

GAHC010038392024



2024:GAU-AS:11083

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

Case No. : Crl.Pet./268/2024

SHWET AGARWAL
S/O TRILOK CHAND AGARWAL, R/O SPANISH GARDEN, RG BARUAH
ROAD, ZOO ROAD, GUWAHATI-781005, P.S.-GEETA NAGAR, DIST-KAMRUP
(M), ASSAM

VERSUS

NAVIN JAIN
PROPRIETOR OF D.R.S. ENTERPRISES, S/O LATE SURESH CHAND JAIN,
R/O AASHIRVAD, BEHIND SISHU NIKETAN SCHOOL, NARAYAN NAGAR,
KUMARPARA, P.O. AND P.S.-BHARALUMUKH, GUWAHATI-781009, DIST-
KAMRUP (M), ASSAM

Advocate for the Petitioner : MR. A KABRA, M KABRA

Advocate for the Respondent : MR. B SHARMA, MR. M HASSAN, MR. S SHARMA

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Mr. M. Kabra, Advocate.
For State respondent	: Mr. B. Sharma, Advocate.
Date of hearing	: 13.09.2024.
Date of judgment	: 13.11.2024

JUDGMENT AND ORDER

(CAV)

Heard Mr. M. Kabra, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned counsel for the respondent.

2. By filing this application under Section 482 Cr.P.C., the petitioner, who is the accused no.4 in C.R. Case No. 2104^C/2016 pending in the Court of Judicial Magistrate First Class, Kamrup (M), Guwahati has prayed for quashing of the said criminal complaint proceeding as well as for quashing of the order dated 09.02.2015, by which cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act for short).

3. In the complaint petition, it is projected that the respondent is the proprietor of a firm under the name and style of D.R.S. Enterprises having its office and business at Guwahati and there was regular business transaction with the accused nos.1 and 2 company, namely, Times Ferro Alloys Ltd., of which the accused no.3 was the Chairman and the accused no.4 i.e. the petitioner is the Director and the accused nos.5 and 6 are related to the day to day business of the company. It was projected that against supply of Low Ash Metrological Coke to the accused company, it had issued a cheque bearing no. 428303 dated 10.02.2013 for a sum of Rs.20.00 lakh drawn on State Bank of India, Spl. Chowringhee SME Branch, Kolkata in the name of the firm of the respondent. The said cheque was deposited for collection with ICICI Bank, Fancy Bazar Branch on 17.02.2013, but the same was dishonoured by the State Bank of India, Centralized Clearing Processing Centre, Panbazar, Guwahati and the complainant was provided with a return memo dated 19.02.2013 with remark "not arranged for", which was received by the complainant on 20.02.2013.

4. The said cheque was re-deposited on two occasions, but the same was returned with return memo indicating that "payment stopped by the drawer". It was dishonoured on both occasions on the ground "payment stopped by the drawer". The memo of dishonoured on the third occasion dated 09.05.2013 was received by the respondent on 10.05.2013. Notice of demand dated 24.05.2013 issued by the respondent through its counsel through registered post with A/C, asking the accused persons to make payment with 15 days of receiving notice. By a reply dated 31.05.2013, the accused persons admitted their liability and assured payment in two equal installment of Rs.10,00,000/- (Rupees ten lakh only) each on 20.06.2013 and 20.07.2013 respectively, which was not done and therefore, a complaint case was instituted.

5. By order dated 09.02.2015, the learned Judicial Magistrate First Class, Kamrup (M), Guwahati found sufficient ground to proceed with the case against the accused persons for the offence under Section 138 of the NI Act and ordered issuance of summons.

6. The learned counsel for the petitioner has referred to Annexure-A to the writ petition and it is submitted that the petitioner, namely, Shwet Agarwal, who was earlier the Director of Times Ferro Alloys Ltd. had resigned from Directorship of the said company from 10.10.2012.

7. By referring to the provisions of Section 141 of the NI Act, it is submitted that a mere statement in the complaint petition that the petitioner is responsible for the business of the company is not sufficient as there is nothing in the complaint petition to show how and in what manner the petitioner is responsible for the affairs of the company, failing which the complaint was liable to be quashed.

8. The learned counsel for the petitioner has also referred to the affidavit-in-reply filed by the petitioner against the affidavit-in-opposition filed by the respondent and has submitted that the petitioner was not the Director and not in charge of the affairs of the company.

