

GAHC010261782022



2024:GAU-AS:11697

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

Case No. : Crl.Pet./1348/2022

INDARJEET KAUR SAHNI
S/O- AMARNATH SAHNI,
R/O- VILLAGE BUCHAULI URF BAZIDPUR,
P.S- JANDAHA,
DIST- VAISHALI, STATE- BIHAR,
PIN-844505

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

2:RAJESH SAHANI
S/O KAILASH SAHANI
89
MAKSUDANPUR
CIRCLE - MOHIUDDIN NAGAR
DIST.-SAMASTIPUR (BIHAR)
PIN-848501. PRESENTLY RESIDING AT MODEL VILLAGE ROAD
G.H.H.S KANKARNALLA
NAHARLAGUN
P.O. AND P.S.- NAHARLAGUN
DIST.- PAPUM PARE
ARUNACHAL PRADESH
PIN-791110

Advocate for the Petitioner : MR. S P ROY, JYOTISH DAS

Advocate for the Respondent : PP, ASSAM, MS L HMAR (r-2),MR. B BORAH (r-2),MR. M R CHOUDHURY (r-2),MR. I H SAIKIA (r-2),MR K KASHYAB (r-2),MR. K KALITA (r-2)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGEMENT AND ORDER (ORAL)

Date : 26-11-2024

Heard Mr. S.P. Roy, learned counsel for the petitioner Shri Indarjeet Kumar Sahni, who has filed this application under Section 482 of Code of Criminal Procedure, 1973 (CrPC for short) with prayer for quashing the FIR registered as Basistha Police Station Case No. 502/2022 under Sections 420/406 of Indian Penal Code, 1860 (IPC for short).

2. The allegation against the petitioner is that he used to serve as the Manager-cum-Accountant under the informant specially, for the commercial activities of Creative UPVC Windoors, Guwahati since October, 2020 to March, 2022. Prior to that, the petitioner used to serve as informant's sales manager at Naharlagun. It is alleged that money taken by the petitioner to purchase raw materials and salary component, was misappropriated by the petitioner. The petitioner showed some expenditures which does not meet up to the money taken away by the petitioner. There is a vast gap within the money taken by the petitioner and the money spent by the petitioner, which implies that the petitioner has misappropriated the money meant for salary component and purchasing raw materials. It is further alleged that the informant called the

petitioner on several occasions to return to Assam and clear the account but the petitioner did not return to Assam. The petitioner has been deliberately avoiding the informant.

3. On checking the stock and after verifying the raw materials and the inputs, an amount of Rs.50 Lacs was found to be missing and unaccounted for. It is alleged that the misappropriated amount was transferred to the petitioner's various bank accounts by the informant as the informant believed that the petitioner would be utilizing the money for the growth and welfare of the informant's company. Further, a list of amount transferred to the petitioner's various bank accounts has been mentioned in the FIR. The following reflects the amount of money transferred to the petitioner by the informant :

“(i) *Y.D. Decor Enterprise Ziro, Central Bank, Ziro branch,*

Ac. No.: 3785 0011 79

(ii) Y.D. Decor Enterprise, Indian Bank, Naharlagun,

Ac. No. 6614 9554 41

Transferred total Rs. 37,03,940.00

(iii) Creative UPVC Windoors, Ghy, Axis Bank, Guwahati Branch

Ac. No: 9200 2001 3747 609

Transferred total Rs. 13,22,882.00

(iv) Rajesh Sahani, SBI Nirjuli Branch,

Ac. No: 3062 4006 591

Transferred total Rs. 8,10,620.00

Cumulative amount transferred : Rs. 97,21,618.00"

4. It is further alleged that the petitioner had shown an amount of Rs.52,24,683/- (Rupees Fifty Two Lacs Twenty Four Thousand Six Hundred and Eighty Three). At present, the petitioner is in Bihar and evading payment of amount misappropriated by him.

