



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

Case No. : Crl. Pet./10/2022

SHRI. LOGYANG RIKHONG AND 2 ORS
PROPRIETOR OF M/S L.R. ENTERPRISES, HEAD OFFICE BOMDILA, P.O. AND
P.S. BOMDILA, DIST- WEST KAMENG, ARUNACHAL PRADESH 2: FESOM
SEKONG
S/O DONGSA SEKONG
PROPRIETOR OF M/S F.S. ENTERPRISES BHALUKPONG
P.O. AND P.S. LADIA
DIST- EAST KAMENG
ARUNACHAL PRADESH

3: B.M. KHONJUJU
S/O LT. PARAI KHONJUJU
P.O. TIPPI
P.S. BHALUKPONG
DIST- WEST KAMENG
ARUNACHAL PRADESH

VERSUS

STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE PUBLIC PROSECUTOR, GAUHATI HIGH COURT
KOHIMA BENCH 2: SMTI. ANGULE CHAKHESANG
D/O LT. KEDUNGYE
R/O BEHIND CITY TOWER BUILDING COMPLEX
CIRCULAR ROAD
P.S. EAST DIMAPUR-797112
NAGALAND

3: VINOD KUMAR SHARMA
R/O GS ROAD DIMAPUR
NAGALAND
C/O SMTI. ANGULE CHAKHESANG
R/O BEHIND CITY TOWER BUILDING COMPLEX
CIRCULAR ROAD

P.S. EAST DIMAPUR- 797112
NAGALAND

4:NITESH BOTHRA
S/O MANOJ BOTHRA
C/O ANGULE CHAKHESANG
R/O BEHIND CITY TOWER BUILDING COMPLEX
CIRCULAR ROAD
P.S. EAST DIMAPUR-797112
NAGALAN

Advocate for the Petitioner : BENDANGNUKEN

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

01.04.2024

1. Heard the learned counsel for the parties.
2. The present application is filed under Section 482 of Cr.P.C. seeking for quashing the proceeding of Criminal Case No. 01/2022 under Section 138 of the Negotiable Instrument Act, 1881 read with Section 420 of Code of Criminal procedure, pending for trial before the learned Court of the Chief Judicial Magistrate, Dimapur, Nagaland.
3. The complaint case being Criminal Case No. 01/2022 was preferred by the respondent No. 2 against the petitioner alleging dishonour of two cheques being Cheque No. 402707 dated 08.12.2021 and Cheque No. 402706 dated 09.12.2021. The learned Magistrate has taken cognizance and issued the process.
4. The basic ground of challenge as pleaded and argued are as follows:-
 - I. There is no legally enforceable liability. 49 numbers leaf of post dated blank cheques were handed over

to the representative of the complainant by the petitioners and the complainant has misused it and deposited the said cheques in the bank account inasmuch as there is a tripartite agreement between the petitioner and the respondent Nos. 1, 2 and 3 for execution of certain works and cheques were handed over in terms of the said agreement and not for honour of any liability.

II. In terms of the Tripartite Agreement dated 04.01.2018 under Clause-V, there is a provision for dispute redressal mechanism between the parties through arbitration and even if, there is some dispute, the case under NI Act is not maintainable.

III. The procedure under Section 204 of the Cr.P.C, has not been adhered and the petitioner has not been served with a copy of the complaint petition along with the summons and therefore, on this count alone, the complaint case is liable to be set aside and quashed.

IV. On 16.04.2021, the petitioner closed the operation of the bank account as the same was not in operation since long and on 17.04.2021, the petitioner intimated the complainant regarding such closure of bank account and requested the complainant to return the cheques and therefore, in view of such intimation, the deposit of the cheques on 08.12.2021 and 09.12.2021 itself is bad. The cheques were presented even after the knowledge of the complainant regarding the fact that the account has already been closed and therefore, the process initiated is nothing but an abuse of the process of the Court and is being initiated to harass the petitioner and therefore, the complaint case is liable to be quashed.

5. Per contra, the learned counsel for the respondents submits that the issues raised are disputed question of fact and such fact cannot be determined in a proceeding under Section 482 of the Cr.P.C. inasmuch as the complainant in their affidavit specifically has taken a stand that she was not intimated as regards closure of the bank account and no communication was served upon her.

6. The learned counsel for the respondents further submits that having an alternative dispute redressal mechanism will not debar the complainant in filing a complaint under Section 138 of N.I. Act., and therefore, availability of remedy of arbitration cannot be a ground for quashing a complaint petition.

7. This Court has given anxious consideration to the submissions made by the learned counsel for the parties. Also perused the materials available on record.

8. From the aforesaid, it is clear that the petitioner has challenged the criminal complaint taking factual defences. Such defence are that there was no legally enforceable debt and the blank cheques were handed over for execution of work in terms of an agreement between the parties and also that the complainant was duly notified as regards closure of the bank account before the cheques were presented. Such question of fact can only be determined by the trial Court after recording of evidence of parties inasmuch as the factual issues raised in the present petition are specifically denied by the complainant respondent by filing affidavit. Therefore, this Court in exercise of its power under Section 482 of the Cr.PC should not enter into such question of fact more particularly in absence of any documents/materials of unimpeachable character in support thereof.

9. The allegation of abuse of process can be a ground for quashing a complaint, however, such determination must be based on document of unimpeachable character which is not available in this case

inasmuch as a specific stand has been taken by the complainant that the complainant has never received any communication disclosing closure of the account.

10. The procedural violation of non furnishing of the complaint petition, did not result in denial of fair hearing or caused prejudice to the petitioner and therefore, such procedural lapse even if any cannot be a ground for quashing a complaint in exercise of power under Section 482 of Cr.P.C.

11. In the aforesaid backdrop, this Court is of the unhesitant view that, this is not a fit case for exercise of power under Section 482 of Cr.P.C. inasmuch as interference would result in negation of the complainant's case without allowing the complainant to lead evidence.

12. Accordingly, for the reasons as recorded hereinabove, the present criminal petition deserved to be dismissed and accordingly, the same is dismissed.

13. While parting with the record, it is made clear that this order shall not influence the learned trial Court below so far relating to the issues raised in the present criminal petition or the defence that may be taken by the petitioner during the trial of the Criminal Case No. 01/2022.

Sd/-

JUDGE

Comparing Assistant