

GAHC020002522022



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

Case No. : Crl. Pet./8/2022

SHRI. N. TOMTHINBA LUWANG @ NT LUWANG
AGED ABOUT 46 YEARS,
S/O N. RAJENDRAKUMAR LUWANG OF
NEW CHECKON CLUB SOIBAM LEIKAI,
P.O/P.S POROMPAT, DISTRICT - IMPHAL EAST, MANIPUR - 795005

VERSUS

THE STATE OF NAGALAND AND ANR
NAGALAND, KOHIMA

2:MR. NEIPHRELIE ANGAMI
COMPLAINANT
S/O (L) ZHAKIESIELIE MECHYULHO
P.K. KOHIMA VILLAGE

Advocate for the Petitioner : VICTOR, ADV.

Advocate for the State Respondent : K. ANGAMI, P.P., NAGALAND

Advocate for the Respondent No. 2 : NANCY LOTH, ADV.

Date of hearing and judgment : **14.06.2024**

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT & ORDER (ORAL)

This is an application under Section 482 of the Code of

Criminal Procedure for quashing of the criminal proceedings against the petitioner in Charge-sheet No. 13/2017 pending before the Chief Judicial Magistrate, Kohima, with reference GR No. 53/2017 reference C No. 406/419/420/468 of the IPC.

2. This Court have duly heard the learned counsels appearing on behalf of the petitioner, who has drawn the attention of this Court to the Charge-sheet submitted on 06.07.2017, wherein the Investigating Officer have only filed the Charge-sheet against one Shri Abhishek Bora and not against the petitioner. He further draws the attention of this Court to the portion of the Charge-sheet wherein the Investigating Officer has opined that there is no *prima facie* concrete evidence that could be established against the petitioner herein from the available documents. He, therefore, submits that the instant FIR requires to be quashed in so far as the petitioner is concerned. In addition to that, he submits that in the Charge-sheet the Investigating Officer has opined that there is no *prima facie* evidence against the petitioner, then also the learned Chief Judicial Magistrate has issued a warrant of arrest against the petitioner, which ought not to have been done. Therefore, he has also challenged the issuance of warrant of arrest in the instant proceedings.

3. I have also heard Mr. K. Angami, learned Public Prosecutor, Nagaland, appearing on behalf of the State, who submits that a perusal of the Charge-sheet, though would show that the Investigating Officer had opined that there was no *prima facie* concrete evidence could be found against the petitioner but that opinion is based on the fact that the

petitioner herein has been an absconder and despite various efforts the petitioner could not be located. He, therefore, referred to the same paragraph of the opinion of the Investigating Officer and submits that the Investigating Officer also stated in the Charge-sheet that investigation would be revived again if and when details of the suspect, i.e. the petitioner, is established to ascertain his involvement in the case and supplementary Charge-sheet shall be submitted. The learned P.P. further brought to the attention of this Court that pursuant to the filing of the Charge-sheet a prayer has been made for the purpose of further investigation and in pursuance to that this warrant of arrest has been issued. He, therefore, submits that the investigation in respect to the said case have not yet been completed, and as such, the case has been pending because of the stay so granted by this Court. Mr. K. Angami has also produced the Case Diary which have been duly perused and returned back.

4. The learned counsel appearing on behalf of respondent No. 2 further submitted that a perusal of the FIR would categorically show the involvement of the petitioner in as much as the petitioner along with the said Shri Abhishek Bora had represented before the respondent No. 2 that they are Chairman and General Manager of a Company, M/S View Image Infratech Pvt. Ltd. and the petitioner along with the said Shri Abhishek Bora had also induced the respondent No. 2 to part with an amount of Rs. 35,00,000/- (Rupees Thirty Five Lakhs) and thereupon, they have cheated the petitioner. She, therefore, submitted that a perusal of the FIR would

categorically shows that there is a disclosure of a criminal offence against the petitioner and in view of the fact that the petitioner could not be located, the Investigating Officer had stated in the Charge-sheet that the petitioner could not be traced out.

5. This Court have duly heard the learned counsel appearing on behalf of the parties and have also perused the materials on record including the FIR, Charge-sheet as well as the Case Records which have been called for.

6. From a perusal of the FIR it appears to this Court that a criminal offence has been *prima facie* disclosed against the petitioner as well as one Shri Abhishek Bora. This Court have also perused the Charge-sheet, wherein investigation could only be conducted in so far as the said Abishek Bora is concerned. However, as the petitioner herein could not be located by the Investigating Officer inspite of due diligence, it has been also mentioned that a supplementary Charge-sheet may be required to be submitted if anything comes up during further investigation. This Court have also perused the Order Sheet of GR Case 53/2017 and from the perusal thereof, it is seen that the Investigating Officer, in order to further carry out the investigation have sought for a warrant of arrest as well as the transit remand.

7. Taking into account the above, this Court is of the opinion that as there is a disclosure of a *prima facie* offence against the petitioner as well as the said Shri Abhishek Bora in the FIR so filed by the respondent No. 2 and the Charge-sheet also categorically mentions that the further investigation would

be required, this Court finds no reason to interfere with the further investigation so to be carried out in respect to GR 53/2017 in connection with Case No. 13/2017 under Section 406/419/420/468 of the IPC. Under such circumstances, this Court is not inclined to exercise the powers under Section 482 in the instant proceedings.

8. The interim orders passed earlier stands vacated.

9. The records which were called for by this Registry be forthwith returned before the Court of the learned Chief Judicial Magistrate, Kohima.

10. With the above observations and directions, the instant petition stands disposed of.

11. Before parting with the record, this Court, however, finds it relevant to observe that the instant order so passed and the observations so made, shall not in any manner, prejudice the petitioner in the investigation as well the trial, if any. In addition to that, the petitioner herein would be always at liberty to avail the provisions of Section 438 of the CrPC, if so advised.

Sd/-
JUDGE

Comparing Assistant