

GAHC010186272014



2024:GAU-AS:11516

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

Case No. : Crl.Pet./664/2014

AMAR CHAND MAHESHWARI @ AMARCHAND MANIHAR and 2 ORS.
S/O LT. PANNALAL MANIHAR

2: RAMAVTAR MAHESHWARI @ RAMAVTAR MANIHAR
S/O AMAR CHAND MAHESHWARI.

3: MANISH KUMAR TAPARIYA
S/O LT. KALURAM TAPARIA ALL ARE R/O A T ROAD
MARWARI PATTY
P.S. NAGAON
DIST. NAGAON
ASSAM
PIN- 782001

VERSUS

THE STATE OF ASSAM and ANR

2:MD MOHIUDDIN AHMED
S/O LT. SAHIBUDDIN SIDDIQUE R/O M D ROAD
MORIKALANG P.S. NAGAON SADAR
NAGAON
DIST. NAGAON
ASSAM PIN- 782001

Advocate for the Petitioner : MR.A SATTAR, MS.N BARMAN,MR.Z MUKIT

Advocate for the Respondent : PP, ASSAM, MR.A Y CHOUDHURY,MS.M DUWARAH

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT & ORDER (ORAL)

Date : 19-11-2024

1. Heard Mr. A Sattar, learned counsel for the petitioners and Mr. B Sarma, learned Addl. PP, appearing for the respondent No.1, State of Assam. Also heard Mr. A.Y. Choudhury, learned counsel for the respondent No.2.

2. The present application under section 482 Cr.P.C., is filed for quashment of prosecution launched in connection with Nagaon PS Case No.382/2014 dated 29.03.2014 under section 120(B)/420/406 IPC.

3. The brief facts which are necessary for adjudication of this present petition are recorded herein below:-

I. The informant/complaint filed a complaint case before the learned Chief Judicial Magistrate, Nagaon which was registered as Complaint Case No.293/2014 under section 120(B)/420/406 IPC. Subsequently, though such case was recorded as complaint case, however, the learned Magistrate had forwarded the same to the local police station for registration of a case and for investigation. Accordingly, Nagaon PS Case No.382/2014 under section 120(B)/420/406 IPC was registered.

II. The primary allegation as discernible from the complaint case/FIR is that the complainant with his family members, friends and relatives and other people of the society on being attracted by an advertisement made by the accused invested a sum of Rs.56,10,000/- with the accused on a

promise to return the informant an interest @ 12% per annum till return of the entire amount invested. It is also stated in the complaint that the accused from time to time paid interest, however, after the month of April 2013, the accused did not pay the interest to the complainant.

III. On 25.02.2014, the complainant could learn that the accused had misappropriated money and therefore, on 26.02.2014, the complainant along with other witnesses went to the premises of the accused company and asked the accused to return the money lend by him.

IV. It is also pleaded that instead of returning the money the accused offered golden ornaments of same valuation to the complainant as he was suffering huge financial loss in business.

V. Though initially the complainant refused to accept the golden jewellery offered by the accused, however, the complainant subsequently accepted the jewellery with invoice and kept the aforesaid golden ornaments in his custody amounting to Rs.46,10,000.00p on good faith.

VI. Thereafter on 04.05.2014, the accused and all other employees of the company left the place of business and in that process, the petitioners suffered a loss of Rs.11,00,000/-, inasmuch as the accused had charged high labour cost on the golden ornaments and as a result, though the golden ornaments were valued at Rs.62,83,200, however, the actual price of the gold ornaments was Rs.51,15,978.

VII. It is also on record that the accused had also lodged an FIR alleging that the informant had ransacked the shop of the accused and taken away golden ornaments. On the basis of aforesaid FIR, Nagaon PS Case No.382/2014 under section 120(B)/420/406 IPC was registered, which was ended in closure report.

4. Mr. Sattar, 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.

5. Per contra, the 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 merits 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.

6. According to the 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.

7. 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.

8. 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.

9. 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.

10. Now coming to the case in hand, the materials available as recorded hereinabove discloses that admittedly the

informant/complainant invested money with a promise of return of 12% per annum. Admittedly, such return was paid for some time, however, such interest or any amount was not paid after the month of April, 2013. It is also an admitted position that the accused informed the complainant that due to his financial problem, he is not in a position to return the interest, however, in lieu of interest he is inclined to exchange golden ornaments of equal amount.

11. It is also an admitted position that golden ornaments were received by the complainant/respondent No.2 after issuance of invoice as the complainant No.2 was afraid that how he can explain of acquiring such gold without any invoice. It is the allegation that the actual amount of gold handed over to the petitioner was not actual compensation as regards money due for the reason that the manufacturing and making charges were charged in an exorbitant way and in the result, the informant/complainant has suffered loss of Rs.11,00,000/-.

12. If the aforesaid statements are accepted to be correct in the considered opinion of this court, there is no ingredients of any initial deception or any ingredients of cheating or misappropriation, inasmuch as the loss incurred is a civil loss in view of the admitted position that it was an investment on expectation of return of interest and that such return was also compensated to an extent by handing over gold ornaments in lieu of cash.

13. Therefore, in the given facts of the present case, this court is of the considered opinion that the complainant has failed to laid the factual foundation in the complaint to satisfy the prosecution of offences

under sections 120(B)/420/406 IPC

14. In the considered opinion of this court, for the reasons recorded hereinabove, the dispute is purely a civil dispute and there are no ingredients of criminal offence and a criminal colour is given to a civil dispute.

15. In view of the aforesaid findings, this Court is of the unhesitant view that this is a fit case where the Complaint Case No. 293/2014 instituted by the respondent under Sections 120(B)/420/406 IPC pending before the learned Chief Judicial Magistrate, Nagaon can be set aside and quashed in exercise of power under Section 482 of Cr.P.C. Order accordingly.

16. While parting with the record, it is made clear that the observations made by this court in this order shall not be treated to be a comment on the merit of the claim of the complainant for the purpose of filing of any civil suit

17. Accordingly the instant petition stands allowed.

JUDGE

Comparing Assistant