

GAHC010277982023



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

Case No. : Crl.Pet./1299/2023

WAHIDA BEGUM
W/O NASIRUDDIN AHMED
R/O B.R. MAZUMDAR PATH BAGHARBORI, PO. PANJABARI, P.S. DISPUR,
GUWAHATI-781037, IN THE DISTRICT OF KAMRUP (M), ASSAM

VERSUS

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

2:SRI PRANJAL JYOTI BORA
S/O LATE DR. PRAFULLA CHANDRA BORA

R/O HOUSE NO. 6
BISHNU PATH

BYE LANE NO. 3
RUKMINIGAON

P.S. DISPUR
GUWAHATI-781022
DIST. KAMRUP (METRO)
ASSA

Advocate for the Petitioner : MR. K R BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER**Date : 15.05.2024**

Heard Mr. K. R. Bora, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. R. Chakravorty, learned counsel for the respondent No. 2.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for setting aside and quashing the proceeding of the C.R. (NI) Case No. 595/2021, pending before the Court of learned Judicial Magistrate First Class No. 5, Kamrup (M), Guwahati as well as the order dated 22.02.2022 or the subsequent orders passed therein.

3. It is submitted by Mr. K. R. Bora, learned counsel for the petitioner, that the present petitioner, along with her husband, had a joint account in Union Bank of India, Maidamgaon Branch, Guwahati, but she never put any signature in the cheque in question for which the respondent No. 2 filed a complaint case against the present petitioner as accused No. 2 along with her husband- Nasiruddin Ahmed as accused No. 1 under Section 138 of the NI Act before the Court of learned Chief Judicial Magistrate, Kamrup(M), Guwahati, which is registered as C.R. (NI) Case No. 595/2021 and subsequently transferred for disposal to Court of learned Judicial Magistrate First Class No. 5, Kamrup (M), Guwahati. He further submitted that this Court vide order dated order 13.12.2023 had called for the scanned copy of the LCR to ascertain as to whether there was any signature of the present petitioner/accused No. 2 in the cheque, which was dishonored by the bank and for which the NI Act case is proceeding.

4. The learned counsel for the petitioner further submitted that the present accused/petitioner cannot be prosecuted under Section 138 of the NI Act and in that context, he also relied on a decision of Supreme Court passed in the case of **Aparna A. Shah Vs. Sheth Developers Pvt. Ltd. & Ors. [Criminal Appeal No. 813 of 2013 (Arising out of SLP (Crl.) No. 9794 of 2010)]**, and basically emphasized on paragraph Nos. 22 & 23 of the said judgment, wherein it has been observed that joint account holder cannot be prosecuted unless the cheque being signed by each and every person who is a joint account holder. Paragraph Nos. 22 & 23 of the said judgment reads as under:

“22. In the light of the above discussion, we hold that under [Section 138](#) of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her

husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in- chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

23. We also hold that under [Section 138](#) of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to [Section 141](#) of the N.I. Act which would have no application in the case on hand. The proceedings filed under [Section 138](#) cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under [Section 138](#). The culpability attached to dishonour of a cheque can, in no case "except in case of [Section 141](#) of the N.I. Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under [Section 138](#) of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage."

5. Accordingly, the learned counsel for the petitioner has submitted that it is a fit case wherein the power under Section 482 Cr.P.C. can be invoked to quash the entire criminal proceeding pending against the present accused/petitioner.

6. In this context, Mr. R. Chakravorty, learned counsel for the respondent No. 2, has submitted that it is a fact that the accused/petitioner did not put her signature in the cheque in question though she is a joint account holder along with her husband (accused No. 1). Accordingly, he also relied on the same judgment of the Apex Court, which has been relied by the learned counsel for the petitioner, and submitted that the present accused/petitioner cannot be prosecuted as she did not put her signature in the cheque in question even if she is a joint account holder and hence, submitted that he has no objection if the criminal proceeding pending against the present accused/ petitioner is set aside and quashed.

7. After hearing the submissions made by the learned counsels for both sides and also considering the provision of Section 138/141 of the NI Act and further considering the view of the Supreme Court in the case law referred to hereinabove, I find it a fit case to exercise the inherent power under Section 482 Cr.P.C. to quash the criminal proceeding pending against the present accused/petitioner, who was

arrayed as accused No. 2 in the said complaint case. Accordingly, the criminal proceeding in C.R. (NI) Case No. 595/2021, pending before the Court of learned Judicial Magistrate First Class No. 5, Kamrup (M), Guwahati, in respect of the present petitioner, namely, Wahida Begum, is hereby set aside and quashed. However, the case will proceed against the accused No. 1, namely, Nasiruddin Ahmed.

8. The criminal petition stands disposed of in terms above.

JUDGE

Comparing Assistant