

Serial No.02 Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No.83 of 2023

Date of Decision: 16.02.2024

Shri. Sandeep Kumar Bhagat Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. N. Das, Adv.

For the Respondent(s) : Mr. K. Khan, PP with
Mr. S. Sengupta, Addl. PP.

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

JUDGMENT AND ORDER

The present criminal petition under Section 482 of the Cr.P.C has been filed by the petitioner for quashing of the FIR dated 18-08-2022 lodged by the respondent No.2 registered as Nongpoh PS Case No.156 (08) 2022 under Section 419/420/406 IPC.

1. The brief fact of the case is that the complainant/respondent No.2 lodged an FIR dated 18-08-2022 before the Byrnihat Outpost,

Ri-Bhoi District, Meghalaya against the petitioner alleging that the respondent No.2 had supplied raw-materials amounting to around Rs. 1,00,00,000/- (rupees one crore) only to the petitioner's factory for conversion of the raw-materials into finished goods almost four years back from the date of filing of the FIR. It was mentioned in the FIR that the value of the raw-materials would not be less than to Rs. 1,65,00,000/- (rupees one crore sixty five lakhs) only as on the date of the filing of the FIR. The respondent No.2 alleged that he was continuously trying to communicate with the petitioner but the petitioner had stopped responding his calls or messages inspite of various reminders. The respondent No.2 stated in the FIR that he was going through a huge financial crisis and also requested for taking of action against the petitioner in order to help him to recover the amount which had been long overdue. On the basis of the FIR, Nongpoh PS Case No.156 (08) 2022 under Section 419/420/406 IPC was registered against the petitioner and an investigation was launched in the matter.

2. Mr. N. Das, learned counsel for the petitioner submits that the allegations made in the FIR do not satisfy the ingredient constituting the alleged offences under Sections 419/420/406 IPC. He contends that even if the entire allegations made in the FIR is accepted as it is, it would not constitute any criminal offence. He submits that the allegation made in the FIR has arisen out of a commercial transaction and is purely a civil dispute. It is further contended that no criminal investigation can be initiated on the basis of the allegations made in the FIR and the same requires to be quashed by this Court.

3. Mr. K. Khan, learned PP appearing for the State-respondent No.1, on the other hand, submits that the FIR prima facie discloses the commission of offences under Section 419/420/406 IPC. He further

submits that the allegation of non-response to the calls and messages of the respondent No.2 inspite of acceptance of the supply of raw material is indicative of commission of criminal offence by the petitioner. He further submits that the petitioner has not responded to the notice issued by the investigating authority under Section 41A Cr.P.C. and is not cooperating with the investigation and such conduct of the petitioner by itself projects the existence of criminal intention on the part of the petitioner. He submits that there is no merit in the present case and the criminal petition is liable to be dismissed.

4. The respondent No.2 has not entered appearance before this Court inspite of service of due notice upon him.

5. For proper appreciation of the rival contentions and for the sake of convenience, the contents of the impugned FIR dated 18-08-2022 is reproduced herein below: -

*“To
The Officer in Charge
Byrnihat
Ri-Bhoi
Meghalaya*

Sub: - First Hand Information

*Respected Sir,
This is to bring to your notice that I Mr. Mayank Sharma resident of Fatasil Glass Factory, Guwahati, have a complaint against Mr.Sandeep Kumar Bhagat owner of Sai Megha Rolling Mills Pvt Ltd, having its location at 15th Mile, Byrnihat.
I would like to inform you that I had supplied raw materials to Mr. Sandeep Kumar's factory for conversion of the same into finished goods, in spite of taking the entire raw materials amounting to around RS. 1,00,00,000.00 at that time i.e. almost 4 years back which now would not amount to less than RS.1,65,00,000.00. I have been continuously trying to communicate with Mr.*

Bhagat but all in vain as he has stopped responding to any calls or messages despite of sending various reminders. I am going through a huge financial crisis, hence request your honourable to take action against Mr Bhagat and help me recovering my amount which has been long overdue.

I shall remain thankful forever and oblige for the same.

Yours's thankfully

Mayank Sharma”.

6. A bare perusal of the aforesaid FIR makes it amply clear that the respondent No.2 has not divulged the details or the type of the raw-material which he allegedly supplied to the petitioner. There is also no mention of the nature and type of the finished product which was supposed to be made by converting the raw-materials. It was stated that the FIR was lodged about four years after the supply of raw-materials to the petitioner, but there is no mention of any date or time frame within which the petitioner was required to prepare the finished product.

7. The contents of the FIR in question also reveals that the respondent No.2 has not made any allegation that the petitioner has misappropriated the raw-materials and disposed of the same in violation of the trust posed by the respondent No.2. There is also no allegation that the petitioner had fraudulent and dishonest intention from the very beginning of the transaction to cheat the respondent No.2. It is required to be noted here that the FIR was lodged by the respondent No.2 by asserting that the value of the raw-materials supplied was Rs. 1,65,00,000/- at the time of filing of the FIR and the respondent No.2 wanted to recover the same amount with the help of investigating agency by claiming that the amount had been long overdue.

8. Moreover, there is also no clarity as to how the alleged finished product was to be dealt with by the petitioner, whether by delivering it back to the respondent No.2 or otherwise, and what was the time limit fixed for the purpose. The allegation of the respondent No.2, as can be made out from the FIR, is that the value of the raw materials assessed as Rs 1,65,00000 as on the date of filing of the FIR, had become long overdue and the amount is liable to be recovered from the petitioner. However, there is no information as to how and when the alleged amount became due to the respondent No.2. In absence of any such details, the contents of the FIR cannot be treated as allegation of cheating and criminal breach of trust.

9. To attract the offence of criminal breach of trust, it is mandatory to disclose the details of property which was entrusted with the accused and the manner in which the accused has violated such trust. Similarly, to maintain a complaint on the allegation of cheating, there has to be an allegation of dishonest inducement on the part of the accused. In the present case, the FIR also does not contain any allegation of cheating by personation by the petitioner.

10. The contention of the learned PP with regard to the non-cooperation of the petitioner in the investigation of the case, if accepted as corrected, would definitely not add to the allegation made in the FIR. A person cannot be made answerable to any investigating agency on the basis of frivolous allegation and his non-response in any such case cannot be termed as a reflection of his adverse conduct, particularly when the person concerned has approached a court of law challenging the allegation made against him.

11. In view of the discussions made above, it would be improper to allow continuation of further investigation against the petitioner on the

basis of the impugned FIR dated 18-08-2022 and hence, the same is set aside and quashed.

12. The Criminal petition stands allowed.

JUDGE

Meghalaya
16.02.2024
"Biswarup-PS"