

GAHC010024842024



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

Case No. : WP(C)/774/2024

SAMAR SARMA
S/O- LATE (DR.) ABHOY PRASAD SARMA,
R/O- LAKHESWAR BARUAH ROAD,
NEW GUWAHATI, BAMUNIMAIDAM, GUWAHATI,
DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, HOME DEPARTMENT
DISPUR, GUWAHATI-6.

2:THE ASSTT. COMMISSIONER OF POLICE
DISPUR POLICE STATION
KAMRUP (M)
G.S ROAD
ASSAM

3:DISPUR POLICE STATION
KAMRUP (M)
G.S ROAD ASSAM

4:OFFICER IN CHARGE
DISPUR POLICE STATION
KAMRUP (M)
G.S ROAD
ASSAM

5:ANEISHA SHARMA
W/O- SADANANDA FGOGOI
R/O- H.NO- 848
DR. JAKIR HUSSAIN PATH
BYE LANE NO-14
P.O- HENGRABARI

P.S- DISPUR
DIST- KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR I S MAZUMDAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
ORDER**

01.03.2024

Heard Mr. I.S. Mazumdar, learned counsel for the petitioner and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 1 – 4.

2. Mr. Mazumdar, learned counsel for the petitioner has submitted that the respondent no. 5 has instituted a complaint case under Section 138 of the Negotiable Instruments Act, 1881, as amended, in respect of alleged dishonour of a cheque amounting to Rs. 1,00,000/- issued in her favour by the petitioner. The said complaint case has already been registered as Complaint Case no. 4177/2023 before the Court of learned Chief Judicial Magistrate, Kamrup [M], Guwahati [‘the trial court’] and notice has already been issued to the petitioner as the accused person by the learned trial court.

3. The instant writ petition is instituted with the contention that on the pretext of the said complaint case, the respondent no. 4 has been asking the petitioner to appear before him, without any case being registered against the petitioner. It is the contention of the petitioner that the petitioner could not have been called to the police station without following due process of law.

4. When the writ petition was listed on 19.02.2024, the learned State Counsel was asked to obtain instructions as regards the grievance raised by the petitioner.

5. Mr. Baruah, learned Junior Government Advocate, has placed a Report from the respondent no. 4, addressed to him.

6. From the said Report, it appears that the complainant in the Complaint Case no. 4177/2023, had also lodged a First Information Report [FIR] at the Dispur Police Station on 04.11.2023. From the Report, it transpires that the petitioner and the complainant are relatives and a dispute is going on between them in a matter relating to release of the complainant's husband on bail. Reference has also been made in the Report about the matter of dishonour of a cheque amounting to Rs. 1,00,000/- issued by the petitioner in favour of the complainant and about the pendency of the Complaint Case no. 4177/2023 before the Court of learned Chief Judicial Magistrate, Kamrup [M], Guwahati. In the said Report, the respondent no. 4 has stated on the basis of the said FIR lodged by the complainant, a General Diary Entry was made and one Sub-Inspector of Police attached to the Dispur Police Station has been entrusted to enquire into the matter. After examination of the complainant in the course of enquiry, the said Sub-Inspector of Police had asked the petitioner to appear before him at the Dispur Police Station for the purpose of recording the statement of the petitioner. The Report of the respondent no. 4 has further mentioned that the petitioner did not turn up before the Sub-Inspector of Police who has been entrusted to enquire into the matter on the basis of the FIR lodged by the complainant.

7. In view of the Report submitted by the respondent no. 4, it is observed that for the purpose of securing appearance of the petitioner, there shall be due observance of the provisions contained in the Code of Criminal Procedure, 1973, more particularly, the provisions contained in Section 41[a] thereof.

8. With the above observations, the writ petition is disposed of. No cost.

JUDGE

Comparing Assistant