

GAHC010221192023



2024:GAU-AS:8401

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

Case No. : Crl.Pet./1059/2023

DIPSIKHA CHOUDHURY
W/O SUDARSHAN MEDHI
VILL- BAHARI P.O. NIZ BAHARI
P.S. TARABARI
DIST. BARPETA, ASSAM

VERSUS

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

2:ADITYA HARALALKA
S/O LATE DINDAYAL HARALALKA
HUDSON FOODS PVT. LTD.
BENGAL ECO INTELLIGENT PARK

13TH FLOOR
ROOM 2A
BLOCK EM
SECTOR-V
SALT LAKE
KOLKATA-70009

Advocate for the Petitioner : MR. R ALI, MR H A AHMED

Advocate for the Respondent : PP, ASSAM, MS. S KAKATI (r-2),MR. S BORTHAKUR (r-2),MR. INDRAJIT BHUYAN (R-2),MR. I DAS (R-2),MS S SHARMA (R-2),MR. D DAS SR. ADV (R-2)

BEFORE

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date of Hearing : **22.08.2024.**

Date of Judgment : **22.08.2024.**

JUDGMENT & ORDER (ORAL)

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. A.H. Ahmed, learned counsel for the accused petitioner. Also heard Mr. S. Borthakur, learned counsel appearing for the respondent No. 2 and Mr. R.R. Kaushik, learned APP for the State respondents.

2. By filing the instant petition under Section 482 CrPC, 1973, the accused petitioner is seeking quashing of the First Information Report being registered as Hatigaon PS Case No. 264/2023 registered under Section 419/406/420 IPC.

3. The facts of the case are as follows:-

The accused petitioner was engaged as Consultant of Hudson Foods Private Limited by Consultant Engagement Agreement dated 19.04.2021 to provide services as set forth in Appendix-A of the said Agreement and the Company agreed to pay the Consultant as mentioned in Appendix-B of the said Agreement. Accordingly, the accused petitioner was working as Consultant of the said Company since 2019.

4. While the accused petitioner was working with the said company since 2019, on 08.08.2023 one Aditya Haralalka/informant lodged an FIR against the accused petitioner before the Hatigaon Police Station alleging inter alia that one Nilank Kashyap under the authority of the present accused petitioner placed order of different poultry commodities. It is further alleged that pursuant thereto, the goods were transported from the factory of the company to the company's

Godown at Sonapur, Guwahati and the stocked were received by one employee Baban Pathak but on inquiry it came to light that the stocks were missing from the Godown and accordingly, it is alleged that the accused petitioner alongwith the others have stolen the goods and sold the product and thereby committed breach of trust of the company. Accordingly, a case has been registered as Hatigaon Police Station Case No. 264/2023 under Section 419/406/420 IPC.

5. The present petition is being filed for quashing the said FIR.

6. Mr. Choudhury, learned Senior Counsel submits that on bare perusal of FIR and taking the allegations as correct, a prima facie case has not been made out under Section 419/406/420 IPC against the accused petitioner. He further submits that there are no ingredients present in the FIR to constitute the offences under Section 419/406/420 IPC against the accused petitioner.

7. He further submits that the accused petitioner executed the Lease Deed dated 09.09.2022 as an authorized signatory of the Hudson Food Private Limited only. He further submits that the Godown at Sonapur is under the control of the company and the accused petitioner was not entrusted with the goods which were delivered in the company Godown. He further submits that the goods were transported by the company from its factory to its Godown at Sonapur as would be evident from the Delivery Notes. He accordingly submits that as the goods were transported from Principal to Principal basis, there is no way the accused petitioner can be held responsible for its alleged misappropriation.

8. He further submits that the allegation of order having been placed by one Nilank Kashyap under the authority of the accused petitioner is absolutely false and fabricated allegation. He further submits that there is no authorization letter issued by the accused petitioner to said Nilank Kashyap and that on the other

hand, said Nilank Kashyap is not any employee or agent of the company. He accordingly submits that if the company believed and accepted the order placed by the said Nilank Kashyap and goods were transported to him, for that the accused petitioner cannot be held responsible. He further submits that as per FIR, the goods were received by one Baban Pathak, the Godown-In-Charge, and that he was appointed by the company.

