

GAHC010123862014



2024:GAU-AS:10879

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

Case No. : Crl.Pet./251/2014

SIZOLL CHEMICALS PVT. LTD. and ANR.
PLOT N O. 112, PHASE -II, CHERIAPALY, HYDRABAD- 500051 REP. BY ITS
DIRECTOR.

2: Y. RAVINDER REDDY
MANAGING CHEMICALS PVT. LTD
PLOT NO. 112
PHASE-II
CHERLAPALLY
HYDRABAD- 500051
ANDHRA PRADESH

VERSUS

M/S ASSENT CHMICALS LIMITED
A PRIVATE LIMITED COMPANY REGISTERED UNDER THE COMPANIES
ACT AND HAVING ITS OFFICE AT RADHA RANI MARKET, T.R.P. ROAD,
FANCY BAZAR, KAMRUP M, ASSAM, GUWAHATI- 781001, RE. BY ITS
MANAGING DIRECTOR SHRI DWARKA PRASAD AGARWALA.

Advocate for the Petitioner : MR.M CHETIA, MR.N DEKA,MR.M GOGOI

Advocate for the Respondent : MR.A CHOUDHURY, MR.R ALI,MR.P K DAS,MRN J DAS

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. N. Deka, Advocate.

For the Respondents : Mr. N. Mahajan, Advocate.

Date of Hearing : 06.11.2024

Date of Judgement : 06.11.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. N. Deka, learned counsel for the petitioners. Also heard Mr. N. Mahajan, learned counsel for the respondent.
2. The present petition is filed under Section 482 of the Criminal Procedure Code, 1973 for quashment of C.R. Case No. 3182^C/2010 instituted by the sole respondent under Sections 405/406/415/417 of the IPC pending in trial before the learned Sub Divisional Judicial Magistrate-I, Kamrup at Guwahti. The further challenge is an order dated 29.06.2011 passed by the learned Sub Divisional Judicial Magistrate-I, Kamrup at Guwahati whereby cognizance of offences under Section 406 of IPC was taken.
3. The brief facts leading to the filing of the present case are narrated as follows:-
 - I. The complainant, Assent Chemicals Limited is a company incorporated under Companies Act, 1956 and is engaged in the business of Alum, Soapstone Powder and Fortified Rosin.

- II. The petitioner No. 2 is the Director of Petitioner No. 1 i.e. Sizoll Chemicals Pvt. Ltd who are arrayed as accused No. 1 and 2 in the connected complaint.
- III. According to the complainant, there were business dealings between the parties and in the month of September, 2009, the complainant and the accused company through his Director accused No. 2 had entered into an oral agreement for sale and supply of Gum Rosin and in terms of the aforesaid agreement, an amount of Rs. 17,00,000/- (Rupees Seventeen Lakhs) only was paid to the accused for supply of approximately 40 MT of Gum Rosin.
- IV. It was further alleged that the accused after having received the aforesaid amount, Gum Rosin of Rs. 5,06,626/- was only supplied in two consignments on 11.10.2009 and thereafter, balance materials were not supplied by the accused and subsequently returned an amount of Rs. 5,00,000/- to the complainant and promised to return the remaining amount of Rs. 6,93,364/- within a month.
- V. It was further alleged that though the accused person promised to return the aforesaid amount, they did not return and accordingly, the complainant by their e-mails issued on different dates ranging from 18th March 2010 till 27th March 2010 requested the present petitioner to refund the balance amount within 31st March, 2010, however, such amount were not paid.
- VI. Thereafter, in the month of June, preciously on 05.06.2010, the complainant issued a pleaders notice which was duly served upon the accused No. 1 and thereafter also, no such amount was returned and it was alleged that the accused person had dishonest intention did not refund

the said amount and converted the same for own use and accordingly, another statement of account was sent to the accused No. 1.

VII. There were certain statements in the complaint that the accused has fraudulently and dishonestly induced the complainant to make advance payment etc. Accordingly, the complaint was filed.

