

GAHC010282782023



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

Case No. : Crl.Pet./1320/2023

RANJAN KUMAR SARMAH
S/O LATE PRAFULLA SARMAH
R/O POLOFIELD, BAMUNGAON
NEAR NAMGHAR, P.O. AND P.S. TEZPUR, DIST. SONITPUR, ASSAM

VERSUS

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

2:SRI BIRAJ NATH
GENERAL SECRETARY
TEZPUR BAR ASSOCIATION
P.S. TEZPUR

DIST. SONITPUR
ASSAM
PIN-78400

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : PP, ASSAM

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of judgment & order : 28.03.2024

JUDGMENT & ORDER

None appears on call for the petitioner.

2. Heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. S. K. Singh, learned Senior Counsel assisted by Mr. A. Dutta, learned counsel for the respondent No. 2.

3. It reveals from the record that the petitioner side remain absent on the last 4 (four) consecutive occasions and today also, none appears on call for the petitioner though the names of 4 (four) counsels are being shown in the Cause List.

4. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the F.I.R. in Tezpur P.S. Case No. 894/2023, under Sections 406/409/420 of the Indian Penal Code, corresponding to G. R. Case No. 1878/2023.

5. The brief facts of the case of the petitioner is that he was serving as Chief Executive Officer in Mahabhairab Co-operative Urban Bank Limited, Sonitpur. However, in the year 2020, the petitioner had resigned from the said Bank and his resignation was also accepted by the Board of Directors and accordingly, the petitioner also handed over the charge of the Bank and submitted all the books

of accounts along with the statement showing fixed assets which was duly verified and accepted by the Accountant Shri Prabin Chandra Lahkar. But, on 04.10.2023, said Shri Prabin Chandra Lahkar, on the strength of Chief Executive Officer of the said Bank, had lodged an F.I.R. before the Superintendent of Police, Sonitpur, Tezpur, which was subsequently forwarded to Officer-In-Charge, Tezpur and accordingly, a case was registered being Tezpur P.S. Case No. 815/2023, under Sections 409/420 of the Indian Penal Code. It is alleged *inter alia* that the data obtained from the investigation carried out by the Auditor of the Reserve Bank of India w.e.f. 18.09.2023 to 23.09.2023 and from the statement received from the State Bank of India, Tezpur, it has been found that the Bank Auditor cum I.T. Officer Shri Dwip Jyoti Nath has misappropriated a sum of Rs. 34,00,000/- by transferring the said money to his own account maintained in different Banks and also mishandled important documents.

6. Thereafter, out of the same incident, on 19.10.2023, said Shri Prabin Chandra Lahkar lodged another F.I.R. before the same Police Station alleging that the present petitioner, while discharging his duty as Chief Executive Officer of the said Bank, had misappropriated more than Rs. 2 Crore from Mahabhairab Co-operative Urban Bank. The said F.I.R. is accordingly registered as Tezpur P.S. Case No. 871/2023, under sections 409/420 of the Indian Penal Code.

7. Again, out of the same transaction, another F.I.R. was lodged on 03.11.2023 by the General Secretary of the Tezpur Bar Association, Tezpur before the Officer-In-Charge of the Tezpur Police Station stating that the Tezpur Bar Association is an old customer of the Mahabhairab Co-operative Urban Bank Limited having 3 (three) accounts in the said Bank and a total sum of Rs.

20,43,781/- was deposited in the Bank. Most of the practicing advocates of the said Tezpur Bar Association also have their individual accounts and accumulated deposited amount in crores. It is alleged in the said F.I.R. that some specific information received from the reliable sources that the daily collection agents as well as the bank staffs including the present petitioner have dishonestly misappropriated and embezzled crores of amount from the said bank resulting huge loss of the said bank and public at large. Accordingly, on the basis of the said F.I.R., another case has been registered as Tezpur P.S. Case No. 894/2023, under Sections 406/409/420 of the Indian Penal Code.

8. It is further stated that the facts and allegations made in the F.I.R. dated 04.10.2023 in Tezpur P.S. Case No. 815/2023, F.I.R. dated 04.11.2023 in Tezpur P.S. Case No. 894/2023 are entirely same and out of the same transaction and there is absolutely no other allegations in the subsequent F.I.R. dated 04.11.2023. The police had already investigated the matter in the earlier F.I.R. dated 04.10.2023 in Tezpur P.S. Case No. 815/2023 and therefore, the registration of another case on the same set of facts and allegations is absolutely illegal. Further it is stated that on bare perusal of the F.I.R. in Tezpur P.S. Case No. 815/2023, Tezpur P.S. Case No. 871/2023 and Tezpur P.S. Case No. 894/2023, it appears that there is no ingredients of commission of any offence under Sections 406/409/420 of the Indian Penal Code and as such, the F.I.R. in Tezpur P.S. Case No. 894/2023, corresponding to G.R. Case No. 1878/2023, is liable to be set aside and quashed. All the F.I.Rs. were lodged and proceedings were initiated only with a *mala fide* intention and ulterior motive and continuation of all the proceedings are nothing but the abuse of the process of the Court and as such, the same is liable to be set aside and quashed.

