

GAHC010119822016



2024:GAU-AS:11527

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

Case No. : Crl.Pet./799/2016

TAJ UDDIN LASKAR and 2 ORS
ADVOCATE, C/O SRI N. DHAR ADVOCATE, REHABARI BILPAR, P.O.
GUWAHATI - 781008, DIST. KAMRUP M, ASSAM.

2: SRI BIKRAM MALAKAR
ADVOCATE
C/O N. DHAR DVOCATE
REHABARI BILPAR
P.O. GUWAHATI - 781008. DIST. KAMRUP M
ASSAM.

3: SRI PALLAB KANTI DEB
RETIRED SUB-ENGINEER
P.W.D. ROADS
ASSAM
CHANDMARI
P.O. GUWAHATI - 781003
DIST. KAMRUP M
ASSAM

VERSUS

ABDUL AHAD CHOUDHURY and ANR.
S/O LT. TAHIDUR RAHMAN CHOUDHURY VILL- SUPRAKANDI,P.O.
SUPRAKANDI- 788712.

2:STATE OF ASSAM

NOTICE TO BESERVED THOUGH THE DEPUTY COMMISSIONER
KARIMGANJ DISTRICT
KARIMGANJ- 788710
ASSAM

Advocate for the Petitioner : MR.N DHAR, MS.S DASGUPTA,MRS.U BARUA,DR.B AHMED

Advocate for the Respondent : MR.S BORTHAKURR-1, ,PP, ASSAM,MRP GOGOI(R-1)

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

ORDER

Date : 25.11.2024

1. Heard Mr. N Dhar, learned counsel for the petitioner and Mr. B Sarma learned Addl. PP, appearing for the State respondent.

2. The present application under section 482 Cr.P.C is filed for quashing of Criminal Proceeding in Karimganj PS Case no.826/2016 dated 01.10.2016 (corresponding to GR Case No.2196/2016 under sections 406/420 IPC against the present petitioners.

3. The FIR is quoted herein below:

*“To,
The Officer in Charge
Karimganj Police Station,*

Sub: FIR

*Complainant: Abdul Ahad Choudhury,
S/O, Lt. Tahidul Rahman Choudhury of Vill &
P.O Sutarkandi, P.S & Dist – Karimganj,
Assam Mob: 9531113349*

Sir,

I the complainant engaged the below scheduled accused persons

who is by profession lawyer by executing wakalatnama and paid fees as per their demand. That the clever accused persons induced me to pay a big sum of fees together by way of cheque and promised me to conduct all my cases pending in Hon'ble Gauhati Court. Believing upon their words, I issued four numbers of cheques in favour of accused person without date against my account No.CD 0036050025447 of Rupees Seven Lac of UBI Karimganj main Branch and another against my CC A/C No.0036250016223 of the same Bank, another of Axix Bank C/C Account No.914020001649985, last one of CC A/No. No.91102054930707. Besides that my manager/employee Nazrul Islam Choudhury, S/O Late Abdul Mutlib Choudhury of vill-Kurikhala, Karimganj if issued any cheque in favour of accused then I got no knowledge of that as he dealt with my cases and now not working under me. That by way of cheque I paid the accused persons Rs. 13 lac & by cash I paid Rs.12 Lac (paid on several dates). The purpose of paying such big amount was to get anticipatory bail in 21 nos of cases and to appear on behalf of me in the cases which is lodged by me. Being assured by their words I blindly believed their words and was of relief that I would get bail and would win cases but all went against me and I got arrested in the cases and was in jail for several days. After getting bail I came out and asked them about such betray on which they used slang words against me and no positive reply came from them. Being suspected by their activity I enquired the positions of my cases and discovered that my cases viz WP(C) 3586 dismissed on 24.05.2016, WP(C) 2950 dismissed on 09.06.2016, WP(C) 1088 dismissed on 24.05.2016, WP(C) 2950 dismissed on 09.06.2016, WP(C) 1088 dismissed on 17.08.2013, WP(C) 4087 dismissed on 04.12.2012, WP(C) 16/15 on 16.09.2016 and all these cases dismissed due to non appearance of my lawyers (accused). So it became crystal clear that the accused being managed by my opposite party cheated me and also made breach of trust and also made breach of trust and I being simple person by their inducement paid them huge amount and ultimately by loosing cases due to their conspiracy I lost in crores.

Therefore you are humble requested to do the needful to recover my said cheques and book the accused persons as per law.

Name of the accused persons:

1. *Taj Uddin Laskar (Mob 9706451963)*
2. *Bikram Malakar,*
3. *Pallab*

All are advocates practicing in Gauhati High Court, Assam

Yours faithfully

Abdul Ahad Choudhury

Date :

*Copy to:
President/secretary,
Bar council of Assam etc.
Superintendent of Police,
Karimganj, Assam."*

4. Mr. Dhar, learned counsel for the petitioners submits that the petitioner Nos.1 & 2 who are named as accused are practicing advocates of Gauhati High Court and the petitioner No.3 who is also named as an accused is retired person who retired as a Sub-Engineer from the Office of the Chief Engineer, PWD (Roads).

5. It is the contention of Mr. Dhar that if the FIR is taken to be correct on the face of it, no prima facie case under sections 406/420 IPC is made out. It is also the contention of Mr. Dhar that if the allegations made in the FIR is seen, the primary allegation is that the accused Nos.1 & 2 being advocates have not conducted the case filed by the informant properly and in the process he paid a substantial amount of

fees.

6. Mr. Dhar, 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.

7. Per contra, Mr. Sarma, 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 merit 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.

8. According to Mr. Sarma, 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.

9. 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.

10. 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:-

I. 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.

II. 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.

III. 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.

IV. 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”.

11. The Hon'ble Apex Court in ***Mohammad Wajid & Anr vs. State of UP and Ors*** reported in ***2023 INSC 683*** relied on by the petitioners, 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.

12. 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.

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. In the case of ***R K Dalmia Vs Delhi Administration***

reported in **1963 1 SCR 253**, the Hon'ble Apex Court held that the definition as given under Section 405 Cr.P.C. does not restrict the property to be movable or immovable one and the property used in the Cr.P.C. is having a much wider sense than the expression movable property. Accordingly, the Hon'ble **Apex Court in RK Dalmia** (supra) concluded that there is no good reason to restrict the meaning of word 'property' to movable property only when it is used without any qualification under Section 405 IPC.

15. Section 420 IPC provides that 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 valuable security or anything, which is signed or sealed, and which is capable of being converted into valuable security, shall be liable to be punished for a terms which may extend to seven years and shall also be liable to fine.

16. Now coming to the case in hand, if the entire statement and the allegations made in the FIR are taken at their face value and accepted in its entirety, what is seen is that the informant engaged the accused Nos.1 & 2 as his lawyer and fees has also been paid, however, his grievance is that the case as not properly conducted, which in no manner even remotely discloses that the fee paid has been dishonestly used or there was any entrustment of property but it is admittedly a legal fee. There is also no material remotely suggesting dishonest inducement. At best the allegation may be an allegation of misconduct and not misappropriation of property or cheating.

17. Be that as it may, in view of the aforesaid findings, this Court

is of the unhesitant view that this is a fit case where the Karimganj Police Station Case No.826/2016 dated 01.10.2016 corresponding to GR Case No.2196/2016 under sections 406/420 IPC can be set aside and quashed in exercise of power under Section 482 of Cr.P.C. Order accordingly.

JUDGE

Comparing Assistant