

GAHC030006052023



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

Case No. : Crl.Pet./13/2023

Sh. Zahnuna and Anr.
S/o Sakhuaa(L)
R/o Zemabawk, Aizawl, Mizoram.

2: Sh. Pahlir

VERSUS

The State of Mizoram and 5 Ors.
r/b the Secretary, Home Department. 2: The Director General of Police (DGP)

3: The Superintendent of Police
Aizawl District

4: The Sub-Divisional Police Officer (SDPO)

5: Smt. Sangkim

Advocate for the Petitioner : Mr. T Lalnunsiam

Advocate for the Respondent : P.P./Addl.PP, Mizoram

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 24-06-2024

Heard Mr. T. Lanunsiam, learned counsel for the petitioners along with Mrs. Mary L. Khiangte, learned Additional Public Prosecutor for the state respondent Nos. 1 to 5. The private respondent no. 6 remained unrepresented in the various court dates though affidavit showing that notice was served to her on through Dasti Service was filed on 05.03.2024.

[2.] The instant criminal petition is filed under Section 482 Cr.P.C, 1973, to quash the First Information Report filed by the respondent no.6 and registered as BK PS Case No. 247/2023 dated 23.03.2023 under Section 420/406/34 IPC against the petitioners.

[3.] The learned counsel for the petitioners submits that the FIR dated 23.03.2023 was filed by the informant stating that in the year 2013, the informant had lent a sum of Rs. 160 lakhs to respondent No. 2/Pahlira of Lungmuat and his colleagues at her residence at Chaltlang for doing a contract work i.e., for upgradation of Serkhan – Bagha road which was awarded to the petitioner No. 1/Zahnuna of Zemabawk. Further, she had also borrowed loan amounting to Rs. 160 lakhs from HDFC Bank using her business KTC which was also spent for performing the said contract work in which she had mortgaged her residential building and land, which is being repaid by her till date. The FIR stated that the money is still not repaid to her by the petitioners despite the fact

that they all withdrew their bills along with their security deposit. The FIR is filed in order to get back her money and she prayed that necessary action as per law be taken. The FIR was accordingly registered as BK PS Case No. 247/2023 dated 23.03.2023 under Section 420/406/34 IPC.

[4.] The learned counsel for the petitioners submits that the petitioners being in danger of being arrested had applied for anticipatory bail which was granted to both of them. That the petitioner No. 1 is a Class-I Contractor having registration No. 38/E-In-C-I/2022 since many years back and has gained a good reputation for his contract works and that some persons have been using his certificate/registration because of his outstanding performance for which he sometimes earns small profit/commission. The petitioner No. 2 is a prominent citizen and one of the Village Council members at Lungmuat, Kolasib District having a good reputation and doing contract work under registered contractor/s like the petitioner No. 1. The learned counsel for the petitioners submits that the petitioners have no involvement in the alleged case/offence under Section 420/406/34 IPC. He further submits that the involvement of the instant petitioners involves no act of criminal nature and that the handing over of money on 26.06.2013 was executed by Sh. Hmingdailova Khiangte, who is the husband of the informant/complainant and there is no involvement of the informant/complainant.

[5.] The learned counsel for the petitioners submits that this case has a long history and submits that in the year, 2008 Sh. Hmingdailova Khiangte (husband of the informant) was an elected member of the Legislative Assembly. During his campaign, the petitioner No. 2 was one of his star campaigners. In the year 2013, Sh. Hmingdailova Khiangte got a contract work of up-gradation of Serkhan – Bagha road in which the petitioner No. 2 and four to five other persons being top campaigners of Sh. Hmingdailova Khiangte, were also given the work as Sub-Contractors. The contract work involved huge amount of money which required Class-I Contractor. Hence, Sh. Zahnuna/petitioner No. 1 was approached and using his certificate/registration of Class-I Contractor, the contract work was started. The bill including running bill was credited to the bank account of petitioner No. 1 and the same was given to other fellows as per their work amount.

