

GAHC010143972018



2024:GAU-AS:13136

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

Case No. : Crl.Pet./635/2018

UTPAL NANDI
S/O LT. RAJENDRALAL NANDI, R/O C/O AJIT RANJAN DAS, HOUSE NO. 4,
BYE LANE NO. 4,
JOYMOTI NAGAR, ADABARI
GUWAHATI -1,
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PUBLIC PROSECUTOR, ASSAM

2:SRI GAUTAM SINHA ROY
S/O LT. A.K. SINHA ROY

R/O 12TH BYE LANE
RAJAT KAMAL PATH

R.G. BARUAH ROAD

P.S. GEETANAGAR
GUWAHATI-24
DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : x, MR. A BHATTACHARJEE,MR. D P BORAH,MR. D J KAPIL

Advocate for the Respondent : PP, ASSAM, MR. D K CHOMAL (R2),MR. A S BHATRA (R2)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

16-09-2024

Heard Mr. M. Nath, learned Senior Counsel assisted by Mr. A. Bhattacharjee, learned counsel for the petitioner and Mr. B. B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent No.1.

2) Though name of two counsels for the respondent No.2 has been reflected in the cause list, the said respondent No.2 remained unrepresented.

3) It is seen from the records of the case, that on earlier occasions, the said respondent No. 2 remained unrepresented and the Court took notice of the same.

4) In spite of filing Vakalatnama by the respondent No.2 on 21.08.2018, the said respondent No.2 remained unrepresented on 31.01.2019, 10.01.2020, 30.04.2020, 10.09.2021, 17.08.2022, 18.01.2023, 23.03.2024 and 26.04.2024.

5) A Coordinate Bench of this Court on 26.04.2024 observed that in the event of subsequent non-representation of the respondent No.2 on the next date, the Court will proceed to hear and dispose of this matter without his presence.

6) In view of the above, the Court decided to proceed with the case ex-parte against the respondent No. 2.

7) Brief facts of the case is that the respondent No. 2 Gautam Sinha Roy as a complainant on 29.12.2017 filed a Complaint Petition under Section 200 CrPC before the Court of the learned Chief Judicial Magistrate (CJM), Kamrup (Metro) at Guwahati being CR Case No. 5615^C/2017 against the petitioner showing him as Area Sales Manager of "M/S Shivam Industries" and prayed before the said Magistrate to take cognizance of the offence under Section 420 IPC against the petitioner.

8) The learned CJM, Kamrup (Metro), Guwahati transferred the said CR Case No. 5615^C/2017 to the Court of the learned Judicial Magistrate First Class (JMFC), Kamrup (Metro), Guwahati for its disposal.

9) On receipt of the said record of CR Case No. 5615^c/2017, the learned JMFC, Kamrup (M), Guwahati after perusal of the complaint and recording the statements of the complainant as well as his witnesses under Section 200 CrPC and 202 CrPC respectively, by order dated 09.05.2018 passed in said of CR Case No. 5615^c/2017 took cognizance of the offence under Section 420 IPC against the petitioner and issued summons to him.

10) Aggrieved with the said order of the learned JMFC, Kamrup (M), Guwahati dated 09.05.2018 passed in said of CR Case No. 5615^c/2017 taking cognizance of the offence under Section 420 IPC against him, the petitioner has preferred this criminal petition praying amongst others, to set aside and quash the impugned proceeding of said CR Case No. 5615^c/2017 pending before the Court of the learned Judicial Magistrate First Class, Kamrup (Metro), Guwahati as well as the impugned order dated 09.05.2018 passed by the said learned Magistrate in said CR Case No. 5615^c/2017 with an interim prayer to stay the further proceeding in the said CR Case No. 5615^c/2017.

11) The Court on 11.07.2018 while issuing notice to the respondents, in the interim, was pleased to stay the further proceeding of said CR Case No. 5615^c/2017 pending before the Court of the learned Judicial Magistrate First Class, Kamrup (Metro), Guwahati, which is still in force.

