

GAHC020005162024

2025:GAU-NL:222



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

Case No. : Crl. Pet./40/2024

A.K JAIN SALES AND MARKETING LIMITED AND 2 ORS
DARJEELING (WEST BENGAL)
REPRESENTED THROUGH ITS AUTHORIZED REPRESENTATIVE SRI.
PAVAN KUMAR
S/O SRI KASHIRAM
ADDRESSED AT TIMES SQUARE, 2ND FLOOR, SHOP NO. 7
2ND MILE, SEVOKE ROAD, OPPOSITE TO RAVI MARKETING
AUTOMOBILES SILIGURI DISTRICT. DARJEELING WEST BENGAL-
734001

2: SRI KAMAL CHAND BOTHRA
SO SRI PUNAM CHAND BOTHRA
R/O FLAT NO.E5
METRO HEIHTS
2ND MILE SEVOKE ROAD
OPPOSITE TO CLUB TOWN
SILIGIRI
DARJEELING
WEST BENGAL
REPRESENTED THROUGH HIS CONSTITUTED ATTORNEY SRI
PAVAN KUMARR
S/O SRI KASHIRAM
ADDRESSED AT TIMES SQUARE
2ND FLOOR
SHOP NO. 7
2ND MILE SEVOKE ROAD
OPPOSITE TO RAVI MARKETING AUTOMOBILES
SILIGURI
DARJEELING
WEST BENGAL.

3: SRI PAVAN KUMAR
S/O SRI KASHIRAM

ADDRESSED AT TIMES SQUARE
2ND FLOOR
SHOP NO.7
2ND MILE SEVOKE ROAD
OPPOSITE TO RAVI MARKETING AUTOMOBILES
SILIGURI
DARJEELING
ERST BENGAL-73400

VERSUS

THE STATE OF NAGALAND AND ANR
NAGALAND KOHIMA

2:SHRI KHRIELEZO VITSU (INFORMANT)
FOR AND ON BEHALF OF ELIHO VITSU
PROPRIETOR E.V. AGENCY
ADFDRESSED AT HOSPITAL ROAD
TCP GATE
KOHIMA NAGALAND-79700

Advocate for the Petitioner : K. KIRE, S K MITRUKA,AAYUSH MITUKA,P MERE

Advocate for the Respondent : P.P, NAGALAND,

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates

For the Petitioner : Mr. Aayush Mituka, Mr. S.K. Mitruka and Mr. P. Mere

For the State : Ms. S. Mere, learned Government Advocate

Date of Hearing : **15.05.2025**

Date of Judgment : **23.05.2025**

JUDGMENT & ORDER (CAV)

1. The instant petition has been filed under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita (BNSS in short) r/w Article 226 of the

Constitution of India praying for quashing of the FIR dated 22.05.2024 U/S 420 IPC in Kohima North P.S Case No. 0047/2024 corresponding to G.R case No. 85 of 2024, pending before the learned CJM, Kohima, on the ground that the same has been registered only to harass the petitioners. It is stated that no criminal case is made out even if the allegations made in the complaint are assumed to be true. It is submitted that, at best the dispute between the parties may be a civil dispute for which no criminal proceedings ought to be initiated.

2. Learned counsel, Mr. Aayush Mituka appearing for the petitioners has submitted that the impugned FIR was registered pursuant to the criminal complaint dated 09.03.2024 filed by the respondent No. 2/complainant who is a retail shop owner. The only allegations in the complaint is that petitioner No. 1 supplied sub-standard/expired goods to the complainant from 2013 onwards which caused him a cumulative loss of approximately Rs. 40.58 Lakhs. Petitioner No. 2 is the Director and the petitioner No. 3 is the employee of the petitioner No. 1 Company. There is no specific allegation against the petitioners No. 2 and 3, and petitioner No. 1 is the only person named in the FIR as accused person.