9. He accordingly submits that Section 419/420 IPC cannot be attracted to hold a person guilty of cheating unless it is shown that he/she had fraudulent or dishonest intention at the time of making the promise. He accordingly submits that in the instant case, absence of any such allegation against the accused petitioner, Section 419/420 IPC is not attracted as far as the accused petitioner is concerned.

10. He further submits that if the allegations are taken in its face value and accepted as true, then also the offence under Section 419/406/420 IPC is not made out against the accused petitioner and that on the other hand, the allegation levelled in the FIR can be construed as a contractual dispute which is Civil in Nature.

11. He further relies upon the decision of the Hon'ble Apex Court in the case of ***Paramjeet Batra-Vs-State of Uttarakhand*** reported in ***(2013) 11 SCC 673***, wherein the Apex Court has held that "*A complaint disclosing Civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence, In such a situation, if a civil remedy is available and is in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceeding to prevent abuse of process of the Court*".

12. Mr. S. Borthakur, learned counsel for the respondent No. 2 on the other hand submits that the allegation in the FIR clearly makes out a prima facie case and therefore the same warrants no interference from this Court. He submits that the accused petitioner being in overall in charge of the North Eastern State operations of Hudson Foods Private Limited was also entrusted with procures orders, to employee people and to enter into rent and lease agreements and the accused petitioner accordingly appointed the employees in the Guwahati Branch office and Godown and the same were de facto in her control. He further submits that Nilank Kashyap the prime accused and Baban Pathak, co-accused were all appointed by the accused petitioner and out of them Nilank Kashyap is a relative of the accused petitioner.

13. He further submits that the Lease Deed dated 05.09.2022 for lease of Sonapur Godown was executed by her and in the process of business the accused petitioner has placed the order of the customers to the head office of Hudson Foods at Kolkata and accordingly goods were transported to Godown at Sonapur from Raninagar Plant with delivery note, consignee notes and tax invoices.

14. He further submits that it is evident from the record that the said goods were received by Sonali Foods & Feeds Private Limited where the accused petitioner is one of the Directors, and the accused petitioner concealed the fact that goods were actually received by Sonali Foods & Feeds Private Limited which is also evident from the consignee note of the transporters wherein a receiving stamp of Sonali Foods is engrossed.

15. He accordingly submits that an offence under Section 415 is clearly made out against the accused petitioner. He further submits that the accused petitioner being entrusted with the goods, the same having been

misappropriated dishonestly, an offence under Section 405 is also made out against the accused petitioner on the face of the allegations made in the FIR.

16. Mr. R.R. Kaushik, learned APP also submits that the allegation of the FIR clearly makes out a criminal case against the accused petitioner. He further submits by referring to the statements recorded by the Investigating Officer under Section 161 CrPC that Case Diary indicates prima facie involvement of the accused petitioner.

17. I have given my prudent consideration to the arguments made by the learned counsels for the parties and perused the materials available on record including the Case Diary placed before this Court.

18. A FIR is not an encyclopedia. It is registered upon receiving information regarding commission of an offence, to start the investigation. In others words, FIR triggers the investigation. Therefore, the condition precedent for registration of FIR is the information disclosing a criminal offence on the face of it. Thus, petition for quashing FIR has to be examined carefully and cautiously so as not to scuttle the investigation, when the allegations in the FIR prima facie constitutes a criminal offence.

19. The principles of exercise of power under Section 482 CrPC to quash the FIR are as hereunder:-

“(1) 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 accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) Where, the allegations in the FIR do not constitute 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.

(5) 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.

(6) 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 institution 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.

(7) 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."

(Refer:- ***State of Haryana & Others Vs. Ch.Bhajan Lal & Others*** reported in ***AIR 1992 SC 604.***)

20. The test therefore is to take the allegations made in the FIR, at its face value and accepting the same in its entirety, if prima facie an offence is made out or not against the accused.

21. Apt to refer to the contents of the FIR which is reproduced hereunder for ready reference:-

“Dated-08.08.2023

*The Officer-in-Charge, Hatigaon
Hatigaon P.S., Guwahati.*

Subject: Request to register FIR regarding cheating, breach of contract, theft, criminal intimidation and unauthorized sale of goods.