The letter dated 26.02.2013 which is Pawisa Inhlanna (handing over the money) was executed by Sh. Hmingdailova Khiangte and respondent No. 6, wherein Sh. Hmingdailova Khiangte credited Rs. 160 lakhs to the bank account of Sh. K. Lalnghakliana. The agreement further stated that this money is to be spent by Sh. Pahlira/petitioner No. 2 and Smt. Zualbawihi of Tuikhuahtlang.

[6.] The learned counsel for the petitioners submitted that there was no

borrowing or debt against Smt. Sangkimi, W/o Sh. Hmingdailova Khiangte. Sh. Hmingdailova Khiangte had spent the money for getting the contract work which cost Rs. 19,15,91,611/-. An agreement was also executed between the SE, PWD, National Highway Circle-I and Zahnuna (petitioner No. 1). By a letter dt. 24th January 2013, the petitioner was served a notice to proceed with the work. However, the work was executed by Sh. Hmingdailova Khiangte and his wife Smt. Sangkimi as well as many of his several well wishes. When the running bill was drawn and paid through the account of Sh. Zahnuna/petitioner No. 1 and money was released to the concerned persons as per their respective amount of work annexed as Annexure-6 & 7.

[7.] The learned counsel further submitted that the main reason for filing the FIR, seems to be due to fact that belated, Sh. K. Lalnghakliana, Smt. F. Lalnunzuali and Smt. Sangkimi along with the petitioner No. 1/Zahnuna had made an agreement dated 18.11.2020. Copy of the agreement dated 18.11.2020 is annexed as annexure-9 which is an agreement that if a revised estimate of Serkhan-Bagha road submitted to NEC by PWD is released, the contractor Zahnuna and 3 others person namely : (1) Shri Pahlira, (2) Smt. Zopuii & (3) Shri Lalchawimawia will have no more share regarding this new bill. Shri K. Lalnghakliana and Shri Zahnuna, Contractor opened bank account at

SBI, Mission Veng and all the new bill be credited to the new statement of account. Shri Zahnuna agreed that he will have no share in respect of the 2nd Revised Estimate and on the released of the 2nd Revised Estimate, the following persons will be given money as follows :

- a) Chama – 4 lakhs
- b) Mama - 4 lakhs
- c) Tana - 1 lakh

[8.] When the said agreement came to the knowledge of the petitioner No. 2 and the other colleagues namely, Shri K. Chawimawia and Smt. Zopuii, they filed a Civil Suit No. 52/2022 against the petitioner No.1 as well as against Shri K. Lalnghakliana, Smt F. Lalnunzuali and Smt. Lalsangkimi (respondent No.6) challenging the agreement dated 18.11.2020 on the grounds that Shri Zahnuna was not competent to represent petitioner No. 2 Shri Pahlira or the other person mentioned. However, the said C.S No. 52/2022 was withdrawn thereafter, and the revised bill amount was distributed amongst them.

[9.] The learned counsel submits that it is known from sources that the revised bill amount of Rs. 160.00 lakhs would be released and that could be the main reasons for filing the FIR as the respondent No. 6 intends to grab the whole said sum of money.

[10.] The learned counsel submitted that the petitioners have no involvement in the instant alleged offence. He submitted that on perusal of the nature of the FIR, the matter is contractual of civil nature and can be adjudicated in the Civil Court. The case is registered under Section 420/406/34 IPC which are for the offence of cheating and dishonestly inducing delivery of property and offence of criminal breach of trust which are not found in the instant case. The instant First Information Report (FIR) pertains to lending and borrowing of Rs.160 lakhs in 2 (two) occasions, the first was in the resident of respondent No. 6, where she alleged that 160 lakhs was lend to petitioner No. 2 and the second occasion was where another 160 lakhs was borrowed from HDFC bank by the respondent No. 6, The learned counsel submitted that the last para of the FIR shows that it is a prayer for recovery of money and does not show that there is any *prima facie* case in the FIR to be registered under BKN Case No. 247/2023 under Section 420/406/34 IPC. There is no criminal nature involved wherein the letter dated 26.02.2013 is of "Pawisa Inhlanna" handed over of money which was executed by Shri Hmingdailova Kiangte H/o Sangkimi, respondent No. 6.