3. Learned counsel submits that prior to filing the complaint the complainant had issued two legal notices dated 23.12.2023 and 08.01.2024 to the petitioner No. 1. In both these legal notices the complainant's only grievance was that he was supplied with sub-standard/expired goods from November, 2013 till March, 2019 and because of which he suffered a loss of Rs. 38.07 Lakhs. There is no explanation as to why the grievance which arose from November, 2013 till

March, 2019 has been addressed only in March, 2024 when the complainant filed the instant criminal complaint, without disclosing the issuance of the two earlier legal notices by the complainant. The delay of more than 5 years in filing the FIR has not been explained anywhere.

4. Ld. Counsel also states that on 05.09.2024, this Court was pleased to grant an order directing that no coercive action be taken against the petitioners till the next date of hearing. This was subsequently extended by another order dated 15.10.2024. However, on 30.01.2025 this Court held that it is not inclined to extend the interim order protection granted to the petitioners on 05.09.2024 any further. This Court also recorded that the State of Nagaland does not wish to file any affidavit-in-opposition and would rely on the case diary. And on 30.01.2025 the service on the complainant/respondent No. 2 was also deemed complete and the complainant has chosen not to appear before this Court.

5. Thereafter, the petitioners challenged the order dated 30.01.2025 before the Hon'ble Supreme Court vide SLP CrI No. 3870/2025. On 21.03.2025 the hon'ble Supreme Court issued notice and on 28.03.2025 the hon'ble Supreme Court granted interim pre arrest bail to the petitioners. On 02.05.2025, the hon'ble Supreme Court directed the petitioners to appear before the I.O. and extended the interim order. The above mentioned petition is presently pending before the hon'ble Supreme Court. However, the learned counsel for the petitioner submits that the pendency of the said petition would not come in the way of this Court deciding the instant petition as there is no stay on the instant petition by the hon'ble Supreme Court and moreover, the limited issue in SLP Criminal

3870/2025 is regarding the interim order passed on 05.09.2024 and the non extension of the same on 30.01.2025.

6. Learned counsel for the petitioner also submits that on 12.04.2025, the statements of the petitioner was recorded by the I.O. and the petitioners have also provided all information and documents available with them to the I.O. of the case.

7. With regard to the merits of the present petition, the learned counsel for the petitioner submits that the complaint/FIR fails to disclose a prima facie case against the petitioners. It is submitted that the contents of the FIR even if accepted as true, does not disclose the essential ingredients for commission of the offence under Section 420 IPC, i.e. that the complainant was deceived by a false or fraudulent representation and that such fraudulent intention was present right from the beginning of the transaction in question from 2013 onwards. This has not been alleged by the complainant.

8. Learned counsel for the petitioner further submits that the instant case is a civil dispute which has been given a criminal colour. The issue in the present case relates to the quality of goods supplied which is purely civil in nature and the complainant may at best be able to file a civil suit for breach of contract and damages. However, the complainant has chosen to file a criminal complaint purely to exert pressure and to coerce the petitioner to settle the matter and gain undue advantage.

9. The learned counsel also submits that there is a significant delay of

about 5 years in filing the complaint. And the complainant has not given any explanation for filing the complaint after a delay of more than 5 years from the conclusion of the last transaction in 2019. The complainant has also never raised any issue or grievance if he was in fact supplied with defective or expired goods from 2013 onwards. It is stated that the legal notices dated 23.12.2023 and 08.01.2024 sent by the complainant to the petitioners shows that the first transaction was in 2013 and the last transaction was in November 2019, but the criminal complaint was filed only on 09.03.2024.

