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

Case No. : Crl.Pet./726/2013

SUSHIL KR. DEORA
S/O LT HARIRAM DEORA R/O RATAN BHAWAN, A.T. ROAD, SANTIPUR, GUWAHATI-09 P.S. BHARALUMUKH DIST. KAMRUP M, ASSAM.

VERSUS

ASHISH AGARWAL
S/O SRI SAJJAN AGARWAL, R/O RAMKUMAR PLAZA CHHATRIBARI-781009, DIST. KAMRUP M, ASSAM.

Advocate for the Petitioner : MRT BORA, MR.P UPADHYAY,MR.D SARMAH,MRA UPADHYAY

Advocate for the Respondent : MR.C PHUKAN, MR. N ALAM,MS. P CHOUDHURY,MS.P CHOUDHURY,MR.U CHOUDHURY,MR.B M CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 04.11.2026

Heard Mr. P Upadhyay, learned Counsel for the petitioner. Also heard Mr. N Alam, learned Counsel appearing for the sole respondent.

The present criminal petition has been instituted invoking the provisions

of Section 482 of the Code of Criminal Procedure (Cr.P.C), 1973, read with Article 227 of the Constitution of India, praying for quashing of the criminal proceedings pending in Complaint Case No. 1762^{C}/2012, pending before the Court of learned Sub-Divisional Judicial Magistrate No. 1, Kamrup (M), Guwahati, Assam. The petitioner has further assailed the order dated 01.10.2012, whereby, the learned Trial Court had taken cognizance of offence punishable under Section 420/418/406/403 IPC and issued processes to the petitioner, herein, to stand by trial in the matter.

I have heard the learned Counsel for the parties.

The genesis of the issue involved in the complaint lodged by the sole respondent, arises from a tenancy agreement executed between the petitioner, herein, and the sole respondent, on 20.12.2010.

In terms of the said tenancy agreement, the premises of the petitioner, herein, was to be leased out to the sole respondent, herein, w.e.f 01.01.2011, for a period of 7 (seven) years. In terms of the said agreement, the sole respondent, herein, was to pay a sum of Rs. 5,07,000/- (Rupees Five Lakhs Seven Thousand Only), as interest free advanced security. The manner in which the said amount was to be adjusted was also provided for in the provisions of Clause 14 of the said tenancy agreement.

It is the case of the respondent, herein, that in spite of clear prescriptions made in the tenancy agreement dated 20.12.2010 and also the handing over of the money, as highlighted in Clause 14 of the said agreement, the premises was not handed over to the sole respondent, by the petitioner, herein. It is alleged that the petitioner had misappropriated the money, so paid by the sole respondent to him, in terms of the said tenancy agreement dated 20.12.2010.

In view of the above position emanating in the matter, the sole respondent, herein, had filed a complaint before the Court of learned Chief Judicial Magistrate, Kamrup (M), Guwahati, Assam, and the same was numbered as Complaint Case No. 1762^{C}/2012. In paragraph 10 of the said complaint petition, the factum of the misappropriation of the money paid by the respondent, herein, to the petitioner, in terms of the deed of tenancy agreement dated 20.12.2010, was highlighted. The learned Trial Court, upon examining the sole respondent under Section 200 Cr.P.C, being satisfied, proceeded to take cognizance of the offence involved in the said complaint case, under Section 420/418/406/403 IPC and issued summon to the petitioner, herein. Accordingly, the present criminal petition has been instituted.

Upon hearing the learned Counsel for the petitioner and also on perusal of the materials available on record, more particularly, the contentions

raised in paragraph 10 of the complaint petition and the deposition of the sole respondent, herein, under Section 200 Cr.P.C, before the learned Trial Court, this Court is of the considered view that the ingredients of the commission of offence under Section 420/418/406/403 IPC, has been made out and the matter would be now required to be examined in a Trial.

Accordingly, in view of the above position, the present criminal petition is not entertained and the same stands dismissed, directing the parties to approach the learned Trial Court for further proceedings in Complaint Case No. 1762^{C}/2012.

With the above observations and directions, the present criminal petition stands dismissed.

Interims orders, if any, passed earlier, stands vacated.

JUDGE

Comparing Assistant