



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

Case No. : Crl. Pet./33/2022

SHRI. RANA SUJEET SINGH AND ANR
S/O SP SINGH, R/O H/NO.1/15,
1ST FLOOR, SARVA PRIYA VIHAR, HAUZ KHAS,
NEW DELHI - 110016
2: SHRI. SHUKESH KUMAR

R/O HAUZ KHAS
NEW DELHI - 11001

VERSUS

THE STATE OF NAGALAND AND ANR
NAGALAND, KOHIMA
2:SHRI. NIZAMUDDIN(FIR INFORMANT)

PROFESSOR
DEPT. OF LPM
NAGALAND UNIVERSITY
SASRD
MEDZIPHEMA - 797106
NAGALAND

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 01.08.2024

Heard Mr. Mannen, learned counsel for the petitioner. I have also heard Mr. Kevi Angami, learned P.P., State of Nagaland and Mr. Laknyei Phom, learned counsel for the respondent No.2.

2. This is an application filed under section 482 Cr.PC 1973 praying for quashing of the criminal proceeding being G.R 340/22 arising out of Medziphema P.S Case No.0009/22 under section 406/409/420 IPC pending before the learned Court of JFMC, Dimapur Nagaland.

3. The case of the petitioner in brief is that the petitioner No.1 and petitioner No.2 runs a firm by the name and style of Education Guidance at Bhikaji Cama Place, New Delhi which is engaged in business of giving educational consultation to children and their parents/guardians. In the year 2019, the respondent No.2 approached the petitioners company seeking admission for his child for Master of Business Management course and have agreed to pay Rs. 5,00,000/-(rupees five lakhs). He then transferred Rs.2,00,000/-(rupees two lakhs) in the firm's account and the rest Rs. 3,00,000/-(Rupees three lakhs) was to be paid after his child's admission. Thereafter, his child got seat in MBA course through management quota. However, the respondent No.2 refused to pay the management fees which according to him was not possible for him. Therefore, in

the month of October, 2019 the respondent No.2 himself cancelled the admission and asked for refund of Rs.2,00,000/- (Rupees two lakhs) that he had paid to the firm. Thereafter on 8.11.2019, Rs.100/- was transferred into the account of the respondent No.2 as testing to check as to whether the said account actually belonged to the respondent No.2 or not; and on 18.11.2019, Rs.25,000/- was transferred into the said account of the respondent No.2 by the petitioner No.1. the rest was to be paid back to him.

4. However, surprisingly on 02.3.2020, the respondent No.2 lodged a written FIR against the petitioners before the Officer-in-Charge, Medziphema P.S inter alia alleging therein that he had deposited Rs. 2,00,000/- in the account of the petitioner's firm for admission of his daughter in MBA course after getting assurance from the petitioner No.2 working as consultant in Educational Guidance. It is further alleged that the petitioners promised to confirm the admission of his child by the end of June, 2019. However, when he contacted, the petitioner No.2 replied that the admission process is still going on and it might take time till the month of August. But when he contacted in August, the petitioner replied that there is no chance of admission for his daughter. Thereafter, when he asked to return back his money, the petitioners assured that after closure of admission process the money will be deposited back into his account. On being asked by the petitioner No.1, the respondent No.2 had given his bank account details. However, after depositing Rs.100 in the account of respondent No.2 on 8.11.2019, the petitioners

have not responded his phone call nor his messages. Hence, requested for taking necessary action.

5. Basing on the above written FIR, the above mentioned Medziphema P.S case was registered against the accused for offence under section 420/406 IPC and investigated it.

6. The learned counsel for the petitioners submits that on the demand made by the respondent No.2, the petitioners have already returned the entire amounts to him on different dates. It is submitted that having failed to pay the management fees, the respondent No.2 himself had cancelled the admission for his child and wanted back his advance amount paid to the petitioners. And accordingly, the same has already been refunded and paid back to him. And since, the only grievance of the respondent/informant for refund of his money has already been satisfied, there is no any further grievance or any case against the petitioners. Moreover, as it was only the case of refund of the money paid by the respondent No.2, no any case of criminal breach of trust by public servant or cheating and dishonestly inducing property has been made out against the petitioners. Hence, prays for setting aside and quashing of the FIR dated 2.3.2020 and the consequential criminal proceeding in G.R Case 340/22 arising out of Medziphema P.S Case 0009/2022.

