

GAHC010192852013



2024:GAU-AS:11352

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

Case No. : Crl.Pet./444/2013

SANTOSH CHOUDHURY
S/O SRI SHYAM KISHOR CHOUDHURY R/O SHREEBHUMI NAGAR,
SHREEBHUMI PATH, P.S. DISPUR, P.O.ODALBAKRA, GUWAHATI- 781034,
DIST. KAMRUP, ASSAM.

VERSUS

DEEPAK KUMAR RAJAK
S/O SRI INDRA DEO RAJAK R/O NAZIB COMPLEX, FIRST FLOOR,
OPPOSITE HOTEL KALPA, G.S. ROAD, GUWAHATI, UNDER P.S. PALTAN
BAZAR, IN THE DISTRICT OF KAMRUP METRO, ASSAM.

Advocate for the Petitioner : MR.J I BORBHUIYA, MR.L MOHAN,MRS.K H
CHOUDHURY,MS. A AHMED,MR.Z ARAFAT,MRS.F BEGUM

Advocate for the Respondent : , MR.M K SAH,MR.M HAQUE,,MD.GIASH UDDIN,MS.B
BHUYAN

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. L. Mohan, Advocate.

For the Respondents : Mr. Deepak Kumar Rajak,
respondent in person.

Date of Hearing : 21.11.2024

Date of Judgement : 21.11.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. L. Mohan, learned counsel for the petitioner. Also heard Mr. Deepak Kumar Rajak, the respondent in person.
2. The present petition is filed under Section 482 of the Criminal Procedure Code, 1973 for setting aside and quashing C.R. Case No. 2124^c/2012 instituted by the sole respondent under Sections 417/406/506 of the IPC pending for trial before the learned Additional Chief Judicial Magistrate, Kamrup at Guwahti. The further challenge is an order dated 14.02.2013 passed by the learned Additional Chief Judicial Magistrate, Kamrup (M) at Guwahati whereby cognizance of offences under Section 417/406/506 of IPC was taken against the petitioner.
3. The allegations levelled in the complaint case are to the following effect:-
 - I. The complainant is an Advocate by profession and doing taxation practice. His client "Cambridge Educational Trust" approached the accused petitioner to do a project for sanction of a loan and in turn, the complainant delegated the aforesaid project to the accused as the accused introduced the complainant to be a person dealing with such project.
 - II. It is the further case that the complainant paid an amount of Rs. 10,000/- by cheque to the accused petitioner for preparation of project report. Subsequently, another amount of Rs. 17,000/- was also paid to the accused petitioner against demand of Rs. 20,000/- with a hope that the accused petitioner will complete the assignment. The said Rs. 17,000/- was taken for preparation of legal report.

- III. It is the further case as discernible from the statement made in the complaint is that the petitioner/accused on 17.03.2012 directly demanded Rs. 50,000/- for further process from the complainant's client i.e. "Cambridge Educational Trust" over phone without intimating the complainant.
- IV. The client of the complainant discussed the matter with the complainant and issued a conditional account payee cheque of Rs. 50,000/- in the name of the accused petitioner with a condition that he should not clear the cheque until further processing the matter and to intimate the complainant before depositing the cheque in the bank. The aforesaid Rs. 50,000/- was dishonestly cleared by the accused petitioner without following the instruction of the complainant and accordingly, the complainant asked the accused petitioner to stop the process of loan and requested to show project and legal report claimed to be prepared by the accused petitioner or otherwise to return all the documents and amount of Rs. 77,000/- in total which was paid by the complainant and his client.
- V. It is further alleged that though initially the accused petitioner promised to complete the work but he could not complete the work and returned an amount of Rs. 50,000/- to the client of the complainant but the amount of Rs. 27,000/- paid by the complainant to the accused petitioner has not yet been paid.
- VI. Further, it is also alleged that the accused petitioner has not returned the documents to the complainant or his client and in this regard, it is pleaded that the complainant has been authorized by the client of complainant to receive the documents from the accused petitioner.
- VII. It is further alleged that the complaint searched the background of the

accused person and it came to know that the accused petitioner has cheated many other people.

VIII. At paragraph 15 of the complaint, it is stated that after several reminders, visits and mental and economical harassment and SMS for expressing intention of filing of criminal and civil case in the court of law for justice, arrest, punishment and recovery of money from the accused, then only the accused has returned an amount of Rs. 50,000/- to the client of the complainant on 19.05.2012 against advance amount of Rs. 77,000/- and the accused has digested the amount of Rs. 27,000/- of the complainant and his client in the name of professional fee by way of dishonestly cheating, breach of trust and misappropriation of property. Accordingly, the complaint was filed.

4. The learned Magistrate after receipt of the complaint recorded the statement of the complainant under Section 200 Cr.P.C. on 22.01.2013, which is quoted herein below:-

“On oath,

I have filed this case against Sri Santosh Kr. Choudhury. He stayed at Shreenagar Path, Odalbakra, Guwahati. He is a professional broker and do the Bank financing Job. I have a firm under the name and style IDS Dipak & Associates, Ulubari. My friend Dharmendra Patel introduced me with the accused Santosh Choudhury and informed me that he usually worked for project loan as well as financing job. On that introduced with me, he used to come to my chamber and consult about Tax matter. He also worked for me. I have a client namely Hemanta Das. He has an institution namely Cambridge Educational Trust. He is the Secretary thereof. There is an another trustee of that Trust namely Rabin Deka. Hemanta Deka and Rabin Deka approached me to do some project work of their School and as asked to prepare the documents. I have handed over the said work to Santosh Choudhury. I have handed over about Rs. 4.5 corer of loan works. Santosh Choudhury asked about 3.5% and also asked about additional amount of Rs. 50,000/-. Santosh Choudhury has visited the site and will do the work within one month. It was in the month of December, 2011. I have given the documents which is required for the preparing loan. The copy of the project prepared by Sri