[11.] The learned counsel for the petitioner therefore prays that the instant petition may be allowed and the FIR be quashed since the FIR was filed mala fide and that there is no element of criminality which is clear from the

plain reading of the FIR itself. The learned counsel for the petitioner further submits that the complaint has only prayed for the recovery of her money which is of a civil nature. In support of his submissions, the learned counsel for the petitions has cited ***State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335***, and ***Shafiya Khan@ Shakuntala Prajapati vs. State of Uttar Pradesh & Anr.***, reported in ***(2022) 4SCC 549*** and the judgment of Coordinate Bench of this Court in ***Sh. Beikrystkypacha Hlychho Vs. State of Mizoram & 5 Ors.***, in ***Crl.Pet No. 12/2023*** wherein this Court had quashed the FIR since no offence under Section 406/420 IPC was found against the petitioners

[12.] Mrs. Mary L. Khiangte, learned Additional Public Prosecutor, on the other hand submits that it is an admitted fact that the informant and her husband had given huge amount of money to the petitioners and by not returning their money by the petitioners, they are committing an offence of misappropriation under Sections 406/34 IPC and the offence u/s 420 IPC is also likely to be established during investigation, thus, there are no grounds for setting aside the judgment. She submits that the investigation of the case is at its final stage of investigation and I.O is likely to submit his charge sheet since the offence under section 420/406/34 IPC is committed by the petitioners. The CD of the case I.O is also produced in the court for perusal. Mrs. Mary L.

Khiangte, learned Additional Public Prosecution, in support of her submissions has cited ***Randheer Singh Vs. State of Uttar Pradesh & Ors.***, reported in ***(2021) 14 SCC 626.***

[13.] The learned Addl. PP further submitted that in term of this court's order dated 20.05.2024, she had verified the correctness of paragraph 8 of the petition. The contents of paragraph 8 of the petition in brief is that a letter dated 26.02.2013 is a Pawisa Inhlanna (handing over the money) executed by Sh. Hmingdailova Khiangte and Smt. Sangkimi, respondent No. 6, witnessed by Smt F. Lalnunzuali and Shri Pahlira (PetitionerNo.2), wherein Sh. Hmingdailova Khiangte credited Rs. 160 lakhs to the bank account of Sh. K. Lalnghakliana of Upper Republic. The agreement further stated that this money is to be spent by Sh. Pahlira of Lungmuat/petitioner No. 2 and Smt. Zualbawihi of Tuikhuahtlang.

Paragraph 8 also stated that Sh. Hmingdailova Khiangte had spent the money for getting the contract work which cost Rs. 19,15,91,611/-for which an agreement was also executed between the SE, PWD, National Highway Circle-I and Zahnuna (petitioner No. 1). By a letter dt. 24thJanuary 2013, the petitioner was served a notice to proceed with the work. However, the work was executed by Sh. Hmingdailova Khiangte and his wife Smt. Sangkimi as well as many of his

several well-wishers. When the running bill was drawn and paid through the account of Sh. Zehnuna/petitioner No. 1 and money was released to the concerned persons as per their respective amount of work.

[14.] I have heard the submissions of the learned counsels for both the parties and I have also perused the documents on record.

This court find it fit to refer to the Judgment of the Apex Court in ***State of Haryana v. Bhajan Lal, (supra)*** which was also referred to by the Apex court in ***Shafiya Khan @ ShakuntalaPrajapati (Supra)*** wherein it was held that :

“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 Act concerned (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.”

The Apex court in ***Vesa Holdings Private Limited & Another Vs. State of Kerela & others***, reported in ***(2015) 8 SCC 293*** has held that even when a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complainant disclose the criminal offence or not.

[15.] In light of the above observations made by the Apex court, the nature of the FIR filed and the facts as narrated at paragraph 8 of the petition is examined to see whether the criminal offence under section 406 IPC and section 420 IPC are made out or not.