Respected Sir,

With due regards I beg to state that I am the authorized representative of Hudson Foods Pvt. Ltd. Having its head office at Bengal Eco Intelligent Park, Sector-5, Salt Lake, Kolkata and one of its Branch Office at 1st floor, Borah Commercial Complex Beltola Basistha, Guwahati 28. Our Company deals with poultry feeds and has manufacturing plant at Raninagar Industrial Estate near Jalpaiguri West Bengal. In order to cater our supplies at Guwahati and other adjoining places we have taken on rent a godown located at Sonapur. One Mr. Nilank Kashyap was introduced to us around 5 years back and he maintained constant touch with us and requested us to appoint him as our representative for the North East States of India. However, Mr. Kashyap stated that he was working with Criminal Investigation Department (CID) of Assam Police and therefore wanted that Mrs. Dipshikha Choudhury one of his close allies be appointed as a consultant for managing all our operation in the North East States including that of Assam.

The process maintained by us for carrying out our business through our Guwahati Office was that, orders were procured by our Guwahati Office and were send to Kolkata Head Office with the detail name of the customer along with his address, items to be dispersed with rate. The Head Office used to issue Delivery order for dispatch goods from Raninagar plant, Jalpaiguri to the godown located at Sonapur, Guwahati on basis of the orders raised by the Guwahati Branch Office.

Mr. Nilank Kashyap on several dates till 23.06.2023 communicated order of different poultry commodities. The goods so transported from our factory to Guwahati stocked at our godown located at Sonapur where suppose to be sold immediately to the customers against whom the orders were booked by the Guwahati office. The stocks were received in the godown by one of the employee of Guwahati Office namely Baban Pathak who certified that stock worth 89.90 MT poultry feed in stock Godown on 23/06/2023. This stock was supposed to be sold on or before 23/06/2023 itself, but we were surprised as there was no request from Guwahati office for issue of invoice to customers and neither was any indication of payment against the same. We had doubt in our mind as transportation of the goods were made on basis of the orders placed by Mr. Nilank Kashyap under the authority of Mrs. Dipshikha Choudhury who at the relevant point of time was officiating as the consultant of our company and was responsible for managing all operations at Guwahati for the North-East states of India. We doubted some foul play and accordingly we all of a sudden made a surprise visit on 24/06/2023 at the Sonapur Godown to take a stalk of the stocks supposed to be available in the godown as per the stock statement of Baban Pathak. We were surprised to find that there was no stock of our product in the godown and Mr. Nilank Kashyap together with Dipshikha Choudhury were found absent. On being enquired Mr. Baban Pathak who received the stock could not give any explanation in regard to the missing of stocks. Thereafter the undersigned called Mr. Nilank Kashyap for discussing about the issue, when he expressed his anger as to why hehad come to Guwahati without his permission and I will face

dire consequences if he went to the company office in Basisthapur or Sonapur Godown. The undersigned felt afraid and refrained from going there. After great persuasion with Mr. Kashyap about the missing goods from Sonapur godown, he simply said that the goods have been sold and he will Inform details of sales after receiving payment. On challenging him, he refused to cooperate and refused to divulge details of the transactions done by him for the 113.40 MT (Value Rs. 4030330.00) Poultry feed removed from the godown by him (including 30 Mt goods delivered there on 25.06.23 from our factory).

As the informant innocently believed Mr. Nilank Kashyap and thought that he would certainly deposit the amount in the account of the company, the informant waited for a reasonable time and provided him opportunities to refund the money. But Mr. Nilank Kashyap has not only failed to deposit the money, but he has cut short all communications with the informant.

Mr. Nilank Kashyap and Dipshikha Choudhury have breached our trust and stolen the goods from Sonapur godown. It is now clear to us that they and the other directors of Shonali Foods & Feeds Pvt. Ltd. (in which Dipshikha Choudhury is a director) have removed the goods and sold the same in market. Moreover, the bilty (consignment note) used as proof of receipt for the transport was consistently stamped by Shonall Foods & Feeds Pvt. Ltd., indicating that the goods were received by their company instead of our office in Guwahati. This clearly points to their complicity in the theft and unauthorized sale of our products. Baban Pathak was in charge of the stock receiving and sales and he is also deeply involved with them in the theft of the goods. Since then, Baban is also not reachable.

