

GAHC040012122023



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

Case No. : Crl.Petn./158/2023

KHODA RAJA

S/O Khoda Piji, Proprietor of M/S A.R Enterprise, Resident of A-Sector, Raj Bhawan, Itanagar, PO and PS- Itanagar, District-Papum Pare, Pin 791111, Arunachal Pradesh.

VERSUS

M/S KURUNG KUMEY ENTERPRISE

represented by the Proprietor Mr Rido Tabiu, S/O Lt Rido Kyoda, Resident of Mowb-II, Itanagar, PO and PS-Itanagar, Pin-791111, District- Papum Pare, Arunachal Pradesh.

Advocate for the Petitioner : T Sunil, Takam Sunil

Advocate for the Respondent : Vijay Jamoh, Bakar Dulom, B Padung

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER(Oral)

Date: 18.11.2024

Heard Mr. T. Sunil, learned counsel for the petitioner. Also heard Mr. V. Jamoh, learned counsel for the sole respondent.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the complaint Case being C.R. No.100/2022, under Section 138 of the Negotiable Instruments Act, 1881, pending in the Court of the learned Judicial Magistrate First Class, Capital Complex, Yupia.

3. The brief fact of the case is that the respondent's firm, namely, M/s Kurung Kumey Enterprises was awarded a contract work for infrastructure development in Itanagar City under Amrut Mission. The petitioner is also a contractor and is a proprietor of a firm i.e., M/s A. R. Enterprises. Both the petitioner and the respondent are stated to be related to each other.

4. It is projected that the respondent after getting the above said contract work informed the petitioner to execute the work on behalf of his firm, which was agreed to by the petitioner, thereby, executed an agreement dated 12.08.2019 with certain terms and conditions between them. Thereafter, the petitioner has carried out the said work and was paid running bills by the concerned authorities for the said contract work.

5. It is contended that the bills were issued by the concerned authorities and the petitioner was supposed to deposit the GST(Goods and Services Tax) incurred in respect of the bills raised during the contract work on behalf of the respondent's firm. The GST bills were to be paid from the respondent's GST account. The respondent failed to regularize the GST account of the firm of the petitioner. It is contended that the respondent had asked the petitioner that he cannot open/regularize his GST account as the account was blocked due to non-payment of arrear dues. Situated thus, on 11.02.2022, vide Cheque No.622620,

the petitioner paid the Chartered Accountant of the respondent's firm an amount of Rs.2,50,000/-(Rupees Two lakhs fifty thousand) to clear the arrear dues of the GST account of the respondent's account. However, when the site was logged-in, it was found that the GST account of the respondent's firm was blocked by the concerned authorities.

6. It is further contended by the petitioner that the respondent was furious with the petitioner as the respondent wanted the petitioner to pay the GST amount in cash, which the petitioner did not agree to the request made by the respondent as the same was not possible due to above reasons which consequently led to difference between them and the relation between the petitioner and the respondent became not cordial.

7. The respondent authorities made a payment for the said contract work as a running bills of Rs.9,63,00,000/-(Rupees Nine crores sixty three lakhs) in the name of M/s Kurung Kumey Enterprises, which the petitioner was representing. To ease the relation between the petitioner and the respondent, the relatives, friends and well wishers convened a meeting to resolve the issue between them. Accordingly, vide dated 06.09.2022, a Deed of Undertaking and Affidavit of Declaration was entered and executed between them, which *inter alia* provides that the petitioner shall pay 10% GST on the bill payment of Rs.9,63,00,000/-(Rupees Nine crore sixty three lakhs) and an amount of Rs.93,00,000/-(Rupees Ninety three lakhs) shall be paid to the respondent. It also provides that GST of 2% is reflected by the Department and that, the amount to be paid by the petitioner will be Rs.1,54,00,000/-(Rupees one crore fifty four lakhs) to the respondent. It further stipulates that the said amount shall be paid by the petitioner to the respondent as and when the pending bill is

cleared by the concerned authorities. Thereafter, the petitioner issued 2(two) numbers of post dated Cheques bearing No.622623 and 622624, amounting to Rs.93,00,000/-(Rupees Ninety three lakhs) and Rs.1,54,00,000/-(Rupees One Crore fifty four lakhs) to the respondent.

8. The respondent issued legal notice vide dated 24.11.2022 to the petitioner, stating that as per the Deed of Agreement dated 06.09.2022, the respondent deposited one of the two post dated Cheques issued by the petitioner with his banker. However, the said Cheque bearing No.622624, dated 01.11.2022 was dishonored due to insufficient funds. The petitioner contended that the said legal notice was not received by him and he came to know the said notice when he received the summon from the learned trial Court.

9. The respondent filed a complaint petition being C.R. No.100/2022 before the learned Court of Judicial Magistrate First Class, Yupia, for taking cognizance of the offence under Section 138 of the N.I. Act, 1881. The learned trial Court, on 22.12.2022 on being satisfied of the case projected by the respondent and after perusal of the relevant record enclosed with the complaint petition has taken cognizance under Section 138 of the N.I. Act, 1881, thereafter, the summon has been issued.