Section 405 IPC defines criminal breach of trust wherein it must be shown that the accused must have been entrusted with some property, or given responsibility or authority over the property which was dishonestly misappropriated or converted it for his own use with the intention to deceive or defraud the person who entrusted the property. There should be a dishonest intention on the part of the accused to gain an advantage or cause a loss to the person who entrusted the property.

Section 420 IPC describes the offence as: 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 of being converted into a valuable security.

[16.] The FIR filed by the complainant stated that in the year 2013, the complainant had lent a sum of Rs. 160 lakhs to respondent No. 2/Pahlira of Lungmuat and his colleagues at her residence at Chaltlang for doing a contract work i.e., for upgradation of Serkhan – Bagha road which was awarded to the petitioner No. 1/Zahnuna of Zemabawk. This is an admitted fact and the petitioners have annexed Annexure 5 which is a letter dated 26.02.2013 wherein Sh. Hmingdailova Khiangte credited Rs. 160 lakhs to the bank account of Sh. K. Lalnghakliana of Upper Republic. The agreement further stated that this money is to be spent by Sh. Pahlira of Lungmuat/petitioner No. 2 and Smt. Zualbawihi of Tuikhuahtlang. It is noted that there is nothing in referred the letter dated 26.02.2013 which shows that the petitioner no. 2 was to repay the said amount or not. The involvement of petitioner no1 is not mentioned in the letter dated 26.02.2013. It is also stated by the petitioner that Sh. Hmingdailova Khiangte had spent the money for getting the contract work which cost Rs. 19,15,91,611/-.

[17.] The complainant has further claimed that she had also

borrowed loan amounting to Rs. 160 lakhs from HDFC Bank using her business KTC which was also spent for performing the said contract work in which she had mortgaged her residential building and land, which is being repaid by her till date. That the money was still not repaid to her by the petitioners despite the fact that they all withdrew their bills along with their security deposit.

[18.] This court finds that the FIR dated 23.03.2023 and the letter dated 26.02.2013, do not indicate that the sum of Rs. 1.6 cores was entrusted to the accused/petitioners, however the said amount is said to be used for the execution of the works of doing a contract work i.e., for upgradation of Serkhan – Bagha road which was awarded to the petitioner No. 1/Zahnuna of Zemabawk. Further, the complainant has stated that she had also borrowed loan amounting to Rs. 160 lakhs from HDFC Bank using her business KTC which was also spent for performing the said contract work. This fact is not denied by the petitioners and it is seen that the running bill was drawn and paid through the account of Sh. Zahnuna/petitioner No.1, who claimed and money was released to the concerned persons as per their respective amount of work. The FIR does not indicate whether or not or the amount which is supposed to be paid to the complainant and whether there exist any commitment on the part of the petitioners to repay the money to the complainant.

[19.] From the nature of the FIR filed and from the facts of the case projected, this court finds that that the ingredients to constitute an offence described under section 405 IPC and punishable under section 406 IPC is not found in the instant case. Likewise, this court finds that there is nothing to show that the petitioners had intended to cheat the complainant or had dishonestly induced the complainant to spend the money claimed by her for the execution of the contract work i.e., for upgradation of Serkhan – Bagha road to institute an offence under section 420 IPC.

[20.] This court thus finds that the allegations made in the first information report 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 under sections 406/420/34 IPC against the accused/petitioners.

This court is however of the considered view that the dispute between the petitioners and the respondent no.6 appears to be of a Civil nature and can be adjudicated in a Civil Court.

[21.] This Court on perusal of the C.D, also finds that the C.D was opened on 25.05.2023 and last opened on 05.12.2023 and closed on the same date at 2:00 PM, wherein it was noted that the C.D was closed by the case I.O and kept pending awaiting instruction from Superior Officer. No further steps

seem to be taken since then.

[22.] In view of the above, this court finds it fit to invoke its inherent power under section 482 Criminal Procedure Code and set aside and quash the FIR which was registered as Aizawl PS under sections 406/420 IPC finding that allowing further police investigation to continue would amount an abuse of the process of the court.

[23.] Accordingly, the instant Criminal Petition No. 12/2023 stands allowed and disposed of.

JUDGE

Comparing Assistant