

GAHC010183112023



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

Case No. : Crl.Pet./867/2023

NASIRUDDIN AHMED
S/O LATE JAINAL ALI
R/O HOUSE NO. 22, B.R. MAZUMDAR PATH, BAGHARBORI, P.O.
PANJABARI,
P.S. DISPUR, GUWAHATI-781037
DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:JAMIR RAHMAN
S/O JALIL RAHMAN
R/O CHANDRA CHOUDHURY PATH

BHETAPARA
PIN-781028
P.S.BASISTHA

DIST. KAMRUP (METRO)
ASSA

Advocate for the Petitioner : MR. K R BORA, MR D CHUTIA,R GOGOI

Advocate for the Respondent : PP, ASSAM, MS N SHYAM,MR DEBA SARMAH

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

22.11.2024

Heard Mr. K.R. Bora, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor, representing the State, respondent No.1 and Mr. D. Sharma, learned counsel for the respondent No. 2.

2. The petitioner has preferred this application u/s 482 Cr.PC, 1973, praying for quashing the entire proceeding of CR case no. 1050/2019 and also for setting aside the order dated 18/04/2019 passed in CR case no. 1050/2019.

3. The respondent no. 2 filed a complaint case, against the petitioner u/s 138 of NI Act before the learned CJM, Kamrup (M) vide CR case no. 1050/2019, and the said case was transferred to the file of learned Additional CJM, Kamrup (M) for disposal.

4. In the first week of October 2017, the petitioner who is known to the complainant, asked for financial help and thereafter the respondent no. 2/ complainant gave an amount of Rs. 10,00,000/- (Rupees Ten Lacs) to the petitioner @ of 5% interest per month for two months by executing a notarised agreement and failing to return the said amount within two months, the interest shall be enhanced up to 10% interest per month. It is stated in the said agreement that the petitioner handed over two undated cheques bearing no. 603325 and 603326 to the respondent no. 2 as a security cheque. Thereafter, as the petitioner failed to return the said amount to the respondent No.2, the two undated security cheques were deposited by the respondent no. 2 in his bank by filling up the dates and the said two cheques were returned unpaid due to insufficient funds. Accordingly, the respondent no. 2 sent a legal

notice dated 01/03/2019 and thereafter filed a complaint case against the petitioner as aforesaid.

5. Learned counsel for the petitioner has submitted that on the basis of the void agreement, the cheque was issued as such the case of the complainant is purely civil in nature. Therefore, taking cognizance u/s 138 of NI Act, and proceeding of trial will be abuse of the process of law. It is further submitted that two cheques were issued on the basis of the void agreement dated 07/10/2017 as such the debt is not legally enforceable and the order dated 18/04/2019 is bad in law and is liable to be quashed.

6. According to learned counsel for the petitioner, the two cheques were issued on the basis of agreement between the parties dated 07/10/2017 and the said agreement was used for money lending and the respondent no. 2 has no such license of money lending and the rate of interest is so exorbitant, as such the continuation of the complaint proceeding is nothing but an abuse of the process of law. Hence, the learned counsel for the petitioner prays for quashing of the entire proceeding of CR case no. 1050/2019.

7. Per contra, learned counsel for the respondent no. 2 has argued that this is a proceeding u/s 138 of the NI Act. The complainant gave a sum of Rs. 10,00,000/- on his request and the petitioner agreed to pay interest @ 5% per month for two months and subsequently 10% interest per month on his failure to return the same. Subsequently, the accused/ petitioner handed over two cheques as security. As the petitioner failed to return the said money, the two cheques were deposited in the bank which were dishonoured with endorsement "insufficient funds". The complainant then sent a demand notice u/s 138 of NI Act to the accused/ petitioner asking him to make payment of

the amount of cheque within 15 days from the date of receipt of the notice. The accused/ petitioner though received the said demand notice but did not pay the amount of cheque to the respondent no. 2. Thereafter, within time, the complainant lodged the complaint and the said complaint is maintainable in view of the provisions of Sections 138 of NI Act.

8. By referring the judgment of Samarendra Nath Das vs. Supriyo Maitra, reported in (2005) Legal Eagle 92, learned counsel for the respondent No. 2 has pointed out that in the said case it was held that the alleged violation of provisions of Money Lenders Act is not at all a bar for continuation of the criminal proceeding u/s 138 of NI Act.

9. It is also the submission of the learned counsel for the respondent No. 2 that the Hon'ble Delhi High Court in Dhanjit Singh Nanda vs. State, Crl. M.C. 209/2009 decided on 09/02/2009 rejected the argument that the complainant is debarred from recovering the loan amount as he is not a registered money lender.

10. Learned counsel for the respondent No.2 also referred another case law –Tanay Agarwal vs. Giriraj Daga vide CRR 1897 of 2021, wherein it is reflected that it is acceptable proposition of law that provisions of the Bengal's Money Lenders Act, 1940 does not limit operation of Section 138 of the Act and both are independent and mutually exclusive to each other. If a person advances a loan even without a valid money lending license or certificate, he can institute and prosecute complaint u/s 138 of the Act on the basis of cheques and he has to satisfy only the mandatory requirements of section 138 of the Act.

11. In another cited case of Ishak Mohammad vs. State of Rajasthan and others, reported in (2024) Legal eagle (Raj) 1863, it was observed that whether the complainant had a license to lend on interest is not relevant in the case of cheque dishonour. In the case of cheque dishonour, what is to be seen is if the cheque was issued in relation to a valid loan and was dishonoured without payment even after giving notice.

12. Learned counsel for the respondent no. 2 also has submitted that the post dated cheque issued as a security and unless there is proof of repayment of debt, the cheques given as a security, can be collected and if dishonoured, the accused can be prosecuted as observed by the Hon'ble Supreme court in the case of Sripati Singh vs. State of Jharkhand, reported in (2021) Legal Eagle 711.

13. Having heard the learned counsel for the parties, it is seen that the petitioner has duly admitted his signatures on the cheques. In view of section 20 of NI Act, 1881, once signature on the cheque are admitted, even then if blank negotiable instrument have been signed and delivered to another person then it amounts to prima facie authority to the holder to make or complete upon it a negotiable instrument. Further, as per section 118 (a) of the said Act, there is a presumption for consideration having been passed once negotiable instrument is made or drawn (Kapil Kumar vs. Raj Kumar), reported in (2022) 10 SCC 281.

15. So far as the contention of the petitioner raised in respect of the respondent no. 2 not having license for money lending, the term money lending has been defined as per section 2(V) of MP Money Lenders Act, 1934, it means a person who advances a loan in the regular course of

business. It is settled that a person carrying out stray transactions of money lending would not be covered under the terms money lenders (Reported in AIR 1970 SC 2007 Gajanan vs. Seth Brindavan and Permanand Jain vs. Firm Babulal Rajendra Kumar Jain, reported in AIR 1976 MP 187).

16. Coming to the case in hand, under the loan agreement in question, though the petitioner had issued the cheques as security, he had also agreed to repay the amounts within two months. The cheques which were held as security were presented for realisation after the period agreed for repayment of the loan amount and the loan advance had already fallen due for payment. Therefore, prima facie, the cheques which were taken as security had matured for payment and the respondent no. 2 is entitled to present the same. On dishonour of such cheques, the consequences contemplated under the NI Act had been fallen on the petitioner. The petitioner may have the defence in the proceedings which will be a matter of trial.

17. In view of the above discussion, this court does not find any irregularity or perversity in the order dated 18/04/2019, passed by the learned magistrate in taking cognizance and issuing summons to the petitioner.

18. In the result, the criminal petition is dismissed and disposed of accordingly.

JUDGE