

GAHC010211752015



2024:GAU-AS:12142

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

Case No. : Crl.Pet./514/2015

SANDIP BOSE and 3 ORS
DIRECTOR, M/S TANTIA CONSTRUCTIONS LIMITED 25/27 NETAJI SUBHAS
ROAD, KOLKATA- 700001.

2: SRI INDRAJIT ROY
SENIOR MANAGER QA/QC M/S TANTIA CONSTRUCTIONS LIMITED 25/27
NETAJI SUBHAS ROAD
KOLKATA- 700001.

3: SRI SOUMEN NASKAR
PLANT IN-CHARGE
M/S TANTIA CONSTRUCTIONS LIMITED. VILL- PAMOHI
PLOT NO. 267 MOUZA- RAMCHARANI P.S. GORCHUK
GUWAHATI- 781035
DIST. KAMRUP M
ASSAM.

4: SRI MRITUNJAY SARMA
MANAGER
M/S TANTIA CONSTRUCTIONS LIMITED
VILL- PAMOHI
PLOT NO. 267
MOUZA- RAMCHARANI P.S. GORCHUK
GUWAHATI- 781035
DIST. KAMRUP M
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR

2:M/S SHASWAT DEVELOPERS PVT. LTD.

FORMERLY M/S SUBHAM BUILDERS PVT. LTD PANCHAJANYA BHAWAN
BLOCK -B
1ST FLOOR
BORTHAKUR MILL ROAD
ULUBARI
GUWAHATI- 781007
KAMRUP METRO
ASSAM

Advocate for the Petitioner : MS.N CHOUDHURY, MS.P PATHAK,MR.M BORAH,MR.A K BHUYAN

Advocate for the Respondent : MRB KAUSHIKR-2, MS.G SARMAH(R-2),PP, ASSAM,MR.S C KEYAL(R-2),MS.P BARUAH(R-2)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

02.12.2024

1. Heard Mr. AK Bhuyan, learned counsel for the petitioners. Also heard Mr. SC Keyal, learned counsel for the respondent No. 2.
2. The present application is filed under Section 482 Cr.P.C. for quashing of complaint case being registered and numbered as CR case No. 2463^C/2014 under Section 406/418/336/425/426 IPC and order dated 11.03.2015 passed by the learned Sub-Divisional Judicial Magistrate No. 1, Kamrup, Guwahati in the aforesaid complaint case whereby cognizance under Section 418/34 was taken against the petitioner and process was issued.
3. Mr. AK Bhuyan, learned counsel referring to the statements made in the complaint petition as well as the statements of the witnesses recorded under Section 200 Cr.P.C. argues that if entire facts stated in the complaint as well as stated before

the court are accepted to be correct, no ingredients of any offence under Section 418 IPC is made out and therefore, there cannot be also any allegation under Section 34 IPC.

4. Per contra, Mr. SC Keyal, learned counsel for the respondent No. 2 referring to the paragraph 2 of the statement made in the complaint petition submits that the complainant has categorically stated that even after knowing the defects, the accused persons are avoiding complainant and denied the works, which was required to be executed. According to the learned counsel, from a bare reading of the complaint, it discloses that wrongful loss was caused to the petitioner and the accused had denied to protect such right of the petitioner and therefore, learned Magistrate had rightly taken cognizance under Section 418 IPC.

5. I have heard the submissions made by the learned counsel for the parties. Also perused the material available on record.

6. The allegations levelled in the complaint, which is necessary for determination of the present lis are to the following effect:

I. That there was a contract between the petitioner for casting of slabs in a building which was being constructed by the complainant company, namely, M/S Tantia Constructions Limited of which the accused persons are functionaries.

II. As per the said contract, 7th floor of the building was casted on 04.11.2013.

III. However, on the next date, the complainant could learn that there were cracks in the slab and accordingly, on 06.11.2013, the accused person visited the site in presence of the complainant and the complainant could learn that the accused used materials which were of inferior quality.

IV. In the aforesaid backdrop, the complainant also took opinion from M/S Star Cement, who conducted some hammer test and also from

an expert and all opined that such slab cannot be allowed to be continued and the materials were of inferior quality.

V. In the aforesaid backdrop, the complainant requested the accused to re-cast slabs and on their denial to re-cast the slabs, the complainant, at the risk and cost and the responsibility of the accused, re-casted the slabs of 7th floor on their own and accordingly, the complaint was filed.

