

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB No. 7 of 2024

Date of Decision: 26.04.2024

Raju Gupta,
S/o: Manoj Gupta
R/o: Zoo Road Tiniali, Jonali Path,
House No.10, Guwahati, Assam-781024

.....Applicant

-Versus-

The State of Meghalaya represented by the Commissioner & Secretary
Department of Home & Police

-AND-

(Smti. Mathilina M. Sangma
R/o Vill. Megong Mokat
P.O. rongkhon, P.S Tura Dist.
West Garo Hills Meghalaya

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. N. Ray, Adv. Ms. N.N. Hussain, Adv. Mr. K. Ranjan Sarmah
For the Respondent(s)	: Mr. N. Syngkon, GA Mr. J.N. Rynjah, GA

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

ORDER (ORAL)

1. Heard Mr. N. Ray, learned counsel for the petitioner who has submitted that the facts of the case pertains to an FIR lodged by one Smti. Marthilina M. Sangma on 05.01.2024 before the Officer-in-Charge, Tura Police Station, West Garo Hills wherein it was alleged that the informant had placed an order for Tiles and other accessories from the petitioner's firm/Akriti Sanimart for a consideration of ₹ 3,48,003/- for which a total payment of ₹ 3,00,000/- have been made by the complainant in favour of the petitioner/proprietor. However till the date of filing of the FIR the proprietor/petitioner has failed to deliver the goods which act constitute an offence under the relevant provisions of the IPC, including Section 420.

2. The learned counsel has further submitted that on the basis of the said FIR, investigation was launched and Tura P.S. Case No. 01(01)2024 under Sections 406/417/420 IPC was registered. In due course the petitioner was in receipt of a notice under Section 41A CrPC calling upon him to appear before the I/O on 31.03.2024 at 11 a.m. However, the petitioner could not appear before the said I/O on the said date on the ground that he is suffering from prolonged illness and the police station is also located far from his residence. To this effect, the petitioner has also intimated the I/O vide his letter dated Nil (Annexure-3 to this

petition).

3. Again, the learned counsel has submitted that the apparent dispute between the informant and the petitioner involves a dispute on a monetary transaction for which the informant have other forums to avail of instead of preferring a criminal complaint. It is, therefore, prayed that under the circumstances, the petitioner may be allowed to go on pre-arrest bail with any conditions fit to be imposed by this Court. It is also the assurance of the petitioner that he will fully cooperate with the I/O as far as the investigation is concerned.

4. Per contra, Mr. N. Syngkon, learned GA appearing for the State respondent has submitted that a perusal of the materials available on the petition itself it is seen that the petitioner in spite of the fact that he is aware of the FIR filed in the month of January, till date he has not taken any steps to allay the fears of the informant/customer and to ensure or assure that her grievance will be dealt with. The order has not been fulfilled inasmuch as the materials have not been supplied to the informant/customer nor was the money received by him refunded to her. This clearly indicates an intention to cheat the informant/customer for which the law will have to take its own course. At this juncture, it is prayed that the petition is devoid of merit and the same to be dismissed accordingly.

5. This Court on consideration of the submission made without once again advertent to the facts as indicated herein above, would observe that the dispute between the informant and the petitioner herein is primarily that of civil in nature inasmuch as it involves a commercial transaction

for which there has occurred a breach of the same by the petitioner herein. It is a fact that the informant can take recourse to other forums, particularly the civil court to redress her grievances however, it is also incumbent upon the petitioner to ensure that he fulfills his commitment though this is not a forum to redress such grievances. This Court would not delve into such an issue considering the fact that the matter is still under investigation and the final report is yet to be filed.

6. Coming to the issuance of notice under Section 41A, the provision demands that on a notice issued by a police officer the notice receiver is directed to appear before such officer. There is nothing in the provision which says that failure to comply with the requirement of such summon or notice would immediately cause the notice receiver to be arrested. Sub-section 4 of the said provision states that in case of failure to comply with the terms of the notice, the police officer may arrest the notice receiver on an order passed by a competent court.

7. In the case in hand, this situation has not arisen inasmuch as there is no report filed before a competent court and as such no order has been passed to affect the arrest of the petitioner/notice receiver.

8. Be that as it may, considering the nature of the case and the offence involved, at this stage this Court is inclined to allow the prayer made in this petition. Accordingly, in the event of his arrest the petitioner is directed to be enlarged on bail on the following conditions:-

- i. That he shall not abscond or tamper with the evidence or witnesses.

- ii. That he shall make himself available to appear before the I/O as and when called for.
 - iii. That he shall bind himself on a bond of ₹ 50,000/- (rupees fifty thousand) only with one surety of like amount to the satisfaction of the I/O concerned.
9. In the event of failure to comply with the above noted conditions, it is open to the I/O to arrest the petitioner.
10. Petition disposed of. No costs.

Judge

Meghalaya
26.04.2024
"Tiprilynti-PS"