It was worth mentioning here that for the purpose of carrying out day to day operation a Bolero vehicle bearing regd. No. WB 02 AA 5823 registered in the name of Radhesyam Singh (an associate of our company in Kolkata) was kept for official use of the company's director during their visit to Guwahati. Mr. Nilank Kashyap without COUY information to us is using the said vehicle for his personal purpose and despite several requests by the informant to return the said vehicle the accused is till date using the same without having any legal right to possess and use the same. We earnestly urge the authorities to thoroughly investigate this matter, facilitate the recovery of damages, and hold those responsible accountable for the losses incurred by our business. We are fully committed to cooperating with the police and will provide any necessary information or evidence to support the investigation.

Therefore, in view of the facts stated above I pray before your good self to register a case against Mr. Nilank Kashyap, Dipshikha Choudhury, Baban Pathak and others involved under appropriate sections of law and be further pleased to recover the stocks and the vehicle of the company. We trust in your prompt action and dedication to upholding justice in this matter. At this juncture, I request your good office to treat this letter of complaint as an FIR and take necessary action

accordingly and oblige.

Thank you for your immediate attention to this serious matter.

*Sd/-Illegible
(Authorised Signatory)
ADITYA HARALALKA
S/o- Late Dindayal Haral
M-9830033935"*

22. Reading of the said FIR indicates that one Nilank Kashyap was introduced to the informant around 5 years back and it is alleged that at his instance one of his close alias i.e. Ms. Dipshikha Choudhury (*accused petitioner herein*) was appointed as a Consultant for managing all their operation in the North East State including Assam.

23. It is the specific allegation that though orders were placed for different poultry commodities by the accused petitioner, the goods so transported from the informant factory to Guwahati was found to be absent in the Godown of the informant.

24. It is the further allegation that it was suspected that the accused petitioner alongwith the other co-accused have breached the trust of the informant and stolen the goods from the Sonapur Godown.

25. Let me now examine whether the aforesaid allegations, if taken in its entirety constitutes an offence under Section 420 IPC.

26. Section 420 IPC is reproduced hereunder for ready reference:-

“Section 420:- Cheating and dishonestly inducing delivery of property:-
Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine.”

27. The following ingredients are essential to bring home the charge of cheating:-

- 1) deliver any property to any person; or
- 2) to consent that any person shall retain any property; or
- 3) intentionally induce the person so deceive to do or omit to do anything which he would not do or omit if he were not so deceived and such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.

(Refer:- ***Vesa Holdings Private Limited & Another Vs. State of Kerala & Others, (2015) 8 SCC 293.***)

28. In the present case, by way of Independent Consultant Engagement Agreement dated 19.04.2021, the accused petitioner agreed to provide the following service to Hudson Foods Private Limited:

- a. Marketing development for sale of animal feeds.
- b. Liaisoning with dealers and sales persons
- c. Risk assessment of prospective dealers and stakeholders
- d. To act under the board of directors and be over all in charge of ethical norms of all employees of the company for operations.

29. That apart the accused petitioner was in overall in-charge of the North Eastern States operations of Hudson Foods Private Limited and was also entrusted with procures orders, employees people and to enter into rent and lease agreements for the purpose of renting/leasing offer space and Godown.

30. It appears that all employees in Guwahati Branch office and Godown were appointed by the accused petitioner and were de facto in her control and Nilam Kashyap@ NilamMedhi [a relative of accused petitioner], and Baban Pathak were all appointed by the accused petitioner. It further appears that Lease Deed dated 05.09.2022 for Lease of Sonapur Godown was executed by her. It further appears that in the process of business, the accused petitioner placed the order of the customers to the head office of Hudson Foods at Kolkata and accordingly, goods were transported to Godown at Sonapur from Raninagar Plant with delivery note, consignee notes and tax invoices. It further appears that however, the goods were received by Sonali Foods & Feeds Pvt. Ltd, where the accused petitioner is one of the directors, in fact, the said company was incorporated on 15.06.2021 [after execution of Independent Consultant Engagement]. It further appears that the accused petitioner concealed the fact that goods were actually received by Sonali Foods & Feeds Pvt. Ltd, which is evident from the consignee note of the transporters wherein a receiving stamp of Sonali Foods is engrossed. It further appears that the employee of the Godown namely Baban Pathak had certified that Stock worth 89.90 MT poultry feeds of Hudson was present in the Godown, however, there was no physical stock of the poultry feeds in the Godown.

