

GAHC010192742013



2024:GAU-AS:11349

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

Case No. : Crl.Pet./393/2013

MUNINDRA HALOI
S/O SRI BHABEN HALOI PERMANENT RESIDENT OF BAMUNIMAIDAM,
BARNACHAL GUWAHATI-21, UNDER CHANDMARI POLICE STATION IN
THE DIST. OF KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.B M CHOUDHURY, MR.U CHOUDHURY,MRS.M S SUNDI

Advocate for the Respondent : PP, ASSAM, ,

Linked Case : Crl.Pet./171/2013

SYED HIFZUR RAHMAN
S/O LT. SYED ABIDUR RAHMAN A M ROAD
ULUBARI
HOUSE NO. 39
P.S. PALTAN BAZAR
GHY
DIST. KAMRUP
ASSAM

VERSUS

THE STATE OF ASSAM

Advocate for : MS.D GUPTA
Advocate for : appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGEMENT & ORDER (oral)

14-11-2024

1. Heard Mr. B.M.Choudhury, learned counsel for the petitioner in CrI.Pet. No. 393/2013 and Mr. N. Ahmed, learned counsel for the petitioner in CrI.Pet. No. 171/2013. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor, (APP) Assam for the respondent.

2. These two criminal petitions filed under Section 482 of the Code of Criminal Procedure, 1973 are taken up together for final disposal as by these two petitions, two accused persons have challenged the impugned order dated 07.02.2013 passed by the learned Additional Sessions Judge No. 4 (FTC), Kamrup, Guwahati, whereby the charges were framed against both the petitioners under Sections 489B/34 IPC in Sessions Case No. 205(k)/2012.

3. **The brief facts leading to the filing of the present petitions are recorded herein below:-**

(i) On 12.01.2010, one Chandan Kumar Goswami lodged an FIR before the Officer In-charge of Jalukbari Police Station *inter alia* alleging that when he went to IDBI Bank ATM at Maligaon Chariali and withdrew cash amount of Rs. 2,500/-(two thousand five hundred only) from the said ATM, he received total 25 numbers of 100 rupees denomination currency notes from the ATM machine and out of which, he suspected one 100 rupees note to be fake. Accordingly, he informed the same to the security guard who was on duty in the said ATM at the relevant point of time and asked the

security guard whether any contact number of the bank or complaint book was available. However, when the guard replied in negative, having no alternative, he displayed the said 100 rupee note and the receipt in front of the camera fixed at the ATM machine. Accordingly, the informant lodged an FIR for investigation.

(ii) On the basis of the aforesaid FIR, Jalukbari P.S. Case No. 27/2010 under Sections 489A/489B IPC was registered and the investigation was initiated. After completion of the investigation, charge-sheet was submitted in said Jalukbari P.S. Case No. 27/2010 and two petitioners herein were sent for trial. The committal Court committed the case to the learned Sessions Judge being session triable case.

(iii) The petitioners urged for their discharge before the learned Sessions Judge contending that the materials collected and the statement recorded by the Investigating Officer during the course of the investigation, even if accept to be correct, no material under Section 489B IPC was made out. However, the learned Additional Sessions Judge No. 4 (FTC), Kamrup, Guwahati under its impugned order dated 07.02.2013 declined to accept such contention and accordingly, charges were framed under Sections 489B/34 IPC against the present petitioners.

4. Being aggrieved, the present petitions are filed. Similar argument has been advanced by the learned counsel for the petitioners before this Court that the learned Sessions Judge has committed serious error of law and facts and ignored the settled propositions of law while framing the charges inasmuch as even if the prosecution materials are accepted to be corrected, the petitioners could not have been charged under Section 489B IPC. In support of such contentions, learned counsel for the petitioners has placed reliance on the judgments of the Hon'ble Apex Court in the cases of ***Ghulam Hassan Beigh Vs. Mohammad Maqbool Margrey and others*** reported in ***2022 (12) SCC 657, the State of Gujarat Vs. Dilipsinh Kishorsinh Rao*** reported in ***2023 SCC OnLine SC 1294*** .

5. On the other hand, Mr. P. Borthakur, learned Additional Public Prosecutor, submits that the learned Sessions Judge has rightly framed charges inasmuch as mini trial cannot be carried out at the stage of framing of charge and there are clinching material which raises grave suspicion against both the petitioners being involved in committing offence.

6. It is also contended by Mr. Borthakur, learned APP that at the stage of framing charges, the Court has power to see and weigh the evidence collected by the investigating authority, for a limited purpose of finding out whether any prima-facie case against the accused has been made out. It is equally well settled that when the material placed before

the Court discloses grave suspicion against the accused, the Court will be justified in framing charge. It is also a settled proposition of law that neither a roving enquiry can be carried out nor any mini trial is required to be taken at the stage of framing of charges. When on the basis of materials collected by the investigating authority, the Court comes into a conclusion that commission of an offence is a probable consequence, a charge can be framed.

7. The principles of law as recorded, framing of charge are as follows:-

I. The purpose of framing a charge is to intimate to the accused clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of trial.