Sandip Sarmah C.A has also given to him. He said that said report will not serve the purpose and required to prepare separate report and for that purpose he has taken Rs. 10,000/- from me through cheque. In this way he has wasted the month of January. Asked for another amount of Rs. 20,000/- for legal report and I have given him Rs. 17,000/- in cash on good faith. Again he passed the month of February. In the month of March he said that he will do the work, but not done. Thereafter, he has asked for Rs. 50,000/- from Hemanta Das over phone, without informing me and said that without making said payment the work will not happen. After inquiry from Hemanta an amount of Rs. 50,000/- has given to him through cheque with a condition that the amount will be cleared only after completion of work. But no work has done by the accused person. The accused person sought for the original papers from us, but we came to know from the Bank that he has given us false statement. Then we asked the accused to return the documents, but the accused has not yet returned. Later on, came to know that he has withdrawn the amount of Rs. 50,000/- through cheque. Later on the accused has returned Rs. 50,000/- to my client, but no documents has yet returned back and also not yet returned back the another amount of Rs. 27,000/- to me. Later on, the accused person threatened Hemanta me that he will be implicating me in false case. Later on it is also came to know that, the accused person cheated many persons.

Witnesses:-

- 1. Sri Dharmendra Pathak.*
- 2. Sri Hemanta Das.*
- 3. Sri Rabin Deka".*

5. In the aforesaid backdrop, the learned Magistrate under its order dated 14.02.2013 took cognizance of the offences under Sections 417/406/506 of IPC.
6. Mr. Mohan, learned counsel appearing for the petitioner submits that the learned Magistrate had taken cognizance of offences under Section 417/406/506 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. According to him, there is no ingredient whatsoever under Section 506 of IPC, not to say about ingredients of Section 417/406 of IPC.
7. According to Mr. Mohan, learned counsel for the petitioner, no statement is available as regards any inducement on the part of the accused or any allegation of initial deception in the mind and the bare reading of the aforesaid complaint as

well as statement recorded under Section 200 Cr.P.C., shall clarify that the grievance of the complainant is non return of money paid to the accused petitioner against professional fee as well as certain documents.

8. Per contra, Mr. Rajak, respondent in person 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 complaint 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.
9. According to Mr. Rajak, respondent in person, if the complaint is read as a whole, the same discloses commission of offences under Sections 417/406/506 of IPC. Therefore, this Court should not exercise its inherent power under Section 482 of Cr.P.C., to interfere with such complaint proceeding as well as the order of cognizance dated 14.02.2013.
10. Mr. Rajak, respondent in person 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 there is a statement that the complainant intimated the accused petitioner that civil remedy will be sought for, however, same shall not automatically lead to a conclusion which shall require interference of this Court 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 commission of offence under Section 417/406/506 of IPC. Therefore, Mr. Rajak, respondent in person submits that the present criminal petition should be dismissed and the complaint should be allowed to proceed.
11. 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.

12. 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”.

13. 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.

14. 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.

15. 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 was an agreement between the complainant and the accused petitioner as regards completion of a project for obtaining a loan from the bank for the client of the complainant. In the aforesaid process, it was also agreed to the payment of certain professional fees and cost to the accused petitioner by the complainant. In terms of such agreement between them, an amount of Rs, 10,000/- was paid against preparation of project report by a Chartered Accountant and Rs. 17,000/- was paid for legal report.
16. The fundamental grievance is that the accused petitioner approached the client of the complainant and obtained a cheque of Rs. 50,000/- for completion of the work, however, it is also stated that such course of action was conditionally approved by both the complainant and his client. However, without completion of the work, cheque was cleared. It is also a fact stated in the complaint that such amount of Rs. 50,000/- was returned by the accused petitioner. What remains to be returned is an amount of Rs. 27,000/- paid by the complainant client and bare perusal of the complaint as well as the statement recorded under Section 200 Cr.P.C. goes to show that the grievance of the complainant is non refund of the aforesaid amount.
17. This Court has not found anything, even to prima facie disclose commission of any offence under Sections 417/406/506 of IPC, if the entire complaint and the statement recorded under Section 200 Cr.P.C. are taken at their face value and accepted in its entirety.
18. In view of the aforesaid and in view of the settled propositions of law as recorded hereinabove, this Court is of the view that if this criminal proceeding is allowed to be proceeded, same will be the abuse of the process of the Court inasmuch as no case under Section 417/406/506 of IPC is made out.

19. Accordingly, this criminal petition is allowed by setting aside and quashing the C.R. Case No. 2124^c/2012 instituted by the sole respondent under Sections 417/406/506 of the IPC pending for trial before the learned Additional Chief Judicial Magistrate, Kamrup at Guwahti and the order dated 14.02.2013 passed by the learned Additional Chief Judicial Magistrate, Kamrup (M) at Guwahati whereby cognizance of offences under Section 417/406/506 of IPC was taken against the petitioner. However, this order shall not preclude the complainant/respondent to obtain civil remedy, if so advised and if permissible under law.
20. Accordingly criminal petition stands disposed of. LCR be returned back.

JUDGE

Comparing Assistant