

GAHC010273852023



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

Case No. : Crl.Pet./1274/2023

LITAN DAS
S/O KHOKAN DAS, R/O LAXMAN PARA AMTALI, SEPAHIJALA AGARTALA
TRIPURA, P.O.-AMTALI, P.S.-AMTALI, PIN-799130

VERSUS

THANMAL CHHAJER AND ANR
PROPRIETOR M/S ARIHANT TILE AND SANITARY WARE, PITAL
KARKHANA COMPOUND, BISHNUPUR MAIN ROAD, P.O.-GUWAHATI-
781016, DIST-KAMRUP (M), ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSA

Advocate for the Petitioner : SAYANTAN TALAPATRA

Advocate for the Respondent : PP, ASSAM (R2)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

07.06.2024

1. Heard Mr. S. Talapatra through VC, learned counsel for the petitioner. Also heard Mr. D. P. Goswami, Additional P.P. for the State/respondent No. 2. None appears for the respondent No.1

2. By filing this application u/s 482 Cr.P.C, the petitioner has prayed for quashing of the criminal proceeding being CR case No. 4394/2022, pending in the court of learned JMFC, Kamrup (M) and the order of taking cognizance against the petitioner dated 12.04.2023 under Section 420 and 506 IPC.

3. The case of the petitioner is that the petitioner being proprietor of M/S Banty Sanitary store having a long standing business relationship with the respondent No.1 (Thanmal Chhajer), proprietor of M/S Arihant Tiles and Sanitary ware, ordered sanitary items from the respondent No.1 in their usual course of business, but when the items reached Agartala the petitioner was shocked to see that all the items were broken and defective. On receiving the items in such condition, the petitioner called the respondent No.1 over phone and told about the defective and broken items which the petitioner had received.

4. Thereafter, the respondent No.1 asked the petitioner to return the goods to the respondent's retail shop under the name of M/S Arihat Tiles and Sanitary ware. Accordingly, the goods were returned by the petitioner in a commercial truck having registration No. TR 01 AG 1769, bearing the transportation cost of his own. The petitioner had also asked for challan of the defective items which he had returned but the respondent's agent told the petitioner that they did not provide challan of defective items and they would replace those items with fresh pieces. The petitioner on good faith did not raise any issue as there was a running business relation between the petitioner and the respondent No.1 for a long time.

5. The petitioner further stated that after span of two years, the petitioner received a legal notice on 10.03.2021 asking him to pay Rs.66,450/- to the respondent No.1 or else the respondent No.1 would file criminal case against

the petitioner. Accordingly, the Complaint Case vide 4394/2022 has been instituted against the petitioner.

6. It was urged by the learned counsel for the petitioner that the trial court by taking cognizance of the offence in pursuant to the complaint has committed serious illegality and material irregularity in as much as there is no material to take cognizance of offence against the petitioner under Section 506 or 420 IPC.

7. It is also the submission of learned counsel for the petitioner that from the complaint petition it reveals that the allegation against the petitioner are on violation of contractual obligation between the parties and if any dispute arises out of the said transaction, the only remedy available to the respondent No.1 is to institute a suit for recovery but not a criminal proceeding.

8. It is further submitted that the learned trial court has failed to appreciate the law as laid down by the Hon'ble Supreme Court in the case of *State of Haryana and others vs Bhajanlal and others AIR 1992 SC 604*. If the principles and guidelines laid down in *Bhajanlal* (supra) are to be followed, the allegation in the complaint and the order of cognizance as well as order of issuance of process against the petitioner are liable to be set aside and quashed.

9. According to learned counsel for the petitioner, the trial court has proceeded wrongly by converting a pure civil dispute into a criminal offence. The evidence as led under Section 200 Cr.P.C. in support of allegations remain uncontroverted, no offence is made out against the petitioner. It is clear example of the abuse of the process of the court.

In support of his submission the learned counsel has relied on the following case laws:

(i) (2023) Livelaw (SC) 157 (*Sarabjit Kaur vs State of*

Pubjan and other).

(ii) *(2015) 8 SCC 293 (Vesa Holdings Pvt. Ltd and others vs Kerala and others).*

10. Though the notice has been properly served to the respondent No.1 but none has appeared. However, the case of the complainant is something different which reveals from the complaint petition is that the accused petitioner having longstanding business relationship induced him to provide different electrical products on credit and purchased such items on credit with assurance of timely payment of the goods. The accused petitioner requested the complainant to provide him product amounting to Rs.66,450/- on different dates. An amount of Rs.45,186/- was debited in the ledger account of accused person being interest on tax invoices. Total amount payable by the accused petitioner till 01.01.2022 as per his ledger account was Rs.1,11,636/-. Though the complainant approached the petitioner on different dates for payment of such amount but he did not pay. Knowing the ill intention of the accused petitioner, a legal notice was issued by the complainant to the petitioner through his lawyer giving him 30 days time to repay the outstanding amount including the interest. Then the complainant lodged the complaint case before the court of CJM, Kamrup (M), Guwahati.