7. The learned counsel for the petitioner further submits that on being asked by the respondent No.2, the petitioners' firm had genuinely tried to get a seat for admission of the child of the respondent No.2. However, it was the respondent No.2 himself who refused to pay the management quota fee to the institute/university and the reservation of admission for his child

as requested by the respondent No.2 was accordingly cancelled at his instance. The learned counsel for the petitioners further submits that the dispute in the instant case is purely of money transaction between the respondent No.2 and the petitioners for securing admission for Respondent No.2's child which was duly refunded to him on his demand. Thus, the above money transaction between two parties even if dispute arises would be a civil nature of case, and thus, no any criminal case has been made out against the petitioners.

8. Mr. Kevi Angami, learned P.P. State of Nagaland while producing the scanned copy of the Case Diary with his instructions regarding the status of case has fairly submitted that after the interim order passed by this Court that "*till the returnable date no stringent or coercive measure should be taken against the petitioners during the investigation*", the investigation of the above P.S case did not progress further. Moreover, the I.O. of the case was informed by the parties that since the matter relates to non-refunding of the money paid by the respondent No.2 to the petitioners firm and the matter was under negotiation for amicable settlement between the parties, the I.O. could not proceed further with the investigation of the case as a result no charge-sheet could be filed into the case. The learned P.P. further fairly submits that under the facts and circumstances of the case and considering that the party has amicably settled the matter between them by way of repayment and accepted by the informant, he has no objection if the prayer made by the petitioners is considered and allowed.

9. The learned counsel for the respondent No.2 while referring to the affidavit and the additional affidavit filed by the respondent No.2 submits that the respondent No.2 has already received back the entire amount earlier paid to the petitioners for her daughters' college admission. And since the respondent No.2 has already received back his money from the petitioners, the respondent/informant does not have any further grievance against the petitioners. Hence it is submitted that the respondent No.2/informant does not want to pursue the matter any longer and while supporting the prayer made by the petitioners, the learned counsel for the respondent No.2 also prays for disposal of the matter for interest of justice.

10. I have heard the learned counsel for the parties. I have also perused and considered the contentions made by the parties.

11. Upon consideration of the contentions made by the parties and on hearing the learned counsel for the parties, it appears that the respondent No.2 had paid sum of Rs.2 lakhs to the petitioners to get seat for admission of his daughter in MBA course and the petitioners had given assurance to get seat for admission for his daughter. However, despite all efforts made by the petitioners, they could not get a seat for the respondent No.2's child. But the petitioners could manage seat for the respondent No.2's child in the management quota and accordingly, the same was offered to the respondent No.2. However, as the management quota fee was very high, the respondent No.2 refused to pay same to the institute, therefore, he demanded that the advance money paid to the petitioners be refunded. The pe-

petitioners agreed to repay the same. However, the petitioners took little longer time than it was necessary for re-payment, the respondent No.2 lodged an FIR against them which has been registered as Medziphema P.S.0009/22 under section 406/409/420 IPC.

12. Mere perusal of the copy of the FIR and the contention and the submissions made by the learned counsel for the parties, it appears that the present case being involved with money transaction and for non-refund of money paid to the petitioners, the same appears to be civil in nature. The above dispute is between the two individuals party and it did not affect the society at large. And since the parties has amicably settled the matter and the respondent/informant has already received back his money paid to the petitioners and having no further grievance against the petitioners, the respondent having expressed that he does not want to pursue the matter any longer, it appears that, under the circumstances, the continuation of the criminal investigation/trial would only cause hardships to the parties and waste of precious judicial time and thus it would result in futile effort. For the reason stated above, I find sufficient force in the submissions made by the learned counsel for the parties.

13. Further, in such circumstances it is now well settled that even though the offence alleged against the accused is not compoundable offence, the High Court or the Apex Court in exercise of their inherent powers may intercept the pending criminal proceedings. In this regard, a reliance can be taken on the principles of law laid down by the Hon'ble Apex Court in the case

of ***Ram Gopal vs State of Madhya Pradesh reported in 2021 SCC online SC 384.***

14. In view of the above decision and since the case has amicably been settled between the parties inter se, this Court is of the considered opinion that the pending investigation/criminal proceeding in G.R. No. 340/22 arising out of Medziphema PS Case No.0009/22 under section 406/409/420 IPC pending investigation/proceedings needs to be quashed. Accordingly, the above G.R. No. 340/22 arising out of Medziphema PS Case No.0009/22 under section 406/409/420 IPC against the accused Shri Rana Sujeet Singh and Shri. Shukesh Kumar is hereby quashed and set aside.

15. With the above observations, this criminal petition stands allowed and disposed of.

Sd/-
JUDGE

Comparing Assistant