

GAHC040010852021



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

Case No. : Crl.Petn./117/2021

Rajendra Kumar Lahoti and Anr.
Resident of LIC Building, Jaipur Road 8 A 3, Jai Narayan Vyas Colony, PO/PS/Distt.
Bikaner, Rajasthan. 334001 2: Anand Lahoti
Age:
Occupation :
S/o Sh. Rajendra Kumar Lahoti

Resident of LIC Building
Jaipur Road 8 A 3
Jai Narayan Vyas Colony
PO/PS/Distt. Bikaner
Rajasthan. 33400

VERSUS

THE STATE OF AP and Anr.
Represented by the PP, Arunachal Pradesh. 2: Smti Sunita Namchoom
Age: 49
Occupation :
D/o Late Meohou Namchoom

R/o Chowkam
P.S Chongkham
Namsai District
Arunachal Pradesh. Phone No. 995396325

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

Advocates for the Petitioners : Mr. M.L. Lahoti, Sr. Adv.
: Mr. R. Dubey, Adv.
Advocate for the Respondents : Mr. T. Ete, APP, AP.
Date of hearing : 19.09.2024 & 23.09.2024.
Date of judgment and order : 25.09.2024.

JUDGMENT & ORDER (CAV)

(K.R. Surana, J.)

Heard Mr. M.L. Lahoti, learned senior counsel, assisted by Mr. R. Dubey, learned counsel for the petitioners through remote video conference mode. Also heard Mr. T. Ete, learned Addl. P.P. for the State respondent no.1.

2. It may be stated that the original respondent no.2 in this criminal petition is Meohou Namchoom. On a projection that he had expired during the pendency of this criminal petition, by an order dated 13.12.2023, the deceased respondent no.2 was substituted by Smt. Sunita Namchoom.

3. It may be stated that there are two counsel for the respondent no.2 on record. One out of two learned counsel, Mr. H.K. Jamoh, learned counsel on record prayed to allow him to recuse from the case as he had no instructions. However, as notice, if any, issued to the respondent no.2 was not on record, his recusal was not permitted and he remained present. The other counsel on record, Sri Dushyant Varma, did not appear without assigning any reason. After the matter was heard from about 2.00 pm to 4.20 pm, a lady appeared through remote video conference mode, claiming to be the respondent no. 2 in person and she prayed for adjournment. She had stated

that on receipt of recusal notice from Sri H.K. Jamoh, her counsel she had accepted it. Accordingly, the presence of Sri H.K. Jamoh, was dispensed with. However, as matter was substantially heard on 19.09.2024, short adjournment was granted and matter was listed on 23.09.2024. Moreover, the lady appearing as respondent no.2 was ordered to send an e-mail along with proof of her identity so as to ensure that correct person had addressed the Court. By the time the order was transcribed, her e-mail with proof of identity was received and recorded in the order.

4. On 23.09.2024, when the hearing commenced at 2.00 pm., the respondent no. 2 had submitted that she was aggrieved by some observation made by the Court on 19.09.2024 and prayed that the matter be adjourned as she has filed a transfer petition before the Supreme Court of India. No proof of filing was produced before the Court. Therefore, as the matter was part heard and the instant proceeding had not been stayed, the reply submissions by the learned senior counsel for the petitioner were heard.

5. By filing this criminal petition under section 482 Cr.P.C., the two petitioners, have prayed to quash the FIR dated 22.04.2021, registered as Chongkham P.S. Case No. 8/2021 under sections 120B/418/423 of the IPC read with sections 3(1)(p) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The said FIR, lodged by Sri Meohao Namchoom, father of the respondent no.2, is quoted below:-

“This is to inform you that I am a Senior Citizen Tribal person aged 76 years and that I along with my daughter am the owner and controller of the Chongkham Saw and Veneer Mills as stated by my daughter in her police complaint dated 25.02.21, Mr. Rajendra Kumar Lahoti has launched a sinister campaign to oust me and my daughter from my business, properties and company by invoking all sorts of illegal and nefarious tactics including extortion, hacking, forgery, mental torture and threat which are criminal acts and the assistance of the law is required to bring the

aforesaid criminals to Justice.