10. Learned counsel also submits that in the legal notices dated 23.12.2023 and 08.01.2024 the complainant's only grievance was that he was supplied with sub-standard/expired goods from November 2013 till March 2019 and he consequently suffered a loss of Rs.38.07 Lakhs. The complainant in the legal notice has not made any allegation of cheating whatsoever. Moreover, there is a contradiction in the legal notices and the FIR. The complainant had claimed an amount of Rs.38.07 Lakhs in the two legal Notices, however, in the FIR the complainant has claimed that he suffered a loss of Rs.40.58 Lakhs. Another submission of the petitioner is that the petitioner company was established only on 27.05.2016 as shown by the certificate of incorporation and therefore, it is impossible for the petitioners to have had any transaction with the complainant before 2016. It is stated that the ledger statements provided by the petitioner at page 119 to 122 in the petition clearly shows that there is in fact an amount of Rs.2,25,509/- payable by the complainant to the petitioners.

11. The learned counsel for the petitioner has relied on the following authorities to support his submissions :

- (i) ***Rikhab Birani & Others v. State of Uttar Pradesh & Others; SLP (Crl.) No. 8592 of 2024 decided on 16.04.2025,***
- (ii) ***Indian Oil Corpn. v. NEPC India Limited; (2006) 6 SCC 736,***
- (iii) ***Mahmood Ali and Ors. vs. State of U.P. and Ors; 2023 SCC Online SC 950*** wherein it has been observed as follows:

*"12. At this stage, we would like to observe something important. Whenever an Accused comes before the Court invoking either the inherent powers Under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction Under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the Accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. **In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.** The Court while exercising its jurisdiction Under Section 482 of the Code of Criminal Procedure or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.*

(iv) **Imran Pratapgadhi v. State of Gujarat; 2025 SCC OnLine SC 678** wherein it was held that:

*“37. We fail to understand how the High Court concluded that the message was posted in a manner that would certainly disturb social harmony. Thereafter, the High Court gave a reason that the investigation was at a nascent stage. **There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the CrPC equivalent to Section 528 of the BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage.** It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage. If such embargo is taken as an absolute rule, it will substantially curtail the powers of the High Court which have been laid down and recognised by this Court in the case of State of Haryana v. Bhajan Lal.”*

12. The petitioner submits that he is only a supplier and the main person responsible for the expired goods would be the manufacturer of the goods which is Pran Company. He submits that the criminal intention/dishonest intention has to be there at the very threshold of entering into transaction with the complainant. And the Court has to examine not only the FIR but also the attending circumstances. The learned counsel for the petitioner relying on the case of **Rikhab Birani and Others** (Supra) and **Indian Oil Corpn** (Supra), submits that the Supreme Court in the above cited cases has held that dishonest intentions on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction

with the complainant, otherwise the offences of cheating is not established or made out. Learned counsel relying on the case of **Imran Pratapgadhi**, (*Supra*), also submits that this Court has the power to exercise its jurisdiction under Article 226 of the Constitution of India, or under Section 482 of the CrPC/ Section 528 BNS by quashing the FIR even at the nascent stage.

13. In view of the above submissions and the authorities relied upon the learned counsel for the petitioner prays that the impugned FIR and the consequent criminal proceedings may be quashed and set aside.

14. The respondent No. 2/complainant has not appeared inspite of notice. Ms. S. Mere, learned Government Advocate appearing for the State respondents submits that there is a prima facie case made out in the complaint requiring thorough investigation. She submits that the question as to whether the allegations in the complaint are true or false cannot be determined at this stage. Learned P.P. states that the investigation is still at nascent stage and it would be premature for this Court to interfere in the investigation. Learned P.P relies on the case of **Somjeet Mallick vrs The State of Jharkhand, 2024 INSC 772**, decided on 14 October, 2024 to support her contention. In the case of **Somjeet Mallick** (*Supra*) the hon'ble Supreme Court had stated that the allegations in the FIR or the complaint including the materials collected during investigation or inquiry are to be taken at face value so as to determine whether a prima facie case for investigation or proceedings against the accused is made out. The correctness of the allegations is not to be tested at this stage. The hon'ble Supreme Court also stated that, when the FIR alleges

dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR. Learned P.P therefore submits that the ratio laid down in this case covers the instant petition.

15. Learned P.P further, submits that three legal notices had been sent to the petitioners but they did not respond to the same and in fact kept assuring the complainant that they would settle the matter however, the same was not done and therefore, the complaint/FIR was lodged. The learned P.P. also submits that the hon'ble Supreme Court, by order dated 02.05.2025 in SLP Cri 3870/2025 had directed the petitioner to appear before the investigating officer on 10.06.2025 and to extend full cooperation for further investigation of the case. Learned P.P. therefore, submits that the investigation/proceedings may be allowed to continue and this Court may not interfere in the investigation proceedings before the trial court at this stage. And the instant petition may be dismissed.

16. I have considered the submissions of the learned counsel for the petitioners and the learned P.P and has also perused the materials available before the court. It is seen that the impugned FIR has been registered against the petitioners u/s 420 IPC. The key ingredient of Section 420 IPC is dishonest inducement. Anyone who cheats and thereby dishonestly induces someone to deliver a property or to alter or destroy a valuable security or anything capable of being converted into a valuable security commits the offence under Section 420 IPC. The main ingredients of Section 420 IPC is that there has to be deception, making a

false or misleading statement either through words or action to mislead the person. The accused also must have dishonestly induced the person to deliver property, meaning that they must have been led to believe something that was not true and this belief resulted in them giving up their property. The accused also must have had a dishonest or fraudulent intention at the time of making the inducement. This means the accused intended to deceive the other person and caused them to lose property.

17. On perusal of the petition it is revealed that 2 legal notices had been served to the petitioners by the complainant before filing the FIR. The legal notices dated 23.12.2023 and 08.01.2024 indicates that there has been some breach of contract by the petitioners. And in the said legal notices the complainant has highlighted the periods/months on which damaged and expired products were received by him. The period given is November 2013, February to December 2014; April to December 2015, March 2016 to April 2016, April 2016 to March 2017, April 2018 and March 2019. The complaint/FIR also shows that the complainant is aggrieved by delivery of damaged goods and he has stated in the complaint that this damage has not been compensated.

18. In the ***State of Haryana Versus Bhajan Lal, 1992 Supp (1) SCC 335***, the Hon'ble Apex Court had considered in detail the scope of the powers of the High Court under Section 482 CrPC and has directed that the High Court can quash the proceedings without allowing the investigating agency to complete its task when the FIR/complaint/evidence do not disclose the commission of any offence.

19. This Court has perused the orders dated 28.03.2025 and 02.05.2025 in SLP CrI 3870/2025. The petitioner had approached the Hon'ble Apex court against the non-extension of the interim order granted on 05.09.2025 by order of this Court dated 30.01.2025. The orders passed in SLP CrI 3870/2025 therefore, will not come in the way of disposal of the present petition.

20. On appraisal of all the facts and circumstances and on applying the laid down position of law regarding the jurisdiction of this court under Section 482 CrPC/528 BNSS, I am of the view that there is no dishonest intention on the part of the petitioners at the threshold of the transaction in order to make out a case under Section 420 IPC. It cannot be said that the petitioner had intention to deceive from the inception of the transaction. Mere breach of promise per se does not infer dishonest intention. At best the complainants are entitled to a civil action for damages against the petitioners. The case of **Somjeet Mallick** (supra), does not help the case of the respondents as the facts and circumstances are different in the present case. In the case of Somjeet Mallick (supra), it was alleged that the accused despite taking possession of a Truck on hire, has failed to pay hire charges for months together, while making false promises for its payment, hence a prima facie case of dishonest intention was made out on the part of the accused, which required investigation. The dishonest intention at the inception of the transaction is not found in the present case.

This Court therefore, concludes that the interference of this Court is warranted at this stage and accordingly, the FIR dated 22.05.2024

registered as Kohima, North P.S. Case No. 0047/2024 under Section 420 IPC and the connected proceeding is quashed and set aside.

Petition is disposed of.

JUDGE

Comparing Assistant