12) The petitioner contended that one, M/S Shivam Industries, represented by its proprietor Sri Sudip Baid (Tinku), earlier initiated a complaint case under Section 138 of the Negotiable Instruments Act, 1881 against the respondent No. 2 before the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati that was registered as CR Case No. 1001/2015 alleging that the respondent No. 2 delivered a cheque bearing No. 962709 dated 27.12.2014 drawn on State Bank of India, Gitanagar Branch, Guwahati for an amount of Rs. 75,000/- to said M/S Shivam Industries for discharge of respondent No. 2's outstanding dues to said M/S Shivam Industries.

13) Said M/S Shivam Industries presented the said cheque of the respondent No. 2 before the Indian Overseas Bank, Dispur Branch on 07.01.2015, but the said cheque of the respondent No. 2 returned unpaid due to insufficient fund on the account of the respondent No. 2 in the SBI, Gitanagar Branch, i.e., the paying banker.

14) Though said M/S Shivam Industries brought the said fact to the notice of the respondent No. 2 and requested him to return the amount and on request of the respondent No. 2, his said

cheque was placed before the Indian Overseas Bank, Dispur Branch for the second time on 02.02.2015. Even on this time, said cheque of the respondent No. 2 was returned due to insufficient funds in the account of the respondent No. 2 in SBI, Gitanagar Branch, the paying banker.

15) Thereafter, said M/S Shivam Industries, though its advocate issued legal notice to the respondent No. 2 under the provision of the NI Act and thereafter, instituted said CR Case No. 1001/2015 before the Court of the learned CJM, Kamrup (Metro), Guwahati under Section 138 of the NI Act against the respondent No. 2 that was transferred by the learned CJM, Kamrup (Metro), Guwahati to the Court of the learned JMFC, Kamrup (Metro), Guwahati.

16) The respondent No. 2 in said CR Case No. 1001/2015 before the learned JMFC, Kamrup (Metro), Guwahati filed an application under Section 91 CrPC alleging that the petitioner being the Area Sales Manager/Business Associates of the complainant firm (M/S Shivam Industries) received an amount of Rs. 40,000/- in cash on behalf of the complainant firm against the cheque in question by issuing a photocopy of the money receipt retaining the original one by him. Through the said application under Section 91 CrPC submitted before the learned JMFC, Kamrup (Metro), Guwahati in said CR Case No. 1001/2015, the respondent No. 2 prayed for a direction to the petitioner to produce the said original money receipt of Rs. 40,000/- that was paid by the respondent No. 2 against the cheque amount in question.

17) M/S Shivam Industries filed its objection against the said application under Section 91 CrPC filed by the respondent No. 2 before the learned JMFC, Kamrup (Metro), Guwahati in said CR Case No. 1001/2015 clearly stating that the petitioner is not an employee of said complainant firm M/S Shivam Industries and the petitioner has no connection with the said complainant firm in as much as there is no post of Area Sales Manager/Business Associates who ever exist in the complainant firm (M/S Shivam Industries) specifying that it is the said Sri Sudip Baid (Tinku) is the In-charge of the said complainant firm who looks after the entire business affair of the firm by his own and he has not authorised any person to collect any money from any person for his business at any point of time and therefore, receiving of any money by the petitioner for and on behalf of the complainant M/S Shivam Industries does not arise at all as the photocopy of the money receipt annexed by the respondent No. 2 in his application under Section 91 CrPC is not under the Official Pad of the complainant's firm and that any such money receipt issued by the petitioner has no relevance in the case.

18) The learned JMFC, Kamrup (M), Guwahati by its order dated 07.06.2016 passed in said CR Case No. 1001/2015 rejected said petition filed by the respondent No. 2 under Section 91 CrPC with the following observations —

“Heard both sides, perused the C/R. Now the petitioner/accused has not annexed any document to show that Mr. Utpal Nandi was the employee of the complainant. The photocopy of the receipt annexed does not contain any seal and signature of the complainant firm which would indicate that the aforesaid Utpal Nandi was an employee of the complainant firm. Moreover, the document annexed with the petition was a photocopy. The petitioner has not explained why would a prudent man would receive a photocopy of a money receipt after payment since is entitled to the original money receipt. The petitioner has not adduced anything by which the Court may presume that the aforesaid Utpal Nandi is an employee of the complainant firm. I think the accused has filed this petition only to delay the proceeding. Hence considering all the aspects, the petition is rejected.

The accused is directed to appear on the next date and to adduce his witness, if any.

Fix 30.06.2016 for DW, if any.”