11. In the instant case, the question that arises is as to whether the allegations in the complaint if taken to the face value give rise to disputes of pure civil nature.

12. [Section 482](#) of Code of Criminal Procedure saves the inherent power of the High Court to make orders necessary to secure the ends of justice. In *Indian Oil Corpn. v NEPC India Ltd. reported in (2006) 6 SCC 736* reviewed the

precedents on the exercise of jurisdiction under [Section 482](#) of the Code of Criminal Procedure 1973 and formulated guiding principles in the following terms:

“i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) 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 mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) 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.

(iv) 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.

(v) ... The High Court, in the exercise of its jurisdiction under [Section 482](#) of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under [Section 482](#). A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of

the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code. 12 The first respondent has alleged in the complaint that the appellants have committed offences under [Sections 405, 406, 415](#) and [420](#) read with [Section 34](#) of the Penal Code.....”

13. [Section 420](#) of the Penal Code reads thus:

“[Section 420](#). Cheating and dishonestly inducing deliver 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 to 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.”

14. *The ingredients to constitute an offence under [Section 420](#) are as follows:*

i) A person must commit the offence of cheating under [Section 415](#); and

ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under [Section 420](#) IPC.”

15. A court exercising its inherent jurisdiction must examine it on their face, the averments made in the complaint constitute the ingredients necessary for the offence. The allegation against the petitioner is basically that he failed to repay the amount of purchasing items as per contract between the parties.

16. The settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words, for the purpose of constituting an offence

of cheating, the complainant is required to show that the accused have fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out.

17. In ***Binod Kumar vs State of Bihar***, reported in **(2014) 10 SCC 663** *certain amounts were due and payable to a contract worker. When the amount due was not paid due to a termination of the contract, the worker filed a criminal case against the appellant for criminal breach of trust. The appellants' petition under [Section 482](#) of the Code of Criminal Procedure for quashing was dismissed by the High Court. A two judge Bench of Hon'ble Supreme Court examined the ingredients of the offence and whether the complaint on its face disclosed the commission of any offence. Hon'ble Supreme Court quashed the criminal proceedings holding thus:*

“14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not.

18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of [Section 405](#) IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property...

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest

misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of [Sections 405/420 IPC](#) are missing, the prosecution of the appellants under [Sections 406/120-B IPC](#), is liable to be quashed.”

18. In the case of ***Rajesh Bajaj vs State of NCT of Delhi*** reported in ***(1999) 3 SCC 259***, the Delhi High Court quashed an FIR alleging an offence under Section 420 of the Penal Code on the ground that the complaint did not disclose the commission of any offence which was observed as follows:

“9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details...”

19. Reverting to the case in hand, according to the learned counsel for the petitioner, the actions of the respondent No.1 constitute an abuse of process of the court. It is contended that the present dispute is of a civil nature and the respondent No.1 has attempted to cloak it with a criminal flavor to harass the present petitioner. It is also contended that there is an undue delay in filing the complaint and this demonstrates the malafide intention of the respondent No.1 in filing the complaint against the petitioner.

20. In the case of ***State of Karnataka vs L. Muniswamy*** reported in ***(1977) 2 SCC 699***, it was held that:

“7...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the

proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

21 . The jurisdiction under [Section 482](#) of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.

22. In the case in hand, as I have already indicated that the petitioner purchased some articles on credit from the respondent No.1. There was a contract between the parties to pay the cost of the goods amounting to Rs. 66,450/-. According to the respondent No.1, the petitioner had to pay Rs. 1,11,636/- along with the interest. However, the petitioner did not pay the said amount in spite of repeated request. Accordingly, the complaint case was lodged. The averments in the complaint, read on its face do not disclose the ingredients necessary to constitute offences under the penal code. An attempt has been made by the respondent No.1 to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. Hence, the complaint filed by the respondent No.1 against the accused petitioner constitutes an abuse of the process of the court and is liable to be quashed. Hence, the proceeding of CR 4394/2022, pending in the court of

JMFC, Kamrup(M) is quashed.

23. In the result, the criminal petition is allowed and disposed of accordingly.

JUDGE

Comparing Assistant