

GAHC010218812023



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

Case No. : Crl.Pet./1045/2023

JAKIR HUSSAIN AND ANR
S/O MOIN UDDIN
R/O VILL- PASHIM SAMARALI
P.O. CHOWDHURY BAZAR
P.S. MURAJHAR, DIST. HOJAI, ASSAM
PIN-782439

2: ANUWAR HUSSAIN @ ANUWAR HUSSAIN CHOUDHURY
S/O LATE HAJI MUSLIM ALI
R/O VILL- CHARING PATHER
P.S. MURAJHAR

DIST. HOJAI
ASSAM

PIN-78243

VERSUS

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

2:KUTUBUDDIN
S/O LATE HAJI MURAKIB ALI
R/O VILL- CHARING PATHER
P.S. MURAJHAR
DIST. HOJAI
ASSAM
PIN-78243

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. R. Ali, Advocate

For the Respondents : Mr. M. P. Goswami, Addl.PP
Mr. M. K. Hussain, Advocate (R-2).

Date of Hearing : 29.04.2024

Date of Judgment & Order : 29.04.2024

JUDGMENT & ORDER(ORAL)

1. Heard Mr. R. Ali, learned counsel for the petitioners. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent and Mr. M. K. Hussain, learned counsel for the respondent No. 2.
2. The present application is filed under Section 482 of Cr.P.C. assailing the criminal proceeding being PRC No. 419/2023 under Section 120(B)/406/420/506/34 of IPC corresponding to Murajhar PS Case No. 86/2023 pending in the Court of learned Judicial Magistrate 1st Class, Hojai at Sankardev Nagar.
3. Mr. Ali, learned counsel for the petitioners submits that from the FIR, no material is disclosed to proceed against the petitioners and to prosecute them under Sections 406/420/506 of IPC.
4. Per contra, Mr. M. K. Hussain, learned counsel for the respondent/informant submits that the FIR is not always a gospel truth and the investigating officer has filed a charge sheet after completion of the investigation, and therefore, such

criminal proceeding should not be stalled in exercise of power of this Court under Section 482 of Cr.P.C..

5. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
6. Now for proper adjudication of the present case, let the FIR be quoted herein below:-

“Sir,

The humble submission of the informant is that the accused persons are known to me. The accused No. 1 collected the electricity bills from the local area by taking on lease. The accused No. 1 and 2 by making conspiracy with a view to cheat the informant tried to make partner in the lease and tried to collect money from the informant through the accused No. 2.

Accordingly, the accused No. 1 and 2 demanded an amount of Rs. 30,00,000/- (Rupees thirty lakhs) only from the informant. The informant on good faith paid an amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs) only to the accused persons. The accused persons accepted the amount of 15,00,000/- (Rupees Fifteen Lakhs) only 14.12.2020 from the informant by executing an undertaking. The accused persons assured the informant to complete the execution of the lease term within 3 months. After 3 months, while I asked the accused persons, the accused persons deferred the matter by saying tomorrow or day after tomorrow. Thereafter, while a complaint was made before the public, the accused persons paid an amount of 5,00,000/- (Rupees Five lakhs) only to the informant and the accused persons seek more time to return the amount to the informant and the accused No. 2 executed 2 (two) Nos. of agreements with the informant. After expiry of time as per agreement, the informant demanded the money from the accused persons but the accused persons avoided the informant.

Today at about 11:00 AM, while the informant demanded the money, the

accused persons threatened the informant in various manner. The accused persons violated the terms of the agreement. The accused persons cheated the informant by taking the advantage of simplicity of the informant and tried to mis-appropriate the money. The accused persons are hurt the feelings of the informant. The witnesses know the facts and they will explain the incident in details. As I was waiting for settlement, there is delay in filing the case. The Xerox copy of agreement executed the accused persons are annexed herewith.

Therefore, it is prayed that your honour would be pleased to investigate into matter and take necessary action against the accused persons”.