19) The respondent No. 2 in said CR Case No. 1001/2015 as DW-1 deposed that they organized an Expo in Silchar every year and he had a good relation with the petitioner of Ashish Furniture. The date of Expo was fixed on 18.12.2015 but, due to some reasons, the said Expo was postponed. The complainant (M/S Shivam Industries) is the carry and forwarding agent of Ashish Furniture. He informed the complainant M/S Shivam Industries that as the Expo has been deferred so there is no provision for refund of money and he gave a cheque to the petitioner as a security against the amount of Rs. 75,000/-. He paid Rs. 40,000/- in cash to the petitioner at Silchar and assured him that the remaining amount of Rs. 30,000/- will be paid in Guwahati, but the complainant deposited in the bank account that was dishonored, pursuant to which, the case has been instituted. The petitioner told him that when the money would be cleared, the documents, cheque etc. would be returned to him. During his cross, the respondent No. 2 stated before the learned JMFC that the complainant M/S Shivam Industries gave him the money and exhibit 1(1) is his signature where Exhibit-1 is the cheque containing his account number. Petitioner gave him a money receipt and he submitted photocopy of the said money receipt before the Court. He denied that the complainant and the petitioner has no relation and also denied that he had not paid any money to the petitioner.

20) By judgment dated 12.04.2017, the learned JMFC, Kamrup (M), Guwahati allowed the said CR Case No. 1001/2015 of the complainant M/S Shivam Industries against the respondent No. 2 of committing an offence under Section 138 of the NI Act, directing the respondent No. 2 to pay compensation of Rs. 90,000/- and sentenced him to undergo simple imprisonment for 4 (four) months. Against the said judgment dated 12.04.2017 of the learned JMFC, Kamrup (M), Guwahati passed in CR Case No. 1001/2015, the respondent No. 2 preferred an appeal before the Court of the learned Sessions Judge, Kamrup (Metro) being Criminal Appeal No. 105/2017 which is pending before the Court of the learned Additional Sessions Judge No. 4 (FTC), Kamrup (Metro), Guwahati.

21) Petitioner contended that after the said judgment dated 12.04.2017 passed by the learned JMFC, Kamrup (M), Guwahati against the respondent No. 2 in said CR Case No. 1001/2015, he filed the CR Case No. 5615^C/2017 against the petitioner, noted above, alleging that about two years back, there was a business deal between M/S Shivam Industries and the respondent No. 2, whereby, it was decided that M/S Shivam Industries would manage/arrange a shop in the Trade Fair for the respondent No. 2 and accordingly, the petitioner being the Area Sales Manager of said M/S Shivam Industries approached the respondent No. 2 for an advance amount of Rs. 40,000/- in cash, without furnishing any money receipt thereof, on behalf of said M/S Shivam Industries and the respondent No. 2 on good faith, paid the said amount to the petitioner on 29.01.2015.

22) Since the Trade Fair was postponed and M/S Shivam Industries failed to provide a shop in the name of the respondent No. 2 in the Trade Fair, for which M/S Shivam Industries is liable to return back the said amount to the respondent No. 2 for which, the respondent No. 2 approached the authority of M/S Shivam Industries for the money that he deposited, amounting to Rs. 40,000/- and during such approach, respondent No. 2 came to know that there was no such deposit of amount with M/S Shivam Industries from the end of the said respondent No. 2. Then the respondent No. 2 informed the petitioner and asked for his money, to which, the petitioner informed him that he failed to deposit the said amount to the account of M/S Shivam Industries and would return the said money to the respondent No. 2 shortly.

23) Since the petitioner, in spite of several requests made by the respondent No. 2 did not return the said amount of Rs. 40,000/-, where he took the said advance amount in cash by making false promise to the respondent No. 2 to arrange/manage a shop in the Trade Fair for the said complainant/respondent No. 2, which the petitioner failed to do so; as such, the petitioner

dishonestly misappropriate the said amount of Rs. 40,000/- from him and thereby, duped him. The respondent No. 2 stating all these filed the complaint petition under Section 200 CrPC being CR Case No. 5615^C/2017 against the petitioner, which is presently pending before the Court of the learned JMFC, Kamrup (Metro), Guwahati, noted above.