7. It is also an admitted position that a suit was also filed for damages and compensation for the same, which is pending for disposal at this stage.

8. Be that as it may, after registering the aforesaid complaint case the statement of one Kripesh Kanti Aich was recorded. The same is quoted hereinbelow:

“On the last 04.11.2013 we engaged Tania RMC for the purpose of concrete construction of our building. We gave them roof/ slab construction part. Accordingly, they have done concrete construction work on 04.11.2013. But during inspection on the next date some cracks were found in the concrete casting. We informed them about the same they advised that the construction was poor. After that we informed our consultant and through the expert of star cement we testified the said construction work. Through the reports of experts of Assam Engineering and star cement it was informed to us that the casting work done by the accused company has become dangerous. We informed about the report to the accused company and have broken the casting. We are repeatedly informed the accused persons but on the contrary they replied us very badly. I am got nothing else to say.”

9. Statement of Director of the complainant company was also recorded in this regard, which is also quoted hereinbelow:

“I am the Director of the Complainants Company. Now we have constructed flats in Kharghuli and the casting work of the 7th floor, was

given to the Tantia construction. On 04.11.2013 they had done the casting work. But on 05.11.2013 when we went to check the work of the casting then we could observe that casting was not done good and there were cracks. When we informed them they came and did inspections and admitted in writing and informed that on 07.11.2013 they will call third party Engineer for inspection. On 07.11.2013 we met engineer but no one came from their side. Later on Engineer after inspection informed us that the casting of the 7th floor has become dangerous for human occupation and life and so it should be demolished. Thereafter we awaited for 1 (one) month by applying water, whether there is any scope of betterment or development. After we gave water there was leakage of water. On 04.12.2013 we tested through the testing Company of Star Cement and they gave a report that the slab casting is dangerous and advised to do other casting. Therefore, on 10.12.2013 we tested through Assam Engineering and they did rebound hammer test and did other tests on 16.12.2013 and gave report that it has become dangerous and it should be reconstituted after dismantling. We thereafter made contracts with M/S Tantia Constructions and sent legal notice. But they said that they did not have any fault and said that we have faults. Therefore, we lodged the complaint.”

10. Section 418 IPC deals with cheating with knowledge of the accused that his/her action may cause for wrongful loss to a person out of a transaction to which such cheating relates and another condition precedent is that the accused is bound, either by law or by legal contract to protect the person cheated.

11. From the reading of the complaint and the statement recorded, if taken at its face value and accepted to be correct, in the considered opinion of this court, what is discernible is that a wrong has been committed by the accused person out of a contract and such wrong has not been compensated on demand. However, in the

considered opinion of this court, the said disclosure shall not automatically make it an offence under Section 418 IPC, until and unless there is ingredients of cheating. In fact, if we read at paragraph 11, which says that the complainant has executed the work on its own at the risk and cost of accused company. Facts remain that a suit has already been filed for damages and compensation.

12. Be that as it may, to attract cheating there must be some suggestion either in the complaint or FIR or in the statement recorded under Section 200 Cr.P.C. or before police under Section 161 Cr.P.C. as the case may be, to suggest that there is deception by any person, that fraudulent or dishonest inducement is there to deliver any property to any person and that the accused had dishonest intention at the time of making such inducement. In the case in hand, what is discernible is that there was a contract, works had earlier also been executed and the slabs were casted and when defect was detected, the accused visited the work site and it was verified that there were certain defects. It was verified by some other expert also that material used were of lower quality, however, there was nothing to suggest such lower quality material has been used with an initial deception in mind to cheat the company inasmuch as the fundamental grievance of the complainant as recorded hereinabove is that the accused company failed to meet the demand of the complainant to again recast the slabs or to pay the amount spent by the complainant in re-casting the slabs by itself. Therefore, in the backdrop of aforesaid fact, a criminality under Section 418 IPC cannot be attributed.

13. Accordingly, this court is of the view that this is a fit case where this court should exercise its power under Section 482 Cr.P.C. to quash the CR case No. 2463^C/2014 under Section 406/418/336/425/426 IPC and order dated 11.03.2015 passed by the learned Sub-Divisional Judicial Magistrate No. 1, Kamrup, Guwahati in the aforesaid complaint case whereby cognizance under Section 418/34 was taken against the petitioner.

14. Accordingly, the present criminal petition stands allowed with the above

observation. Parties to bear their own costs.

JUDGE

Comparing Assistant