Today at about 14:10 hrs I was informed by my office that Anand Lahoti along with his lather Rajendra Kumar Lahoti on 10.04.21 fraudulently and illegally sent an email from an email account cmnamchoom1945@gmail.coa without my consent or knowledge to the board of directors of Chowkham Saw & Veneer Mills Pvt. Ltd. which Is a company of which my daughter and me are 58% majority shareholders. This email apparently held a resignation on my side from the company. Copies procured from the official website of the Ministry of Corporate Affairs are appended herewith for your kind perusal.

This criminal act was perpetrated by the aforesaid serial criminals as on 12.04.2011 was holding a shareholders meeting to affirm my daughter, Ms. Sunita Namchoom and another person as directors in my company. The objective of the Criminals Rajendra Lahoti and Anand Lahoti was to play a fraud not only on me but also on the Registrar of Companies into making them believe that I have resigned from my own company on the day I was appointing my daughter as a director of the company. This was done with the objective that I will be unable to upload documents to the website of the MCA affirming my daughter as a director of the company and thereby maintain control of my own company by having a majority on the board of directors. Apart from attracting numerous sections of the IPC and IT Act, taking away the rights of tribals and usurping them illegally are serious crimes on their own, punishable exclusively by the SC ST Act.

I would like to further state that considering it is only the criminals Rajendra Lahoti and Anand Lahoti who shall be the beneficiaries of this criminal act perpetrated by them, you shall swiftly apprehend these criminals at the earliest so that they do not continue committing crimes openly in this manner.

The entire aim of Rajendra Kumar Lahoti and Anand Lahoti is to drive me out of my business by using the tactics mentioned in my daughter's previous complaint, hacking my email and illegally make me resign from my own company, openly file the illegal resignation at the Registrar of Companies and drive me out of business. So that they can eventually illegally force me to hand over control and possession to them.

Received on 23.04.2021 at 14.30.hrs and registered a case vide CKM P.S. C/No 08/2021 u/s 120(B)/ 418/423 IPC R/W Section 3(1)(P) of ST and SC (Eligible) of atrocities Act, an endorsed to self for investigation.

You are also requested to restrain Rajendra Kumar Lahoti and Anand Lahoti from further breaking the law and commit crimes under the SC ST Act as they are also engaging in a defamation campaign against me and also trying to influence numerous government agencies in order to put me out of business. Rajendra Kumar

Lahoti and Anand Lahoti have tried to file frivolous and vexatious complaints in various forums when actually all they are trying to do is to illegally extort my own business and force me to hand over possession to them. Even a lay person can make out that, the entire objective of Rajendra Kumar Lahoti and Anand Lahoti is to illegally usurp control of my business to extort and stop the business and financial functioning of my daughter and me.

Therefore, in light of the aforementioned facts and circumstances you are requested to take action in accordance with Criminal Law and bring the aforementioned criminals to Justice whose sole intention is to extort the entire business of tribal persons via coercion, fraud, cheating and threat using nefarious means and thereby illegally usurp the business. This is a clear and present case of extortion, fraud and cheating to usurp the property, dispossess me of all financial means and commit crimes punishable by numerous sections of the IPC, IT Act as well as the SC ST Act.

This case is a classic example of the olden days 'Zamindari System' where tribal persons are being dispossessed of their business and property in broad daylight and that too by using death threats, fake emails, hacking, a tirade of vexatious complaints and other agencies to perpetrate this extortion of business and property. Most astoundingly this time they have written an email from a fake email address generated by them sent to the Registrar of Companies and also signed and accented to by both the aforesaid criminals. It seems like they are unaware that merely due to the fact that they are the sole beneficiaries of the crime perpetrated by them, they shall be held guilty by any court of law simply based on that one incriminating circumstance.

Further, even a lay person can make out that upon investigation it shall emanate that the la address of this email is not from Chowkham where I have been residing for more than a year now.

The aforesaid matters have been written in an abridged form by me for the sake of brevity and registration of the FIR, however during the course of your investigation you will come to know of the systematic and deliberate criminal conspiracy of exploitation forgery hacking and creating a fake email account, forging, and email without consent, extortion, threat, coercion, oppression, mental torture, defamation, cheating, criminal breach of trust and intimidation of the tribals. You are requested to help me especially considering that this is a second complaint against the aforementioned criminals and protect me as there is a threat to my very existence and take necessary action in accordance with Law."