9. In this regard, reliance was placed on the following cases, viz. (1) *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.*, (2005) 8 SCC 89, (2) *Siby Thomas v. Somany Ceramics Ltd.*, 2023 INSC 890, (3) *Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.*, AIR 1983 SC 67 : (1983) 1 SCC 1 , (4) *Monaben Ketanbhai Shah & Anr. v. State of Gujarat & Ors.*, (2004) 0 Supreme (SC) 845 : AIR 2004 SC 4274.

10. Per contra, the learned counsel for the respondent has referred to Annexure-F to the affidavit-in-opposition and it is submitted that the respondent has downloaded the copy of Form No. DIR-11 from the portal of Registrar of Companies, which relates to notice of resignation of a Director to the Registrar of Companies, which discloses that the petitioner Shwet Agarwal has resigned from Times Ferro Alloys Ltd. on 23.04.2016, which is the effective date of resignation. Similarly, by referring to Annexure-H to the affidavit-in-opposition, it is submitted that the petitioner Shwet Agarwal, whose DIN is 00124266 had issued notice of extraordinary general meeting dated 06.12.2014 of Times Ferro Alloys Ltd. to be held on 06.01.2015 and the minutes of the said meeting was prepared and circulated on 06.01.2015 by the petitioner Shwet Agarwal, who was voted to the Chair to preside the meeting. Moreover, by referring to Annexure-J to L appended to the affidavit-in-opposition, it is submitted that the petitioner Shwet Agarwal had entered into an agreement with the State Bank of India on 03.12.2012 by executing a Letter of Arrangement, by which loan, cash, credit etc to the extent of Rs.3698.00 lakh was availed by Times Ferro Alloys

Ltd. and that the petitioner had signed as a Director and moreover, by virtue of authorization under Board Resolution dated 04.12.2012, the petitioner Shwet Agarwal had affixed the common seal of Times Ferro Alloys Ltd. to the said bank loan document, supplemental agreement of loan hypothecation dated 04.12.2012.

11. It is submitted that the then Branch Manager of State Bank of India, Specialized Chowringhee SME, Kolkata appeared as PW-2 on 15.05.2024 in the proceedings of CR Case No. 2104/2016 and had exhibited the bank document referred above, stating that the petitioner was a Director as on 04.12.2012.

12. In the present case in hand, the respondent has been able to demonstrate that not only in the complaint petition a statement has been made that the petitioner was the Director and person responsible for the day to day affairs of Times Ferro Alloys Ltd. Moreover, by the time the present application has heard, the PW-2 had deposed in the proceedings of CR Case No. 2104/2016 and had exhibited documents showing that the petitioner was the Director of Times Ferro Alloys Ltd. as on 04.12.2012. Therefore, Annexure-A to the writ petition, which is a copy of Resignation Letter from Directorship dated 10.10.2012 is a false and fabricated document, which has disentitled the petitioner to be heard. The Court is conscious of the fact that normally a complaint petition is required to be examined while adjudicating a quashing application under Section 482 Cr.P.C. However, the bank documents referred above has already become a part of evidence and there is nothing on record to show that the evidence of PW-2 was demolished during cross-examination.

13. Therefore, has the petitioner approached this Court with clean hands and without the aid of false and fabricated resignation letter dated 10.10.2012, the matter would have been different. As stated above, as the petitioner has

filed a copy of resignation letter dated 10.10.2012, which is *ex facie* demonstrated to be false in light of loan availed from the State Bank of India by Times Ferro Alloys Ltd. purportedly to the extent of Rs.3698.00 lakh, which was sanctioned on 03.12.2012 and Form No. DIR-11 obtained from the portal of the Registrar of Companies, which discloses purported resignation of the petitioner w.e.f. 23.04.2016, this is not a fit case for the petitioner to be heard on merit for filing false and fabricated resignation letter dated 10.10.2012 (Annexure-A to the writ petition), which is aimed squarely to mislead this Court.

14. Filing of false and fabricated document is held to be contumacious or contemptuous and the Court is of the considered opinion that a person in contempt has no right to be heard unless it purges of the contempt.

15. Accordingly, in view of the discussions above, this quashing application stands dismissed.

16. It may be mention that there is no interim order operating in this case. Therefore, there would be no impediment for the learned Trial Court to proceed with the trial of CR Case No. 2104^C/2016 pending before the Court of learned Judicial Magistrate First Class, Kamrup (M), Guwahati.

17. Both sides are directed to produce a certified copy of the order before the learned Trial Court.

JUDGE

Comparing Assistant