4. The learned Magistrate after receipt of the complaint recorded the statement of the Managing Director of the complainant company under Section 200 Cr.P.C. on 29.06.2011, which is quoted herein below:-

“Initial deposition of Dwarka Prasad Agarwall s/o Sri Satya Narayan Agarwall, R/o Fancy Bazar, P.S.- Panbazar, age-43 years,

On oath,

I am the Managing Director of Assent Chemicals Limited, Sizoll Chemicals is a Private Company deals in supply of Gum Rosin. As per verbal agreement, I paid Rs. 17 Lakhs in total by cheque for supply of 40 Metric Tonnes of Gum Rosin. After supplying only about 15 Metric Tonnes, they stopped further supply. 15 Metric Tonnes is of value of Rs. 5,06,626/-. Thereafter on earnest request being made to disburse the materials as agreed, accused failed to do but repaid only Rs. 5,00,000/-. Balance Rs. 6,93,364/- is still left to be paid by the accused. Several reminders were given to the accused and a notice was sent on 05.06.2010 vide registered post A/D card, which were received by accused. Accused had the intention to cheat the company from the very inception.

*Witness: Nand Kishore Agarwal, Branch Manager, SBI
Fancy Bazar Branch”.*

5. In the aforesaid backdrop, the learned Magistrate under its order dated 29.06.2011 took cognizance of the offences under Section 406 of IPC.

6. Mr. Deka, learned counsel appearing for the petitioners submits that the learned Magistrate had taken cognizance of offences under Section 406 of IPC

without application of mind inasmuch as even bare reading of the complaint petition as well as the initial deposition recorded under Section 200 Cr.P.C., even if treated to be correct, the same would go to show that the purported dispute raised is a dispute of civil nature where recovery of money is claimed and admittedly, a portion of the amount was returned by the accused petitioners. Therefore, such civil dispute ought not to have been treated as an offence under Section 406 of IPC.

7. Mr. Deka, learned counsel for the petitioners further contends that during pendency of this present criminal petition, the complainant had already filed a money suit being Money Suit No. 262/2012 before the learned Court of Civil Judge No. 1, Kamrup, Guwahati for realization of the claim which was also decreed in favour of the complainant by Judgment and Decree dated 23.09.2019 and therefore, such fact though subsequent ascertains the contentions raised by the petitioners.
8. Mr. Deka, learned counsel for the petitioners relying on the decision of the Hon'ble Apex Court in the case of **Dalip Kaur and Others –Vs- Jagnar Singh and Another** reported in **(2009) 14 SCC 696** contends that no inducement on the part of the accused has been raised either in the complaint or in the pleaders notice issued earlier, therefore, mere stating that there are inducement on the part of the complainant shall not make any prima facie case under Section 406 of IPC.
9. Per contra, Mr. Mahajan, learned counsel for the respondent submits that this Court in exercise of power under Section 482 of Cr.P.C. should not enter into the merit of the claim as raised in the FIR and is to consider whether a reading of the complaint makes out a prima facie case when such assertion made in the complaint is taken in its face value.

10. According to Mr. Mahajan, learned counsel for the respondent, if the complaint is read as a whole, the same discloses offences under Section 406 of IPC. Therefore, this Court should not exercise its inherent power under Section 482 of Cr.P.C., to interfere with such complaint petition as well as the order of cognizance dated 29.06.2011.
11. Mr. Mahajan, learned counsel for the respondent relying on the decision of the Hon'ble Apex Court in the case of **Vijayander Kumar and Others –Vs- State of Rajasthan and Another** reported in **(2014) 3 SCC 389** argues that in the given set of facts though it may look like a civil wrong and though the civil remedy has already been availed by the complainant/respondent by way of filing Money Suit No. 262/2012, however, same shall not automatically make the complaint liable for interference in exercise of power under Section 482 of Cr.P.C., more particularly, in the given facts of the present case, when the complaint prima facie discloses an offence under Section 406 of IPC. Therefore, Mr. Mahajan, learned counsel for the respondent submits that the present criminal petition should be dismissed and the complaint should be allowed to be proceeded.
12. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record including the complaint petition.
13. The power of High Court under Section 482 of Cr.P.C., to quash complaint and criminal proceeding was summarized by the Hon'ble Apex Court in **Indian Oil Corporation –Vs- NEPC India Limited and Others** reported in **2006 (6) SCC 736**. The relevant portion is quoted herein below:-

“(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have

been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not”.