5. It is submitted on behalf of the petitioner that the amount allegedly misappropriated by the petitioner as shown through Annexure-D series reflects that there is a difference of only Rs.16,00,000/- (Rupees Sixteen Lacs) and not Rs.50,00,000/- (Rupees Fifty Lacs), as alleged. It is submitted that this dispute is purely civil in nature. The informant can file a Money Suit and recover the unaccounted money as reflected in Annexure-D series. Annexure-D series is a detailed statement, which reflects the amount of money received by the petitioner and the amount the petitioner had utilized for the company. It is admitted by the petitioner that indeed he was working in the Company since October, 2020 and he had resigned in March, 2022. It is further submitted that

the informant has not denied the statement of the petitioner. It is further submitted that no objection has been filed by the informant denying the statement of the petitioner marked as Annexure-D series and the petitioner has relied on the decision of the Hon'ble Supreme Court in *Naseem Bano (SMT) vs. State of U.P. and others reported in (1993) Supp (4) SCC 46* wherein it has been held that :

“11. Since we have already held that the appellant possessed the minimum qualifications prescribed for the post of L.T. grade teacher on the relevant date, it follows that the appellant was wrongly denied promotion to the post of L.T. grade teacher when one post became available on August 29, 1977 and it was filled in by appointment of respondent 6 by direct recruitment. Respondent 6 was appointed on the post of L.T. grade teacher on October 17, 1979 and she has been holding the post since then. Keeping in view the facts and circumstances, we are of the opinion that the ends of justice could be met if, without upsetting the appointment of respondent 6 on the post of L.T. grade teacher, the appellant is treated to have been promoted to the post of L.T. grade teacher with effect from the date when respondent 6 was appointed on the said post and the appellant is given the consequential benefits accruing to her as a result of such promotion.”

6. The allegation that the petitioner has misappropriated crores of rupees and has constructed a villa, is absolutely false allegation. The petitioner has constructed a small house obtaining a loan and Annexure-E clearly reflects that the petitioner obtained a loan of Rs.12,00,000/- (Rupees Twelve Lacs) to construct his house. The petitioner has also annexed his bank statements in Annexure-C series of the petition relating to all the transactions undertaken by

the petitioner.

7. Refuting the averments, learned Additional Public Prosecutor Mr. D. Das has submitted that the ratio of Naseem Bano's case (supra) is not applicable to this case. To invoke the inherent jurisdiction under Section 482 of CrPC, the petitioner has to establish a prima facie case, which the petitioner has failed to establish.

8. It is submitted that this Court vide order dated 18.07.2022 in AB No. 1606/2022 has rejected the Anticipatory Bail application after perusal of Case Diary. In this case, the Case Diary is before this Court and investigation has been stalled since November, 2023 as the Case Diary has been lying in this Court. Further investigation is necessary which will unearth through proper evidence whether any case lies against the petitioner. The petitioner has failed to discharge his burden to establish a prima facie case to quash the FIR, at least at this stage of investigation.

9. Learned counsel Mr. I.H. Saikia for the respondent No. 2 has submitted that admittedly the petitioner has accepted that there are unaccounted expenses of Rs.16 Lacs and not Rs.50 Lacs but this does not negate the allegation that the petitioner has misappropriated the money which was for salary component and for purchasing raw materials for the informant's

Company.

10. Learned counsel for respondent No. 2 has relied on the decision of the Hon'ble Supreme Court in *State of Haryana and others v. Ch. Bhajan Lal and others reported in AIR 1992 SC 604* wherein guidelines have been laid down if the inherent jurisdiction under Section 482 of CrPC can be invoked and it has been held that :

“108. In the backdrop of the interpretation of various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 channelized and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 F.L.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.

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 F.I.R. 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.

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.”

11. In reply, learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in *Rajiv Thapar and Others Vs. Madan Lal Kapoor* reported in (2013) 3 SCC 330, wherein it has been held that :

“23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court u/s 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the

assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it u/s 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

12. I have considered the submissions at the bar with circumspection. I have also scrutinized the Case Diary as well as the documents submitted by the petitioner. A Coordinate Bench of this Court has indeed rejected the anticipatory bail application of the petitioner vide order dated 18.07.2022 in Case No. AB No. 1606/2022 after going through the Case Diary. The police has also seized certain documents from the office of the Company. Annexure-D series itself reflects anomalies of Rs. 16 Lacs.

13. Thus, the ratio of the decision of the Hon'ble Supreme Court in Rajiv

Thapar's case is not applicable to this case as the materials relied upon by the petitioner does not appear to be irrebuttable, at least at this stage of investigation. Investigation is still under progress. There does not appear to be a prima facie case to invoke the inherent jurisdiction under Section 482 of CrPC. At this juncture, it cannot be conclusively decided that further proceeding will be an abuse of the process of the Court. The provision under Section 482 of CrPC has to be exercised sparingly.

14. In view of my foregoing discussions, this petition is dismissed as this petition is devoid of merits.

15. Send back the Case Diary.

JUDGE

Comparing Assistant