GAHC020000222024 2025:GAU-NL:71

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

Case No. : Crl. Pet./2/2024

SMTI. MAMPI PAUL
W/O SHRI GOPAL PAUL
T.K. COMPLEX, LHOMITHI COLONY,
P.O. DIMAPUR NAGALAND
REPRESENTED BY POWER OF ATTORNEY HOLDER SHRI GOPAL PAUL

VERSUS

SMTI. JARITA DAS AND ANR
W/O SHRI DILIP DAS
NEAR SATSANG TEMPLE
PACCA ALI, P.O. BOKAJAN-782480
DISTRICT- KARBI ANGLONG, ASSAM

2:SMTI. JHUMU DEBNATH
W/O LATE DHRUBA DEBNATH
NEAR SHIB MANDIR
PACCA ALI
P.O. BOKAJAN-782480
DISTRICT- KARBI ANGLONG
ASSA

Advocate for the Petitioner : WATI JAMIR, ALITO SWU,S.IMLI

Advocate for the Respondent : P. B. PAUL, PFOSEKHO PFOTTE,MEDO VERO

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

O R D E R

04.03.2025

Heard Mr. Wati Jamir, learned counsel for the petitioner/complainant and Mr. Pfosekho Pfotte, learned counsel for the respondents/accused persons.

2. In the present application under Section 482 read with Section 397 and 401 CrPC, the petitioner has prayed for quashing of Order dated 11.12.2023 passed by the Chief Judicial Magistrate, Dimapur in CR Case No. 26/2017. The learned counsel for the petitioner, Mr. Wati Jamir has submitted that the present case is linked with Crl.Pet./57/2024 in as much as the connected CR 12/2022 was still pending before the JMFC, Dimapur when the CR 26/2017 was heard and disposed of by the learned CJM, Dimapur.

3. In the said impugned Order, the complainant/petitioner had stated that there was a Deed of Partnership dated 07.07.2004 between the petitioner and the respondents/accused persons but the respondents/accused persons in contravention of the terms and conditions of the Deed of Partnership had, without giving notice to the petitioner, gifted the shares of their partnership to one Shri Hetoi Awomi. Hence, the Criminal Complaint 26/2017 was filed alleging criminal breach of trust, cheating and criminal conspiracy. Cognizance was taken by the learned CJM under Section 405/409/418/420 and 120B of the IPC. Learned counsel for the petitioner, Mr. Wati Jamir stated that the learned CJM, Dimapur dismissed his complaint CR/26/2017 on the ground that the Enquiry Report and all the other material evidences placed on record showed that the allegations

levelled against the accused persons were not made out in as much as the Affidavit dated 15.06.2015 (Annexure-H) was a clear indication of the fact that the complainant/petitioner had also consented to the handing over of the shares of the partnership to Shri Hetoi Awomi. The learned Trial Court, therefore, held that contravention of the terms and conditions of the Deed of Partnership dated 07.07.2004 did not arise warranting prosecution of the accused persons under Section 405/409/418/420/120B IPC. In view of this observation, the learned CJM, Dimapur came to a conclusion that there was no sufficient ground to proceed against the accused persons and hence CR/26/2017 was dismissed on 11.12.2023.

4. The main thrust of submission of the learned counsel for the petitioner in this petition is that the learned Chief Judicial Magistrate, Dimapur could not have come to the conclusion arrived basing on the Affidavit dated 15.06.2015 as the said Affidavit dated 15.06.2015 was already the subject matter in the criminal complaint, CR 12/2022 before the JMFC, Dimapur, wherein the petitioner had alleged that the said Affidavit dated 15.06.2015 is a forged document. He has, therefore prayed that this present petition may be disposed of with a direction to the learned Chief Judicial Magistrate, Dimapur to keep the matter pending till such time the CR 12/2022 is disposed of by the Court of the learned JMFC, Dimapur.

5. The learned counsel for the respondents/accused persons, Mr. Pfosekho Pfotte has stated that he has filed his affidavit-in-opposition on behalf of the respondent nos. 1 and 2. In the said affidavit, he has submitted that the petitioner has filed the Criminal Complaint 26/2017, which is actually a civil dispute, arising from a partnership

agreement without having any criminal ingredients. He has also stated that there is an Arbitration Clause in the Deed of Partnership (Annexure-B to the petition) at paragraph-25 of the document which states that "disputes with any third party may be referred to arbitration by any partner and such partner shall have all powers to take necessary steps in the best interest of the forum till such arbitration proceedings come to an end. The reward is made a rule of the court." Therefore, in view of the Arbitration Clause, the learned counsel for the respondents/accused persons submits that the criminal proceedings will not lie in the facts and circumstances of the case. Learned counsel for the respondents/accused persons also submits that the Affidavit dated 15.06.2015 was authenticated by a notary public and the genuine signature of the complainant/petitioner is reflected in the said Affidavit of 15.06.2015.

6. The counsel for the respondents/accused persons also relies on the affidavit-in-opposition of the respondent no. 1, whereby it is stated that the gifting of shares to Shri Hetoi Awomi was accepted by the Power of Attorney holder of the petitioner/complainant by putting his signature therein during the meeting with Nagaland Medicine Dealers Association on 02.06.2015. Therefore, the petitioner cannot turn around at this stage and allege that the gifting of shares to Shri Hetoi Awomi was done without their knowledge or that the Affidavit dated 15.06.2015 is a forged document. He has, therefore, prayed that the present petition may be dismissed.

7. This Court, upon going through the records and upon hearing the learned counsels for the parties is of the view that the Order of this Court

dated 04.03.2025 passed in Crl.Pet. 57/2024 has an effect on this petition as this Court has already remanded back the matter to the learned Judicial Magistrate (First Class), Dimapur for taking up the proceeding at the stage of Section 244 CrPC in CR 12/2022. Moreover, the issue of arbitration was never raised before the Trial Court nor is there any averment regarding the Arbitration Clause in the affidavit-in-opposition of the respondents/accused persons in this case. It is also observed that the only reason given by the learned CJM in dismissing the C.R 26/2017 was that the Affidavit dated 15.06.2015 is a clear indication of the fact that the complainant had also consented to the handing over of the shares and interest of the partnership business by the accused persons to one hetoi Awomi. It is pertinent to mention that the issue before the learned JMFC, Dimapur in CR 12/2022 is regarding the allegation of forgery of the Affidavit dated 15.06.2015.

8. Accordingly, this petition is allowed. Order dated 11.12.2023 passed by the learned Chief Judicial Magistrate, Dimapur in C.R 26/2017 is set aside. The case is restored to the file of the learned CJM Dimapur. The learned CJM, Dimapur is directed to proceed in the C.R 26/2017 only after the culmination of the CR 12/2022 pending before the learned Judicial Magistrate (First Class), Dimapur. The petition is disposed of accordingly.

9. Registry is directed to return the LCR to the learned CJM, Dimapur.

JUDGE

Comparing Assistant