14. The Hon’ble Apex Court in ***Mohammad Wajid & Anr vs. State of UP and Ors*** reported in ***2023 INSC 683*** relied on by the petitioner, after dealing elaborately with the power of revision so far same relates to the quashing of FIR and charge sheet has laid down the following principles.

- i. It will not be just enough for the court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.
- ii. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments made.
- iii. The overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation is to be looked into.

15. The Hon'ble Apex Court in the case of **G. Sagar Suri and Anr –Vs- State of UP and Ors** reported in **2000 2 SCC 636** went to say that while dealing with a dispute of civil matter in exercise of power under Section 482 of Cr.P.C. for quashment, it is to be seen that whether the matter is essentially a civil in nature and has been given a cloak of criminal offence inasmuch as criminal proceedings are not a short cut of other remedies available in law. It was held by the Hon'ble Apex Court in the said case that before issuing process, a criminal court has to exercise a great deal of caution for the reason that for the accused, it is a serious matter.
16. Now, coming to the case in hand, if the entire statement and allegations made in the complaint are taken at their face value and accepted in its entirety what is seen is that there is an agreement for supply of certain raw material (Gum Rosin), amounting to Rs. 17 Lakhs and out of which the petitioners herein could supply Gum Rosin amounting to Rs. 5,06,626/- and on their failure to supply rest of the material, they returned an amount of Rs. 5 Lakhs. The remaining amount was not returned by them, for which already a civil remedy was availed by the respondent complainant and also obtained a decree in that regard.

17. A bare reading of the complaint, in the considered opinion of this Court nowhere discloses any materials which suggest commission of offence under Section 406 of IPC.
18. The learned Magistrate in a mechanical manner, has issued the process on the basis of the statement recorded under Section 200 Cr.P.C. The bare perusal and reading of the statement recorded under Section 200 of Cr.P.C., if is taken at its face value and accepted to be correct, shall also not make out any case under Section 406 of IPC.
19. This Court, in a given facts of the present case, is of the considered opinion that the complainant has failed to lay the necessary factual foundation in the complaint as well as in the statement recorded under Section 200 of Cr.P.C. to satisfy the Magistrate to take cognizance under Section 406 of IPC. In the considered opinion of this Court, the dispute is purely civil and there is no ingredient of any criminal offence and a criminal colour is given to a civil dispute.
20. The dispute arising out of the admitted commercial transaction has already been ended in a decree in favour of the complainant though Mr. Mahajan, learned counsel for the respondent submits that till the decree has not been executed but the same cannot be ground not to exercise of its power under Section 482 of Cr.P.C. when this Court has found as recorded hereinabove, no case under Section 406 of IPC is made out on bare perusal of the complaint as well as on the perusal of the statement of the Managing Director of the complainant company under Section 200 of Cr.P.C.
21. In view of the aforesaid findings, this Court is of the unhesitant view that this is a fit case where the C.R. Case No. 3182^C/2010 instituted by the sole respondent under Sections 405/406/415/417 of the IPC and the order dated 29.06.2011 passed by the learned Sub Divisional Judicial Magistrate-I, Kamrup at Guwahati

whereby cognizance of offences under Section 406 of IPC was taken can be set aside and quashed in exercise of power under Section 482 of Cr.P.C. Order accordingly.

22. This criminal petition stands disposed of. LCR be returned back.

JUDGE

Comparing Assistant