No. 04/2020 under Section 420 of IPC.

3. The case of the petitioner is that one Shri. Rajendra Yadav, a resident of Madhopur, Hajaribag in the State of Jharkhand, filed an FIR on 19.12.2019 with Zunheboto P.S. alleging inter alia that one Tata Hitachi Hydraulic Excavator, Model EX210LC Super Plus, Machine No. SP21-60095, Colour Dawn Glow, Engine No. CUMMINS81J8422474 is missing for a couple of months. The petitioner being the owner of the missing vehicle came to know that it was being utilized at a site of Sukhalu Village, Zunheboto. Accordingly, the FIR was registered and Zunheboto P.S. Case No. 04/2020 was registered on 20.01.2020.

4. The learned counsel for the petitioner while relying on the FIR dated 19.12.2019 and also the seizure list dated 18.12.2019 submits that the FIR is seen to be registered on 20.01.2020 and the seizure list is shown to be registered on 18.12.2019 which shows the discrepancies in the case.

5. Mr. S.R. Rabha, learned counsel submits that the petitioner and the informant have been known to each other since long time and they have been in business terms. Accordingly, the respondent No. 2 who is the owner of the vehicle, on 18.06.2019 entered into a deed of agreement with the present petitioner on some specific terms and conditions and the agreement was made for a term of one year w.e.f. 20.06.2019 to 20.12.2019 and as per the agreement, the petitioner would utilize the vehicle for one year at a consideration of Rs. 2,10,000/- and two SBI cheques bearing no. 652240 and 652239 had been given to the respondent no. 2 as

mortgage or security.

6. By referring to the agreement dated 18.06.2019, the learned counsel for the petitioner submits that the agreement was valid from 20.06.2019 to 20.12.2019. Therefore, at the time when the FIR was registered the agreement was in subsistence as such, there is no breach of agreement. It is clear that it is of civil dispute wherein the criminal liability cannot be fastened on the petitioner that too under Section 420 of IPC,1860, therefore, the FIR and the consequential proceedings are complete abuse of the process of law. As such the FIR and the consequential proceedings may be set aside and quashed by invoking the inherent power under Section 482 of Cr.PC, 1973.

7. Mr. Tongpang Jamir, learned counsel for respondent No. 2 by referring to the additional affidavit filed on behalf of respondent No. 2 particularly paragraphs 6, 7 and 8 submits that he has no objection if this Court set aside and quash the FIR and the consequential proceedings in as much as the parties have entered into an agreement and they were engaged in business transactions and assured to have cordial relationship in the future too.

8. Mr. K. Angami, learned PP submits that the facts and circumstances of the case appears to have been originated from commercial transaction and prima facie no criminal liability can be fastened on the petitioner. Therefore, he submits that this Court may pass appropriate order as deem fit.

9. Having considered the submissions of learned counsel for the

parties and the materials available on record, this Court finds that this matter appears to have been originated from commercial and business transactions between the petitioner and respondent No. 2. On consideration of the FIR as well as the seizure list and the agreement dated 18.06.2019 executed between the petitioner and the respondent No. 2, this Court is of the view that no criminal case could have been fastened upon the respondent No. 2 under Section 420 of IPC, 1860.

10. Relying on the case of ***State of Haryana v. Bhajan Lal*** reported in 1992 (1) SCC 335 as referred to by the learned counsel for the petitioner, this Court is of the view that the allegations in the FIR if it is taken at its face value and accepted in its entirety coupled with the seizure list and the agreement would not constitute any offence against the petitioner. At best, it could have been a case of civil dispute.

11. In view of the above, this Court is of the view that the FIR dated 19.12.2019 and its consequential proceedings are deserved to be set aside and quashed. Accordingly, FIR dated 19.12.2019 and its consequential proceedings are hereby set aside and quashed.

Crl.Pet./23/2020 stand allowed and disposed of.

Sd/-
JUDGE

Comparing Assistant