6. The documents appended to this criminal petition reveal that prior to the said FIR dated 22.04.2021, the respondent no. 2 had also lodged an

FIR dated 25.02.2021. On 10.04.2021, the petitioner no.2, namely, Sri Anand Lahoti submitted a letter to the Officer-in-Charge, Chongkham PS, denying the allegations made in the FIR dated 25.02.2021 by the respondent no.2 and stating their stand thereon.

7. The FIR dated 23.04.2024 in question, as extracted above refers to existence of business dispute in connection with the business and management of Chowkham Saw and Veneer Mills Pvt. Ltd. It was stated in the FIR that the informant along with his daughter (substituted respondent no.2) were majority 58% shareholder of the said company. In the FIR, it was claimed that to drive out the complainant from his business, the petitioners by hacking his email, illegally made him resign from his own company and illegal resignation of the complainant was filed before the Registrar of Companies to force him to handover control and possession to the petitioners. It was also alleged that the petitioners had restrained of further breaking the law and commits crime under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as the petitioners were also engaging in a deformation campaign against the complainants and were trying to influence numerous government agencies in order to put him out of business. It was also alleged that upon investigation it would reveals that there was a systematic and deliberate criminal conspiracy, exploitation, forgery hacking or crating a feck email account, forging an email without consent, extortion, thereat, coercion, operation, mental torture, deformation, cheating, criminal breach of trust and intimidation of the tribals.

8. The learned senior counsel has made his submissions in support of the prayer for quashing and he has placed reliance on the following cases, viz., (1) *Ramawatar v. State of Madhya Pradesh*, LL 2021 SC 589, (2) *Hitesh*

Verma v. State of Uttarakhand & Anr., AIR 2020 SC 5584, (3) *Khuman Singh v. State of Madhya Pradesh*, (2020) 18 SCC 763: (2019) 0 Supreme (SC) 963, (4) *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.*, 2021 SCC OnLine SC 315, (5) *Aman Preet Singh v. CBI*, (2022) 13 SCC 764: (2021) 0 Supreme (SC) 980, (6) *Gulam Mustafa v. The State of Karnataka & Anr.* 2023 LiveLaw (SC) 421, (7) *B. Kenkateswaran & Ors. v. P Bakthavatchalam*, 2022 LiveLaw (SC) 14, (8) *Mr. K.P.N. Shenoy & Ors. v. State of Karnataka & Ors.* CrI. Pet. No. 1133/2021 decided by High Court of Karnataka on 26.07.2022, (9) *V.V. Renewable Energy Pvt. Ltd. & Ors. v. The Registrar of Companies & Ors.*, WP(C) 1338/2021 decided by High Court of Madras on 30.03.2021, and (10) *Ramesh Chandra Vaishya v. The State of Uttar Pradesh & Ors.*, 2023 LiveLaw (SC) 469.

9. Per contra, the learned APP has submitted that the FIR dated 23.04.2021, discloses *prima facie* case against the petitioners. Referring to the scanned copy of the case diary, the learned APP has submitted that one of the witnesses examined by the IO has stated that the petitioners were heard saying that the substituted respondent no.2, being a tribal lady would not be able to run business. Accordingly, it is submitted that it was a case of making a derogatory remarks against the substituted respondent no.2 on the ground of her being a tribal lady. It is further submitted that the investigation is yet to be completed and if on completion of investigation, a charge-sheet submitted, the petitioner would still have an opportunity of praying for their discharge. It is submitted that if no case is made out then obviously the FIR will lead to submission of a final form, exonerating the petitioners. Accordingly, it is submitted that the petitioners shall not suffer any prejudice if the FIR is not quashed. In support of his submissions, the learned APP has relying on the following cases, viz., (1) *Shaileshbhai Ranchhodbhai Patel & Anr. v. State of*

Gujarat & Ors., Crl. Appeal, decided by Supreme Court of India on 28.08.2024, (2) Ashok Kumar v. State of Union Territory Chandigarh, 2024 SCC OnLine SC 274, (3) Kalika Pratap Singh v. State of U.P. & Anr. 2023 SCC OnLine All 68, (4) Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., 2021 SCC OnLine SC 315, (5) Iqbal Alias Bala & Ors. v. State of Uttar Pradesh & Ors., (2023) 8 SCC 734, (6) Central Bureau of Investigation v. Aryan Singh etc., 2023 SCC OnLine SC 379, (7) Ramesh Chandra Vaishya v. The State of Uttar Pradesh & Ors., 2023 SCC OnLine SC 668, (8) Shajan Skaria v. State of Kerala & Anr., 2024 SCC OnLine SC 2249.

10. It is seen that a written submission has been filed on behalf of the respondent no.2 on 13.03.2024. It has been stated therein that this was a case of forgery and use of forged documents as genuine to oust tribal people out of their own company by forging signature, obtaining a fake phone number in order to get OTP to manipulate the records of Registrar of Companies and then illegally ousting the complainant and the substituted respondent no.2 from the company, of which the complainant (since deceased) is the majority shareholder and founder of the company in the year 1979. It is stated that the complainant was in the process of making the substituted respondent no.2, a director of the company on 12.04.2021 by calling a shareholders meeting, but exactly one day prior to the shareholders meet, the petitioners by forging records knocked out the complainant and the substituted respondent no.2 from their own company. Accordingly, it is stated that the petitioners are liable to be charged with Section 409, 420, 467, 468, 471 and 120B of the IPC as well as under Section 3(g), 3(q), 3(z)(E) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which are squarely attracted in this case as the complainant has been robbed of his legal right as a director in his

own company as well the substituted respondent no.2, who was impeded from having here name entered in the Registrar of Companies as a director of the said company. It is also stated that the company and the shares with assets and shares are immovable property and movable property respectively. Moreover, reliance is placed on the decision of the Supreme Court of India in the case of *Neeharika Infrastructure Pvt. Ltd. (supra)*. Accordingly, it is prayed that no case of quashing is made out at this stage and this Court should immediately withdraw the line "no coercive action to be taken against the petitioners" in all further orders of this Court.

11. We have considered the submissions made at the bar on behalf of the petitioners and the State respondent no.1 and Court is also considered the written submissions filed on behalf of the respondent no.2.

12. It is observed from the order dated 14.03.2024 of this Court in connection with this proceedings that the attention of the Court was drawn to Annexure-A and B appended to their written argument, which is a part of case diary and the learned counsel for the substituted respondent no.2 had made a submissions that the said Annexure-A and B was received by the learned counsel from the case diary after the learned trial Court passed orders granting liberty to the said learned counsel representing the substituted respondent no.2 to take such copies from the case diary. Thereafter, the matter was listed on 30.05.2024, 17.06.2024, 18.07.2024, 22.08.2024, but the substituted respondent no.2 remained absent when the matter was called. As per order dated 03.09.2024, one Mr. A. Kumar, learned counsel appeared on behalf of Mr. D. Varma, counsel for the substituted respondent no.2 and made a submission that affidavit pursuant to order dated 14.03.2024 was sent to the local counsel, Mr. H.K. Jamoh, and the said local counsel has not filed the affidavit. Thereafter,

the matter was listed on 19.09.2024 and whatever had transpired in the Court has already been mentioned hereinbefore. From the above, the only presumption that can be drawn is that the substituted respondent no.2 and /or her learned counsel had an access to the case diary which is legally impermissible. The other presumption is that as Mr. D. Varma, the learned counsel of respondent no.2 has made a specific statement before this Court on 14.03.2024, which he could not substantiate, he has stopped appearing, perhaps to avoid uncomfortable questions that might be posed on his conduct. We rest at that and state nothing more.

13. The contents of the FIR as extracted hereinbefore disclose that the original complainant and the substituted respondent no.2 are majority shareholders having 58% share in the company. It is alleged that resignation of the complainant from the company was fabricated and forged. Therefore, issue relates to the office of the Director of a private limited company. These issues relating to management of a company are ordinarily required to be inspected, enquired and investigated under Chapter-XIV of the Companies Act, 2013 and such an investigation can also be carried out by Serious Fraud Investigation Office as provided under the said chapter. The issues relating to management of the affairs of the company is not within the domain of a normal police investigation upon lodging of an FIR.

14. From the contents of the FIR, it is seen that there is no statement of which criminal proceeding, suit or any legal proceeding filed by the petitioners is false, malicious or vexatious, or the place or Court where such false, malicious or vexatious proceedings have been filed and how the complainant and the substituted respondent no.2 have arrived at a conclusion that such proceedings are false, malicious or vexatious.

