

GAHC010123862017



2024:GAU-AS:12790

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

Case No. : Crl.Pet./192/2017

TAPAN ROY
S/O SRI GOPENDRA ROY C/O M/S ROY TRADERS CEMENT SHOP, SONAI
ROAD, SILCHAR-5, P.O. and P.S. SILCHAR DIST. CACHAR, ASSAM PIN -
788001

VERSUS

THE STATE OF ASSAM AND ANR.

2:SRI MANIK DAS
S/O LT. JOYDEB DAS R/O TARAPUR
ANNAPURNAGHAT P.O. and P.S. SILCHAR
SILCHAR-3 DIST. CACHAR
ASSAM PIN - 78800

Advocate for the Petitioner : MR.S C BISWAS, MR.F A HASSAN

Advocate for the Respondent : PP, ASSAM, MRD C CHAKRABORTY(R-2)

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

13.12.2024

1. Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. D. C. Chakraborty, learned counsel for the respondent No. 2 and Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

2. The present application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the complaint case registered as N.I. Case No. 156/2015 under Section 138 of N.I.Act which is pending for trial before the learned Additional Chief Judicial Magistrate, Cachar, Silchar.
3. The complaint case was filed by the respondent No. 2 under Section 138 of N.I.Act. The aforesaid proceeding is challenged by the petitioner primarily on the ground that the said proceeding is an abuse of the process of Court.
4. According to the respondent/complainant, the complainant and the accused petitioner are very close friend and having cordial relation. The accused petitioner took an amount of Rs. 2,50,000/- as loan from the complainant on 15.02.2015 and returned the same on 28.05.2015 by way of 3 (three) numbers of cheques dated 28.05.2015 of Gramin Vikash Bank. The said cheques were returned back on 29.05.2015 for the reason of insufficiency of fund and thereafter, a notice was issued by the complainant on 17.06.2015 and accused petitioner replied to the said on 08.07.2015 denying the liability but admitted the issuance of blank cheques without filling up of date, names etc., upon the cheques.
5. Subsequently, the learned Court below took cognizance under Section 138 of N. I. Act and issued summon under its order dated 07.09.2015. Thereafter, the accused petitioner appeared before the learned trial Court below and he was enlarged on bail.
6. The present application is filed with a contention that no loan was taken by the accused petitioner as alleged by the complainant inasmuch as the complainant has failed to show the mode of payment of such loan either by cash or by cheque inasmuch as such amount of money cannot be paid in derogation of the procedure laid down by the banking authorities.
7. It is the further case of the petitioner that that the complainant wanted some

blank cheques to submit as security cheques against his purported supply order from different State agencies and accordingly, as a good faith and belief and for the reason of having good friendship, the petitioner issued the blank cheque to the complainant. However, the complainant used such cheque even after there being no liability from the side of the accused petitioner. Therefore, this is an abuse of the process of Court.

8. This Court is of the opinion that the aforesaid grounds and defense raised by the accused petitioner can be a subject matter of the proceeding of N.I. Case No. 156/2015 pending before the learned trial Court below inasmuch as this Court in exercise of its revisional jurisdiction cannot conclude those factual disputes inasmuch as such factual disputes and factual defense are required to be proved as mandated under Section 138 of N. I. Act. There is also a presumption under Section 139 of N.I. Act. Therefore, this Court is of the view that this is not a fit case for setting aside and quashing the proceeding of N.I. Case No. 156/2015 under Section 138 of N.I. Act which is pending for trial before the learned Additional Chief Judicial Magistrate, Cachar, Silchar inasmuch as the learned Magistrate after perusal of the complaint and taking consideration of the statement recorded under Section 202 of Cr.P.C., took cognizance of the offence under Section 138 of N. I. Act. The fact further remains that no other ground is taken to quash such proceeding This Court is also of the opinion that the statement made in the complaint as well as the statement of the witnesses, if taken on its face value, a case under Section 138 of N.I. Act is made out.
9. That being the position, the present criminal petition stands dismissed. The learned trial Court below shall now proceed with the case.

JUDGE

Comparing Assistant