10. Mr. T. Sunil, learned counsel for the petitioner while referring to the agreement dated 06.09.2022, submits that it was an undertaking entered between the parties to the effect that the future bills if cleared by the competent authority will have to be paid by the petitioner to the respondent. The parties have not agreed to give any retrospective effect to the Deed of Undertaking executed between them. He submits that after the execution of

Deed of Undertaking dated 06.09.2022, no bills were paid nor cleared by the concerned authorities in respect of the contract work carried out by the petitioner after released of Rs.9,63,00,000/-. Mr. Sunil, learned counsel further submits that as per Clause 3 of the said Deed of Undertaking, an amount of Rs.1,54,00,000/- was to be paid when GST of 2% is reflected by the concerned authorities. However, since the GST account was shown blocked by the concerned authorities due to arrear dues, and there being no reflection of 2% of GST in respect of the firm, the respondent ought not to have deposited one of the post dated Cheque bearing No.622624 dated 01.11.2022 issued by the petitioner with his banker. Since the Cheque was issued with post dated and on happening of certain contingencies in terms of the agreement/undertaking, no case is made out against the petitioner.

11. Mr. Sunil, learned counsel for petitioner submits that the complaint petition being C.R. No.100/2022 and the cognizance taken under Section 138 of the N.I. Act, 1881 by the learned trial Court is bad in law as the complaint petition does not disclose any commission of an offence. He further submits that as per the agreement dated 06.09.2022, although the petitioner has issued two post dated Cheques by way of a security in adherence to the clauses of the said agreement as the payment is to be made once the subsequent payment were received by the petitioner. Therefore, he submits that the proceedings and the consequential taking cognizance by the learned trial Court in CR No.100/2022 may be quashed.

12. Mr. V. Jamoh, learned counsel for the respondent, submits that since the petitioner has admitted to have issued 2(two) numbers of post dated Cheques bearing No.622623 and 622624, for Rs.93,00,000/- and Rs.1,54,00,000/-

respectively, the respondent is bound to deposit the same to his banker. However, one of the post dated Cheques issued by the petitioner which has been deposited with his banker, has been dishonored due to insufficient fund, therefore, a commission of offence under Section 138 of the N.I. Act is clearly disclosed and as such, taking cognizance of the complaint petition being C.R. No.100/2022 is in accordance with law. He submits that any dispute that has been sought to be raised is a matter of trial before the competent Court in the proceedings of complaint petition. Therefore, the proceedings and the cognizance taken by the learned Judicial Magistrate First Class does not require any interference and as such, the same is not liable to be quashed.

13. I have considered the submissions of the learned counsel for the parties and also perused the materials available on record.

14. Admittedly, the petitioner has issued two numbers of post dated Cheques bearing No.622623 and 622624 for an amount of Rs.93,00,000/- and Rs.1,54,00,000/- respectively. The parties have entered into an agreement with certain stipulations/terms and conditions. The terms and conditions of the Deed of Undertaking duly executed between the petitioner and the respondent provides that the petitioner will clear the GST, amounting to Rs.9,63,00,000/- in respect of the firm- M/s Kurung Kumey Enterprises for execution of the work. An amount of Rs.9,63,00,000/-, of which 10% GST amount will be Rs.33,00,000/- (Rupees Thirty three lakhs) shall be paid by the petitioner to the respondent. If the GST of 2% is reflected by the Department of Municipal Corporation, the amount to be paid by the petitioner will be Rs.1,54,00,000/- to the respondent. The said amount will be paid by the petitioner to the respondent as and when the pending bills is cleared by the concerned authorities. It also stipulates that

the petitioner has issued two numbers of post dated Cheques bearing No.622623 and 622624, amounting to Rs.93,00,000/- and Rs.1,54,00,000/- to the respondent. It further provides that the amount mentioned is with regard to the first bill of GST incurred upon M/s Kurung Kumey Enterprises.

15. Perusal of the Deed of Undertaking goes to show that the two Cheques have been issued as post dated for an amount of Rs.93,00,000/- and Rs.1,54,00,000/- to the respondent on fulfillment of certain conditions. Having considered the said stipulation, I am afraid that such an stipulation could be a valid stipulation insofar as the issuance of Cheques are concerned.

16. Having considered the submissions of the learned counsels for the parties and also on perusal of the relevant materials placed on record, this Court finds no ground to quash the proceedings of C.R. No.100/2022 and taking cognizance by the learned Judicial Magistrate First Class, Yupia, as if at all, the issues/grounds that have been raised appears to be a matter of trial before the competent Court.

17. In view of the above and having considered the facts and circumstances of the case, I am not inclined to invoke the inherent power of this Court for quashing of the proceedings in the instant case.

18. Accordingly, the criminal petition is rejected and stands dismissed.

JUDGE

Comparing Assistant