9. It is further stated that the registration of the subsequent F.I.R. on the same charges on the same facts would be a blatant disregard of settled principles which disapprove double jeopardy and also contrary to the provisions of law precisely contained in Article 20(2) of the Constitution of India as well as Section 300 of the Code of Criminal Procedure, 1973 and as such, the registration of the F.I.R. in Tezpur P.S. Case No. 894/2023, under Sections 406/409/420 of the Indian Penal Code, is absolutely illegal and liable to be set aside and quashed.

10. In this context, Mr. S. K. Singh, learned Senior Counsel for the respondent No. 2, has submitted that from the plain reading of all the F.I.Rs., it is seen that the contents of all the F.I.Rs. are different. Though it is basically the allegation of misappropriation of money, but in all the matters the way of misappropriation of money is different and he adopted multiple ways to misappropriate the money while he was discharging as Chief Executive Officer of Mahabhairab Co-operative Urban Bank Limited. Further, all the informants in the F.I.Rs. are different persons and the allegations of misappropriation of money or the way of misappropriation is also differently adopted by the present accused/petitioner. He further submitted that the case of **T. T. Antony Vs. State of Kerala & Ors.**, reported in **(2001) 6 SCC 181**, passed by the Hon'ble Apex Court, is also not applicable in the present case, which was passed in different context.

11. Mr. Singh, learned Senior Counsel, further submitted that here in the instant case, it is seen that not only the 2 (two) F.I.Rs., but the 3rd F.I.R., impugned herein, is also lodged against the present accused/petitioner wherein

it has been alleged that by creating fake accounts in the name of his relatives, he transferred the money to the fake accounts of his relatives and thus, he also adopted new way for misappropriating the money while discharging in a responsible post of the said Bank. Accordingly, he submitted that this is not at all a fit case wherein the 3rd or the subsequent F.I.R. can be quashed as prayed by the petitioner.

12. In this context, Mr. P. S. Lahkar, learned Additional Public Prosecutor, also submitted that all the facts of the cases are different and hence, the cases cannot be clubbed together and there cannot be any reason for quashing the subsequent F.I.R, which is registered as Tezpur P.S. Case No. 894/2023, under Section 406/409/420 of the Indian Penal Code. Accordingly, he submitted that it is not at all a fit case wherein the 3rd or subsequent F.I.R. can be quashed by exercising the power under Section 482 Cr.P.C.

13. After hearing the submissions made by the learned Senior Counsel for the respondent No. 2 and the learned Additional Public Prosecutor for the State respondent and also on perusal of the case record, it is seen that the present petition has been filed under Section 482 Cr.P.C. praying for quashing of the 3rd/subsequent F.I.R. lodged before the Tezpur Police Station, being Tezpur P.S. Case No. 894/2023, under Sections 406/409/420 of the Indian Penal Code, corresponding to G.R. Case No. 1878/2023, stating that the lodging of the subsequent F.I.R. with the allegation for the same transaction is illegal and it is the settled principle which disprove double jeopardy and also contrary to the provisions of law precisely contained under Article 20(2) of the Constitution of India. But, from the perusal of all the F.I.Rs., it is seen that though the

allegation is basically regarding misappropriation of money, but the facts and circumstances of all the matters are different and the present petitioner also adopted different ways for misappropriation of money and hence, it cannot be said all the F.I.Rs. are of same transaction to consider the subsequent F.I.R. as a petition under Section 162 Cr.P.C. In the 3rd/subsequent F.I.R., i.e. Tezpur P.S. Case No. 894/2023, under Sections 406/409/420 of the Indian Penal Code, which is filed by the Tezpur Bar Association with the allegation of misappropriation of Rs. 20,43,781/- from their 3 (three) different accounts and also stated that most of the practicing advocates of the said Bar Association had also their individual accounts in the said Bank which accumulated to crores in amount, it is the allegation that the present petitioner along with the staff have dishonestly misappropriated crores of amount from the said bank resulting huge loss to the bank and public at large.

14. In the case of **State of Haryana Vs. Bhajan Lal**, reported in **1992 Supp (1) SCC 335**, the Hon'ble Apex Court had formulated some guidelines, which reads as under:

"102. In the backdrop of the interpretation of the 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 inherent powers 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 formulae 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 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 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.”

15. But, here in the instant case, it is seen that the statement made in the F.I.R. itself constitute a *prima facie* case against the accused/petitioner in all the F.I.Rs. and further it is seen that though basically the allegation of misappropriation of money has been brought by the different complainants, but in all the cases, the story as well as the circumstances of the cases are different and hence, the present F.I.R. cannot be considered as the 3rd or subsequent F.I.R. to be quashed and set aside, as prayed for.

16. In view of the discussions made above, *prima facie* material available

against the petitioner and also in view of the law laid down by the Hon'ble Supreme Court in the case laws referred to hereinabove, I am of the view that this is not a fit case where the power under Section 482 Cr.P.C. can be invoked to quash and set aside the F.I.R. dated 04.11.2023 of Tezpur P.S. Case No. 894/2023, under Sections 406/409/420 of the Indian Penal Code, corresponding to G. R. Case No. 1878/2023. Resultantly, I do not find any merit in this petition and accordingly the same stands dismissed.

17. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant