GAHC020007352022 2025:GAU-NL:193

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

Case No. : Crl. Pet./32/2022

SHRI. INDRONEEL GOHO
SON OF PANNA GOHO, R/O DEVALOKE HEIGHTS, FLAT NO. 92, 14-2A, RAJA S.C. MULLICK ROAD, JADAVPUR, KOLKATA-700094, WEST BENGAL

VERSUS

SMTI. RAZOUVONUO THONG AND ANR
PROPRIETOR OF C.R. TRADERS, H.NO. NFHS-04/89/01, NAHARBARI, DIMAPUR

2:THE STATE OF NAGALAND
THROUGH THR OFFICER-IN-CHARGE
EAST P.S.
DIMAPUR-79711

Advocate for the Petitioner : H. RAHMAN SR ADV, I HASIEB,T. B. JAMIR,I JAMIR

Advocate for the Respondent : N K LUIKHAM, KHEMVU MEKRU,C D RUNGSUNG

BEFORE

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates

For the Petitioner : Mr. H. Rahman, Senior Adv. Assisted

by Mr. I. Jamir, Adv.

For the Respondent No. 1 : Mr. N. K. Luikham

For the Respondent No. 2 : Mr. Veto V. Zhimomi, Gov. Adv.

Date of Hearing : **05.05.2025**

Date of Judgment : **13.05.2025**

JUDGMENT & ORDER (CAV)

Heard learned Senior Advocate, Mr. H. Rahman assisted by Mr. I. Jamir, learned counsel for the petitioner. Also heard Mr. N. K. Luikham, learned counsel for the respondent No. 1 and Mr. Veto V. Zhimomi, learned Government Advocate for the respondent No. 2.

2. This application has been filed under Section 482 CrPC r/w Article 227 of the Constitution of India, praying for quashing of the C.R. Case No. 17/2020 pending before the learned JMFC, Dimapur.

3. The learned counsel for the petitioner has stated that the respondent No. 1 had filed a complaint under Section 200 CrPC alleging that the petitioner has committed an offence punishable under Section 417 and 420 CrPC. It was registered as C.R. Case No. 17/2022 and is pending before the Court of JMFC, Dimapur.

4. The contention of the counsel for the petitioner is that the matter involved in the C.R. Case No. 17/2022 is of Civil Nature and does not involve any criminal offence. Another contention of the petitioner is that the company which was involved in the alleged offence has not been made a party and therefore, on this ground alone, the criminal

proceeding needs to be quashed and set aside. Learned counsel also submits that the ingredients of Section 417 and 420 CrPC are not attracted in the present case as there was no inducement or illegal intention to cheat.

5. The learned Senior counsel has submitted that the MoU dated 01.06.2021 was signed between the Darjeeling Organic Tea Estates Private Limited, as first party and the respondent No. 1 as second party. It is submitted that the respondent No. 1 already knew that the Jamguri Tea Estate was under mortgage with the UCO Bank as indicated from the letter dated 31.05.2021, which was written by the respondent No. 1 to the Deputy General Manager, UCO Bank, Kolkata. In the said letter dated 31.05.2021, the respondent No. 1 had stated that she visited the Jamguri Tea Estate and had shown interest in taking over the Tea Estate and has also stated that the management of Darjeeling Organic Tea Estate Private Limited had informed her that the said Darjeeling Organic Tea Estate is under mortgage with the bank. Thereafter, the MoU dated 01.06.2021 was signed. Accordingly, it cannot be said that the respondent No.1 did not know that the Jamguri Tea Estate was under mortgage with the bank.

6. Learned Senior counsel states that the MoU was signed between the company and the respondent No. 1 and not with the petitioner. The petitioner had only signed the MoU as an authorised signatory and if the company is not impleaded as a party, the proceeding of the criminal complaint needs to be quashed by this Court. Learned

Senior counsel also states that there is an Arbitration Clause in the MoU and the respondent No. 1 instead of availing the arbitration proceeding has filed the complaint case and therefore, the complaint is not maintainable in the eye of law.

7. The petitioner states that he had filed an application before the learned Trial Court praying for discharge of the petitioner. However, by order dated 16.11.2022, the said petition was dismissed and further, the Trial Court made further observations on facts which have not even been led by way of evidence.

8. Learned counsel for the petitioner further submits that the petitioner has now resigned from the company and his resignation was accepted vide letter dated 03.08.2022 and the petitioner was released with effect from 31.07.2022. Therefore, in view of his resignation and the MoU being with the company and not with the petitioner, the instant criminal complaint which has been filed after his resignation is not maintainable and liable to be quashed. Learned Senior counsel has relied on the following cases to support his arguments. The learned counsel for the petitioner has referred to the following judgments:-

1. ***AHMAD ALI QURAISHI AND ANOTHER Versus STATE OF UTTAR PRADESH AND ANOTHER*** reported in ***(2020) 13 Supreme Court Cases 435,***

2. ***VESA HOLDINGS PRIVATE LIMITED AND ANOTHER Versus STATE OF KERALA AND OTHERS*** reported in ***(2015) 8 Supreme Court Cases 293***

3. ***ANIL MAHAJAN Versus BHOR INDUSTRIES LTD. AND ANOTHER*** reported in ***(2005) 10 Supreme Court cases 228***

4. ***SARABJIT KAUR Versus STATE OF PUNJAB AND ANOTHER*** reported in ***(2023) 5 Supreme Court Cases 360*** and

5. ***SUSHIL SETHI AND ANOTHER Versus STATE OF ARUNACHAL PRADESH AND OTHERS*** reported in ***(2020) 3 Supreme Court Cases 240***

9. It is submitted by the learned counsel for the petitioner that in the aforementioned cited cases, the hon'ble Supreme Court has laid down the law with regard to the inherent power given to the High Court under Section 482 CrPC. Relying on the above judgments, learned counsel states that when a criminal proceedings is manifestly attended with Mala fide and the proceedings is maliciously instituted with a ulterior motive, the high court should not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding. In the case of, *Vesa Holdings Private Limited (Supra)*, the hon'ble Supreme Court had stated that a given set of facts may make out a civil wrong and also a criminal offence and only because a civil remedy may be available to the complainant, that itself cannot be a ground to quash the criminal proceeding. The real test is, whether the allegations in the complaint disclose the criminal offence of cheating or not and if there was no intention on the part of accused person to cheat, allowing the said investigation to continue would amount to an abuse of the process of the court. And therefore, in the present case also this Court can exercise the power under Section 482 of the CrPC to quash the proceedings. Also

in the case of *Anil Mahajan Vs Bhor Industries Ltd. And Another (Supra)*, the hon'ble Apex Court observed that the mere use of the expression "Cheating" in the complaint is of no consequence, specially, when there is no averment about the deceit, cheating or fraudulent intentions of the accused when the complaint was filed before the police. In the case of *Sarabjit Kaur Vs State of Punjab And Another (Supra)*, the Apex Court stated that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intentions is shown right at the beginning of the transaction; merely on the allegation of failure to keep up a promise will not be enough to initiate criminal proceeding. The petitioner has relied on the case of *Sushil Sethi and Another Versus State of Arunachal Pradesh And Others (Supra)*, to support his contentions that when the main allegations are against a company and the company has not been made a party, and there are no specific allegations against the Managing Director or even the Director, the impugned criminal proceedings are required to be quashed and set aside. So also in the present case, the allegations in the complaint are against the company i.e., Darjeeling Organic Tea Estates Private Limited, but the said company has not been made a party in the proceedings and accordingly, learned Senior counsel submits that on this ground alone the criminal proceedings are required to be quashed.

10. Learned counsel Mr. N. K. Luikham appears for the respondent No. 1. Learned counsel for the respondent No. 1 has drawn the attention of this Court to the Criminal complaint which was filed

before the Chief Judicial Magistrate, Dimapur. Learned counsel has stated that the complainant, sometime, in the month of March, 2021 decided to start a business in purchase and sale of tea, specifically Organic Tea. Subsequently, the complainant came to know about the Darjeeling Organic Tea Estates Private Limited, and procured the contact number of its CEO, being the present petitioner. Sometime in the last week of May, 2021, the complainant contacted the petitioner over phone and inquired about organic tea. Upon further discussion, the petitioner represented himself as the CEO and Power of Attorney Holder of the Darjeeling Organic Tea Estates Private Limited, and informed that his company wants to lease out one of their Organic Tea Estate by the name of Jamguri Tea Estate situated at Golaghat, Assam. On 03.05.2021 the petitioner sent the pictures of the Jamguri Tea Estate and the Tea factory through WhatsApp to the complainant/respondent No. 1 and informed about execution of MoU. Thereafter, on 06.05.2021 the draft copy of MoU was mailed by the petitioner to the complainant. Learned counsel for the respondent No. 1 has taken the court through various receipts dated 07.06.2021 by which the amount of 40 lakhs was transferred by the complainant to the account of the company. Learned counsel has also shown from various WhatsApp messages inclosed in the petition through which it is seen that the complainant was not satisfied with the terms and conditions of the MoU and there was correspondence regarding the amendment of the MoU. However, while such correspondence was going on, the petitioner stopped all contact with the complainant after 03.10.2021.

11. Learned counsel for the respondent No. 1 also submits that in the month of November, 2021 the complainant visited the Jamguri Tea Estate and tea factory at Golaghat, Assam and upon inquiry, came to know that the Jamguri Tea Estate belongs to one Bhumya Tea Company Private Limited, 20 Coalberth Hoboken Road, Kolkata and that there was a litigation with UCO Bank, Kolkata before the National Company Law Tribunal Kolkata Bench. It was only then in November 2021 upon visiting the Jamguri Tea Estate that the complainant came to know that the Jamguri Tea Estate did not belong to the petitioner's company and that the Tea Estate actually belonged to another company. The complainant also visited the website of the National Company Law Tribunal, Kolkata Bench and upon extracting a copy of the order dated 05.07.2022, confirmed that the company of the petitioner is not the owner of the said Jamguri Tea Estate, Golaghat, Assam, but that it belonged to Bhumya Tea Company Private Limited and under litigation with the UCO Bank. The respondent has annexed a copy of the order dated 05.07.2022, which is at Annexure 20 in the petition, and in the said order it can be seen that the owner of Jamguri Tea Estate was the Bhumya Tea Company and respondent No. 1 was the Darjeeling Organic Tea Estates Private Limited, the company of the petitioner who was using the land claiming to be its owner.

12. Learned counsel for the respondent No. 1 further submits that the petitioner was the overall in charge of the management of the company basing on the power of attorney and the complainant therefore, was under the impression that the intention of the

petitioner was genuine. It is stated that all the correspondence was taken up with the petitioner on his mobile phone, (mobile No. 9883150127). It is also submitted that the letter dated 31.05.2021, at Annexure 9 of the petition was written by her to the Deputy General Manager UCO Bank, Kolkata. However, a clear picture regarding the mortgage was not known to the complainant till she visited the Tea Estate in November, 2021. When the letter dated 31.05.2021 was written to the UCO Bank, the respondent No. 1 was under the impression that the Jamguri Tea Estate belonged to the petitioner's company and that the Tea Estate was under mortgage. However, it was not known to her that the Tea Estate belonged to another company.

13. In view of the above facts and circumstances, learned counsel for the respondent No. 1 submits that there is a clear prima facia case under Section 417 and 420 IPC, against the present petition, as he has dishonestly induced the respondent No. 1 to deliver an amount of Rupees 40 Lakhs, which she would not have done if the real facts about the ownership of the Tea Estate had been revealed to her from the very initial stage.

14. Learned counsel also submits that under Section 170 of the Companies Act, 2013 the fact about the petitioner's resignation has to be entered in the record of the Registrar. However, the petitioner's resignation has not been entered in the records of the Registrar as mandated in Section 170 of the Companies Act 2013. Therefore, the plea of resignation taken by the petitioner is just an excuse to avoid

the liabilities of the criminal proceedings. It is submitted that the respondent No. 1, can also take recourse to Section 319 CrPC, to summon the company as an accused in the present case. It is stated that only in the present petition, it has been revealed that the petitioner has resigned from the company. And therefore, the respondent No. 1 is not barred from taking steps under the provisions of Article 319 CrPC, before the Trial Court.

15. The learned counsel for the respondent No. 1, submits that even though there is an arbitration clause in the MoU, that alone cannot be a ground for quashing of the criminal proceedings. Learned counsel states that arbitration is a remedy for giving the relief to the party affected by breach of the agreement. However, referring the dispute to arbitration cannot be a substitute for a criminal prosecution when the disputed act is an offence. The learned counsel has relied on the case of ***Priti Saraf and Another Versus State (NCT of Delhi)*** reported in ***2021 16SCC 142*** to support his contention. Learned counsel submits that the case of *Sushil Sethi (Supra)* can be distinguished from the present case as there was no specific allegation against the Managing Director and Director of the company in that case. Whereas, in the present case, there is a specific allegation against the Petitioner/Accused.

16. In view of the above submissions and the authorities relied upon the learned counsel for the respondent No. 1 submits that this is a case, where a prima facie case of inducement for cheating has been made out and therefore, prays that the petition may be dismissed

and the proceeding before the learned court below may be allowed to continue.

17. This Court has considered the submissions of the opposing parties and has examined the Trial Court records, which are available before this Court. In the case of ***Inder Mohan Goswami and Another Versus State of Uttaranchal and Others*** reported in ***AIR 2008 SC 251,*** the hon'ble Supreme Court while examining the scope and ambit of the High Court's powers under Section 482 CrPC has stated that the inherent power can be exercised :

"1) To give effect to an order under the Code, 2) To prevent abuse of the process of court and 3) To otherwise secure the ends of justice." The Apex Court stated that, "inherent powers under Section 482 CrPC, though wide have to be exercised sparingly, carefully, and with great caution and only when such exercise is justified by the test specifically, laid down in this section itself. The authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court could be justified in preventing injustice by invoking inherent powers in absence of specific provision in the statute… it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene.… the courts power to prevent such abuse is of great constitutional importance and should be jealously preserved."

Therefore, it has been laid down that the power under Section

482 CrPC, is very wide and this power requires great caution in its exercise, the court has to be careful to see that its decision in exercise of this power is based on sound principles, and this power should not be exercised to stifle a legitimate prosecution. The court has to examine minutely as to whether the basic ingredients of the offence under Section 417 and 420 IPC are altogether missing in the complaint of the respondent No. 1. Only then, can this Court interfere in the proceeding before the learned court below. The judgments relied upon by the petitioner as far as it relates to the principles of law laid down are accepted. However, the facts and circumstances always differ from case to case and the judgments have to be applied accordingly. In the present case, this court is of the view after examining all the materials produced by the petitioner as well as the respondent No. 1 and also upon going through the trial court records, that there is a prima facie case under section 417 and 420 IPC.

18. This Court is also of the view that the mere provision of an arbitration clause cannot be a ground to quash a criminal proceeding when the ingredients of an offence are made out. As far as impleadment of the company is concerned, it is always open to the complainant to take steps as per law, however, in the present case the allegations are also leveled against the petitioner/accused in this personal capacity.

19. In view of the discussion and observations made above, the proceedings before the learned Judicial Magistrate First Class,

Dimapur does not warrant any interference by this Court.

20. The petition is dismissed. The Trial Court may continue with the proceedings without being influenced by the observations made in this judgment.

21. The petition is disposed of accordingly.

22. The interim order stands vacated.

Send back the trial court records to the court of JMFC, Dimapur.

JUDGE

Comparing Assistant