15. In this regard, the provision of Section 3(1)(p) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quoted below:

3. Punishments for Offence of Atrocities.- (1) Whoever, not being a member of a Scheduled Castes or a Scheduled Tribes, -

* * *

(p) institutes false, malicious or vexatious suit or criminal proceeding or other legal proceeding against a member of a Scheduled Castes or a Scheduled Tribe;

16. It is seen that the FIR was lodged on 23.04.2021 and by now three years and five months have passed by but the IO has not filed any charge-sheet, which leads to a presumption that perhaps till date no evidence could be collected of any hacking of email or illegal transmission of resignation by email.

17. There is no material in the FIR, which discloses any cognizable offence has been made out because the complainant (since deceased) and the substituted respondent no.2 are still shareholders of 58% share as stated in the FIR and therefore, appropriate steps as permissible under Companies Act can still be resorted to take control of the management of the private limited company.

18. We find some force in the submissions made by the learned senior counsel for the petitioners that the State of Arunachal Pradesh is a State where majority of the citizens belong to scheduled tribes. He has submitted that as per his instruction, it would be impossible for any non-permanent resident of the State of Arunachal Pradesh to commit atrocities on a member of a scheduled tribe community, which would invite an immediate hostile situation in the area. However, as the said submission is not based on any historical record, we do not take cognizance of such statement.

19. The learned APP has rightly stated that the FIR is not an encyclopedia which must disclose all facts and details relating to the offence reported, for which he has placed reliance on paragraph 18 of the case of *Neeharika Infrastructure Pvt. Ltd. (supra)*. However, in this case the FIR does not disclose anything to show any atrocities within the meaning of Section 3(1) (p) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

20. Although, the FIR contains a reference to illegal sending of email from an email account "cmnamchoom1945@gmail.com" without the consent of the informant on 10.04.2021. However, in the written submission of the respondent no.2, it is not stated that the effect of the alleged fake email cannot be lawfully undone under the Companies Act, 2013.

21. As indicated above, an offence relating to the affairs of a company or relating to dispute regarding management of a company has to be inspected, enquired and investigated under Chapter-XIV of the Companies Act. The Companies Act, 2013 being a special law prevail over the general law. Moreover, the ingredient of cheating as defined under Section 415 of the IPC is not disclosed in the FIR. Moreover, the FIR does not disclose execution of any deed of transfer of any property or any interest therein. Therefore, prima facie, the ingredients of Section 418 and 423 of the IPC under which the FIR is registered is also not disclosed in the FIR.

22. There is no nothing on record to show that the petitioners are at the location of the Chowkham Saw and Veneer Mills Pvt. Ltd. and they have taken over the physical possession of the immovable assets or plant/ machinery of the company. Therefore, the FIR does not disclose as to what was the conspiracy between the petitioners so as to attract provision of Section 120B of

the IPC.

23. Therefore, in light of the discussions above, the Court is of the considered opinion that the present case falls within the meaning of sub-paragraph (1), (3), (5) and (7) of paragraph 102 of the case of *State of Haryana v. Bhajan Lal*, 1992 Supp. (1) SCC 335. The said paragraph 102 of the case of *Bhajan Lal* (*supra*) is quoted below:

“102.(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R.

do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

24. In view of the well settled principles of quashing laid down in the case of *Bhajan Lal (supra)*, as reiterated in the case of *Neeharika Infrastructure Pvt. Ltd. (supra)*, there would be no point burdening this order with a discussion on various case law cited by both sides.

25. Accordingly, the Court is of the considered opinion that from the uncontroverted allegations made in the FIR, no cognizable offence has been made out. Therefore, as more than three years and five months of investigation has not revealed any material which could lead to submission of a charge-sheet against the petitioners, the Court is of the considered opinion that no purpose would be served for allowing further investigation in respect of the FIR dated 22.04.2021 registered as Chongkham PS Case No. 8/2021 under section 120B/ 418/ 423 IPC read with Section 3(1)(p) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Accordingly, the said FIR is quashed.

26. It is made clear that the observations made in this order is qua the challenge to the FIR and nothing contained in this order shall be construed to be a finding of fact in any suits or proceedings that may be there between the parties.

JUDGE

Comparing Assistant