II. The prima-facie case must be made out before a charge can be framed.

III. A Court while exercising its power under Section 227 of the Code is having power to shift and weigh the evidence for the limited purpose of finding out, whether any prima-facie case against the accused is made out.

IV. Where grave suspicion exists against the accused, a Court shall be justified in framing a charge.

V. When two views are equally possible and the material produced by the prosecution gives rise to some suspicion but not grave suspicion against the accused, the Court shall be within its jurisdiction to discharge the accused.

VI. At the time of framing of charge, the probative value of the material produced by the investigating authority, though cannot be gone into but the Court must apply its judicial mind on the material placed on record and must be satisfied that commission of offence by the accused is possible.

VII. A trial Court, while exercising its power under Section 227/228 of the Code, is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record.

8. On the basis of the aforesaid settled propositions of law, let this Court first examine the facts of the present cases.

9. From the statement of the informant recorded under Section 161CrPC what is discernable is that the informant received a fake currency note in denomination of Rs. 100/- while he receiving 25 numbers of currency notes of 100 rupee domination and accordingly, he lodged the FIR.

10. The statement of one Md. Khasnur Ali, who is a driver by profession was recorded under Section 161 CrPc by the concerned Investigating Officer. He stated that he carried his

owner to the IDBI ATM at Maligaon Chariali to withdrew cash from it and his owner withdrew Rs. 2500/-(two thousand five hundred only) from the said ATM machine and one fake 100 rupee currency note was detected from the machine.

11. Another person, namely, Nirmal Doley, an Assistant Manager of IDBI Bank, was examined and his statement was recorded under Section 161 CrPC by the Investigating Officer. He stated before the Investigating Officer that 'Brinks Arya', on behalf of Euronet, brought cash from the IDBI bank for loading the same into the ATM machine at Maligaon Chariali on 9th, January, 2010 and that the accused/petitioner, namely, Munindra Haloi collected the cash on behalf of said Brinks Arya.

12. The statement of Lakhi Barman, a security guard of IDBI Bank ATM was also recorded by the Investigating Officer and the said witness stated before the police that the informant withdrew some cash from the said ATM machine and the informant told him that there was one duplicate 100 rupee note and asked him telephone number of bank Manager to which he replied that he did not know.

13. The statement of Raju Das, a businessman of Maligaon locality was also recorded by the Investigating Officer. The said witness stated that one fake 100 rupee note was seized by police in his presence and he signed the seizure list.

14. The statement of Sri Kumar Kaushik, an Assistant Manager of IDBI Bank discloses that the cash was collected by Brinks Arya on behalf of Euronet for loading that into the ATM and the accused/petitioner i.e., Munindra Haloi collected the cash on behalf of 'Brinks Arya'.

15. The seized note was also sent for the forensic examination and the report was given that the currency note was fake one.

16. Therefore, from the aforesaid materials, if it is accepted to be correct what is discernible is that on 12.01.2010, the informant withdrew cash amounting to Rs. 2,500/- (two thousand five hundred only) from the IDBI ATM machine at Maligaon Chariali and out of 25 numbers of 100 rupee currency notes which he received, one 100 rupee note was suspected to be fake.

17. *Prima facie*, it appears that such cash was collected from the IDBI Bank by the accused/petitioner Munindra Haloi, who is a representative of 'Brinks Arya'. The 'Brinks Arya' is entrusted with the responsibility of transporting and replenishing ATM machine on behalf of the entity called Euronet, which is having a contract with the IDBI Bank.

18. It also prima facie seen that the petitioner, Syed Hifzur Rahman was the Branch Manager of IDBI Bank, Panbazar Branch at the relevant point of time, who had handed over the cash to accused/petitioner Munindra Haloi for replenishing the same in the IDBI ATM machine at Maligaon Chariali.

19. Admittedly neither any competent authority of the Brinks Arya or any competent authority of the Euronet has been arrested or any of the representatives has been examined. The other Bank officials whose statements are recorded by police ascertained that the money was handed over to the accused/petitioner, Munindra Haloi from the IDBI Bank as a representative of the 'Brinks Arya' and the 'Brinks Arya' works on behalf of Euronet with whom said bank has contract for replenishing the cash in the ATM machine.

20. Before proceeding further, Section 489B IPC is quoted herein below:-

489B Using as genuine, forged or counterfeit currency-notes or bank-notes

Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

21. From a reading of the aforesaid provision of law, it is clear that Section 489B IPC makes selling, buying, receiving, or otherwise trafficking in or using as genuine counterfeit currency notes or bank notes culpable. When a separate and distinct act or illegal omission independently constitutes a crime, in the considered opinion of this Court, to frame a charge under such provision of law, there must be prima facie material to indicate which act or illegal omission of the accused makes out such prima facie case.