24) Mr. M Nath, learned Senior Counsel appearing for the petitioner Utpal Nandi placed before the Court the contradictions of the respondent No. 2 Gautam Sinha Roy in his complaint petition CR Case No. 5615^C/2017 against the petitioner made before the learned JMFC, Kamrup (Metro), Guwahati as well as said respondent No. 2 Gautam Sinha Roy's statement/deposition made by him as an accused in CR Case No. 1001/2015 that was preferred by M/S Shivam Industries as complainant, in which, the respondent No. 2 Gautam Sinha Roy was convicted and sentenced by the learned JMFC, Kamrup (Metro), Guwahati under Section 138 of the NI Act by judgment and order dated 12.04.2017, noted above.

25) Placing all these, Mr. Nath, learned Senior Counsel submitted that the respondent No. 2 as a complainant has filed a false complaint case being CR Case No. 5615^C/2017 against the petitioner, wherein the learned JMFC, Kamrup (Metro), Guwahati had taken cognizance of offence under Section 420 IPC, should be set aside and quashed.

26) Mr. Nath, learned Senior Counsel relying on the decision of the Hon'ble Supreme Court consisting a Bench of its three Hon'ble Judges in the case of *Md Akram Siddiqui Vs. State of Bihar & Another*, reported in (2019) 13 SCC 350 submitted that the Court in exercise of the power under Section 482 CrPC should set aside the proceeding of said CR Case No. 5615^C/2017 as well as the order dated 09.05.2018 passed by the learned JMFC, Kamrup (Metro), Guwahati in said CR Case No. 5615^C/2017.

27) In a case relating to dishonor of cheque the Hon'ble Supreme Court in the case of *Harshendra Kumar D Vs. Rebatilata Koley*, reported in (2011) 3 SCC 351, have held that —

“..... It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents — which are beyond suspicion or doubt — placed by the accused, the accusations against

him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company."

28) Their Lordships of the Hon'ble Supreme in the case of *Md Akram Siddiqui* (supra) have laid down that —

"Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in Yin Cheng Hsiung -Vs- Essem Chemical Industries [(2011) 15 SCC 207]; State of Haryana -Vs- Bhajan Lal [1992 Suppl (1) SCC 335] and Harshendra Kumar D. -Vs- Rebatilata Koley [(2011) 3 SCC 351] to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered."

29) In the case in hand, it is seen that the respondent No. 2 as an accused gave different statement and deposition before the learned JMFC, Kamrup (Metro), Guwahati in CR Case No. 1001/2015, in which, he was convicted by the learned Magistrate under Section 138 of the NI Act by judgment and order dated 12.04.2017.

30) But from the statement of the respondent No. 2 in his complaint petition CR Case No. 5615^c/2017 against the petitioner pending before the Court of learned JMFC, Kamrup (Metro), Guwahati, it is seen that the said respondent, now as complainant contradicted himself from his earlier statements and depositions made in said CR Case No. 1001/2015.

31) It is also seen that the respondent No. 2 received the notice of the case on 01.08.2018 and entered appearance in this matter on 21.08.2018 by filing vakalatnama. But the respondent No. 2 did not raise any dispute with regard to such claim of the present petitioner made in this petition.

32) After hearing Mr. Nath, learned Senior Counsel for the petitioner and Mr. Gogoi, learned Additional Public Prosecutor, Assam for the State and considering the entire aspect of the matter as well as the decision of the Hon'ble Supreme Court reported in *Harshendra Kumar D* (supra) and *Md Akram Siddiqui* (supra), this Court is of the opinion that if the proceeding of said complaint case being CR Case No. 5615^c/2017 filed by the complainant respondent No. 2, pending before the Court of the learned JMFC, Kamrup (Metro), Guwahati is allowed to continue against the petitioner, it will be an abuse of the process of the Court.

33) For the reasons above, in exercise of the power under Section 482 CrPC to prevent the abuse of the process of the Court and to secure the ends of justice, the order dated 09.05.2018 passed by the learned JMFC, Kamrup (Metro), Guwahati in CR Case No. 5615^c/2017 as well as the proceeding of said CR Case No. 5615^c/2017 and the complainant filed in said CR Case No. 5615^c/2017 are hereby set aside and quashed.

34) Accordingly this criminal petition stands allowed.

JUDGE

Comparing Assistant