7. It is not in dispute that the amount was transferred under an agreement entered between the petitioners and informant/respondent which is part of the present proceeding.
8. From the agreement and the FIR, it is seen that the grievance of the informant is non return of the money as agreed in terms of the agreement dated 14.12.2020. The agreement was entered between the petitioner No. 1 and the respondent No. 2 and the petitioner No. 2 is the witness to such agreement. It is also not disputed that such agreement was entered by the informant with the accused/petitioners on the basis of an agreement dated 05.03.2021 entered into between Assam Power Distribution Company Limited and the petitioner No. 1. By the said agreement, the petitioner/accused was appointed as an agent for collection of electricity bill.
9. The agreement between the present petitioners and the informant reflects that the informant invested certain money in the project, however, the accused/petitioners failed to return such money and subsequently refused to return such money.
10. In the case of **State of Haryana and Ors –Vs- Ch. Bhajan Lal reported in AIR 1992 SC 604-** the Hon'ble Supreme Court has laid down certain guidelines for exercise of power under Section 482 of Cr.P.C. The relevant portion of such

judgment is quoted herein below:-

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the ac- cused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institu- tion and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. By now it is well settled and as held in the case of **Paramjeet Batra–Vs- State of Uttarakhand** reported in **2013 11 SCC 673** that though the inherent

power of the High Court under Section 482 of the Cr.P.C. should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceeding which are essentially is civil in nature.

12. It is also equally well settled that where a dispute which is essentially of a civil nature is given a cloak of criminal offence, then the proceeding arising out of such dispute can be quashed by exercising the inherent power under Section 482 of the Cr.P.C.
13. Section 405 IPC defines the criminal breach of trust. A reading of the aforesaid provision of law, the essential ingredients of criminal breach of trust can be summarized as below:
 - A. There must be an entrustment of property or dominion over it upon the accused.
 - B. The accused upon whom such property is entrusted has dishonestly used or disposed of the property in violation of any provision of law which prescribed the mode in which such trust is to be discharged or of any contract made defining the discharge of such trust.
14. Section 415 IPC defines cheating. The essential ingredients of cheating are that deception of any person, fraudulent and dishonest inducement with intent to deliver any property or to have consent to retain any property and also an intention whereby an inducement is made to a person to do or omit to do anything which he would not or omit if he was so deceived.
15. The Hon'ble Apex Court in the case of ***Hriday Ranjan Prasad Verma Vs. State of Bihar and Anr.*** reported in ***2000 4 SCC 168*** clarified that there is a very fine line while making a distinction between mere breach of

contract and cheating, which is criminal one and breach of contract. Law is by now well settled that breach of contract cannot give rise to criminal prosecution of cheating until and unless the fraudulent or dishonest intention of cheating is made out in the complaint itself.

16. A bare perusal of the FIR and agreement as discussed hereinabove, clearly reveals that the dispute between the parties is primarily civil in nature. Such dispute involves as regards non return of the investment made by the informant in terms of the agreement dated 14.12.2020.
17. No materials is available on record including in the case diary to establish that there was an intention to cheat the informant right from the very beginning. Only for the reason that the money taken as investment under the terms of the agreement has not been returned, will not necessarily mean that there is an initial deception to cheat the informant.
18. To bring home the prima facie case under Section 420 of IPC, some materials including a narration in the FIR is required that there is an initial deception in mind of the petitioner.
19. So far coming to the criminal breach of trust, though in the FIR allegation is made that money was transferred for investment by the informant to the petitioners but there is no material to suggest that petitioners have dishonestly used or disposed of the property transferred in violation of any provision of law. Therefore, in the considered opinion of this Court, no case under Section 420 of IPC or Section 406 of IPC is made out. No ingredient is available either in the FIR or in the materials so far collected by the investigating authority on the basis of which the charge sheet has been filed.
20. Now coming to the offence under Section 506 of IPC, a vague statement was made in the FIR that the accused/petitioners have threatened the informant

when the informant demanded for return of the money invested. The case diary also doesnot reflect any specific materials as regard commission of offence under Section 506 of IPC or any material regarding the threat given by the petitioners.

21. Therefore, in the totality of the matter, the present criminal petition stand allowed and accordingly, criminal proceeding being PRC No. 419/2023 under Section 120(B)/406/420/506/34 of IPC corresponding to Murajhar PS Case No. 86/2023 pending in the Court of learned Judicial Magistrate 1st Class, Hojai at Sankardev Nagar is set aside and quashed.
22. While parting with the record, it is made clear that the observation made in this present petition shall not debar the informant to seek his appropriate legal remedy for recovery of the money/investment nor the observation made should be treated to be comment on the merit of claim of investment as discussed hereinabove, so far relating to the civil dispute amongst the parties.
23. This criminal petition stands disposed of.

JUDGE

Comparing Assistant