22. The impugned charge framed by the learned Court below is quoted herein below:-

“First-That you, on 12.1.10 at about 18:42:57 at IDBI ATM, Maligaon under Jalukbari P.S. in furtherance of common intention brought a counterfeit one hundred currency note

No.4KN000701 from IDBI Bank as employer BRINK'S Arya Agency on behalf of EURONET and replaced the cash in the vault of ATM, IDBI, Maligaon knowing or having reason to believe the same to be counterfeit."

23. In the cases in hand, from the materials collected by the investigating authority, it is seen that the allegation against Syed Hifzur Rahman is not clear and he has only been implicated being the Bank Manager inasmuch as the material suggests that he handed over the cash as a Manager of the said bank. There is no material on record to suggest any *mens rea* on the part of the present two accused/petitioners. Rather, from the statements recorded under Section 161 CrPC what is discernible is handing over cash by the accused/petitioner, Syed Hifzur Rahman to the accused/petitioner, Munindra Haloi in regular course of banking hours and there is no material to suggest that said 100 rupee note was knowingly handed over by the accused/petitioner, Syed Hifzur Rahman or that the accused/petitioner Munindra Haloi deposited the same in the ATM on his own.

24. Further, in the cases in hand, nowhere the material collected by the prosecution merely suggests possession of such currency note by both the accused persons, i.e., Munindra Haloi and Syed Hifzur Rahman and it is an admitted position that they have acted in discharge of their duties and there is no material to suggest that such possession was a conscious possession or they were involved in selling, buying, receiving, using as genuine counterfeit currency note or trafficking the same. Though it is seen that the alleged currency note was found in the ATM Machine and that said note was transported by the accused/petitioner, Munindra Haloi on being handed over by the accused/petitioner, Syed Hifzur Rahman, there is no whisper or any suspicion to suggest as regard their culpability and their consciousness and their involvement in the present cases. Therefore, this Court cannot be unmindful of the materials so far collected by the Investigating Officer that there is no material to suggest that the petitioners had committed any offence under Sections 489B/34 IPC.

25. In the case of ***Uma Sankar Vs. State of Chhattisgarh***, reported in ***2001 Supp(3) SCR 646***, the Hon'ble Apex Court laid down that *mens rea* of an offence under Sections 489B and 489C IPC is knowing or having reason to believe that the currency notes or the bank notes are forged or counterfeit.

26. It is true that this Court cannot determine the *mens rea* at the stage of framing of charge. However, there must be some materials even remotely suggesting such *mens rea* on the part of the persons accused inasmuch as in the given facts of the present cases, there is no dispute that the accused/petitioner Syed Hifzur Rahman was the Branch Manager and Munindra Haloi was the authorized person to transfer the notes to the ATM machine and that the cash amount was handed over in regular course of banking times.

27. Another aspect of the matter is that to charge a person under Section 489B, there must be some material to suggest that the accused person sells, buys or receives from any person or otherwise traffics in or uses as genuine any forged or counterfeit currency notes or bank notes with the knowledge or the reasonable belief that the said notes are forged or counterfeit. Thus, prima facie material suggesting the sale, purchase or receive from any person or otherwise trafficking of currency notes as genuine is required to charge under an offence under Section 489B. No material has been collected by the investigating authority even to remotely suggest that the petitioners had sold, received or used any counterfeit notes having knowledge or having reasonable belief that the same is a forged one. It is not the case of the prosecution in that effect rather it is simple case of carrying and depositing counterfeit note in the ATM machine.

28. From the material available on record, it cannot also be said that the petitioners herein are involved in trafficking of counterfeit note. The Hon'ble Apex Court in the case of ***K.Hashim Vs. Tamil Nadu*** reported in **(2005) 1 SCC 237** held that the object of the legislature in enacting Section 489B IPC is to stop circulation of forged notes and to punish who knowing or having reason to believe the same to be forged involved themselves in such an act which could lead to their circulation. In Black's Law Dictionary 12th edition defines the word 'traffic' to be a commerce, trade, sale or exchange of such things and passing or exchange of goods or commodities from one person to another or transportation on a route etc. However, the materials collected by the investigating authority do not prima facie disclose any such material to suggest any traffic of such counterfeit note knowing or having reason to believe the same is forged one inasmuch as one of the accused is a Branch Manager of the said Bank and the other accused is an authorized person whose duty is to take the money

from the Bank and deposit the same in the ATM machine. There is no material to even remotely suggest that the single counterfeit note was part of the consignment which was delivered by the Branch Manager to the authorized person who transported the same to the ATM machine.

29. In view of the aforesaid material, this Court is of the unhesitant view that there is no prima facie material before the learned Trial Court to frame charge under Section 489B IPC. In the considered opinion of this Court, there is no material to raise any suspicion against the accused/petitioners not to say about any grave suspicion. The petitioners could not have been charged for commission of offence under Section 489B IPC. Accordingly, the impugned order dated 07.02.2013 passed by the learned Additional Sessions Judge No. 4 (FTC), Kamrup, Guwahati, is set aside and quashed and the accused/ petitioners are discharged from the charges framed under Sections 489B/34 IPC.

30. Accordingly, these two criminal petitions stand disposed of.

JUDGE

Comparing Assistant