31. Apparent from the above, that the accused petitioner in collusion with the other accused dishonestly made false representations to Hudson Foods to transport poultry feeds to the Godown at Sonapur, to induce Hudson foods to deliver its products. Further, goods delivered by Hudson at Sonapur Godown were sold in the name of Sonali Foods & Feeds Pvt. Ltd. This would be evident from the bank statement of the accused petitioner that amount payable by the

customers were actually remitted by the accused petitioner from her bank account to Hudson Foods and this also implies that products of Hudson Foods were actually sold by the accused petitioner in the name of Sonali Foods & Feeds Pvt. Ltd. and not in the name of Hudson Foods.

32. In the FIR, the opposite party No. 2 alleged that on physical verification of the products in the Godown on 24.06.2023, he could not find any products and that both accused petitioner and Nilam Kashyap were absent. And subsequently, Nilam Kashyap intimated the Opp. party No. 2 (informant) that goods were sold and refused to divulge the details of the transaction. No payment against such goods have been received by Hudson Foods and such goods have been utilized by the accused petitioner for her personal benefit.

33. Therefore, in the case in hand, all the ingredients of Section 420 IPC, are present in the face of the allegations made in the FIR. Hence, an offence under Section 420 IPC is made out against the accused petitioner.

34. Let me next examine whether the aforesaid allegations, if taken in its entirety constitutes an offence under Section 405 IPC.

35. Section 405 IPC is reproduced hereunder for ready reference:-

“405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

36. The basic requirement to bring home the acquisition under Section 405 IPC

are the requirement to prove conjointly, entrustment with the property or domain over the property and whether the accused petitioner was actuated with dishonest intention or not misappropriated it or converted it to his own use to be detriment of the person entrust.

37. Thus, the entrustment of property is pivotal to constitute an offence under Section 405 IPC.

(Refer:-***State of Gujarat Vs. Jaswantlal Nathalal, AIR 1968 SC 700.***)

38. In the present case, it appears that the accused petitioner used to communicate the orders placed by Customers and on the basis of which the goods from Raninagar were delivered to Sonapur Godown along with a delivery note, consignee notes of transporters and tax invoices. Indeed, goods were entrusted to the accused petitioner, as she was in overall in-charge of the goods. Once goods were delivered to Godown, goods were under her dominion. Pertinent that Baban Pathak was appointed by accused petitioner and thereby she was in the overall in charge of ethical norms of all the employees.

39. After receiving the goods, the accused petitioner ought to have sold the goods to the customers as per the order placed before the Kolkata office of the Hudson Foods. The employee of the Godown certified that there was a stock of 89.90 MT as on 23.06.2021, however, the same appears to be incorrect. Further, from the consignee notes of the transporters, the goods transported from factory were actually received by the Sonali Foods & Feeds Pvt. Ltd, where the accused petitioner is one of the directors. Moreover, the accused petitioner along with her associates could not divulge the details of transaction. This acts

of the accused petitioner implies that goods received by the accused petitioner [entrusted with her] were converted for their own use, which is once again evident from the bank statement of the accused petitioner wherein one person, namely, Mohammed Atowar remitted money in the account of accused petitioner and thereafter, she remitted the same amount to Hudson Foods.

40. Therefore, from the above, ingredients of Section 405 IPC is also well founded in the present case against the accused petitioner.

41. Situated thus, apparent that from the allegations made in the FIR and the materials collected by the Investigating Officer which is available in the Case Diary produced before this Court by the Additional Public Prosecutor, the accused petitioner is prima facie involved in the offence alleged.

42. It further appears that the investigation is at the initial stage and it is evident from the case diary that the accused petitioner has not cooperated with the investigation till date. I am thus of the considered view that such investigation cannot be nipped in the bud.

43. In view of the above, this Court is of considered view that this FIR warrants no quashment from this Court.

44. Accordingly, the Criminal petition stands rejected.

45. Resultantly, interim order passed earlier stands vacated.

Return the Case Diary.

The petition stands dismissed.

JUDGE

Comparing Assistant