

GAHC010009322024



2024:GAU-AS:13123

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

Case No. : Crl.Pet./46/2024

HANNAN ALI KHAN
S/O LATE SOFIR UDDIN KHAN
R/O VILL- MOHIMARI
P.O. MOHIMARI
P.S. GAROIMARI
DIST. KAMRUP, ASSAM
PIN-781137

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE PP, ASSAM

2:IMRAN HUSSAIN
S/O NEBBAS ALI
R/O VILL- HATIPARA
P.O. HATIPARA
P.S. GAROIMARI
DIST. KAMRUP
ASSAM
PIN-78113

Advocate for the Petitioner : MR. J C GOGOI, MR. S ALI,MR B ISLAM

Advocate for the Respondent : PP, ASSAM, MR. T T MONI (R-2),MR. K NATH (R-2),MR. A M KHAN (R-2)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

22/08/2024

Heard Mr. J C Gogoi, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State respondent No. 1. Also heard Mr. A M Khan, learned counsel for the respondent No. 2.

2. The respondent No. 2 as a complainant filed a complaint petition under Section 138 of the NI Act, 1881 before the learned Chief Judicial Magistrate, Goalpara on 07.09.2023 being C.R. (NI) Case No. 28/2023 alleging that the petitioner on 08.01.2021 borrowed an amount of Rs.10,00,000/- from him and when the complainant/respondent No. 2 demanded the said amount from the petitioner/accused person, the petitioner on 05.08.2023 gave him a cheque of Rs.10,00,000/- vide Cheque No. 745835 issued in the State Bank of India, Chhayaon Branch towards discharging the said loan amount.

3. When the complainant/respondent No. 2 presented the said cheque for its liquidation through the drawee Bank, i.e., the State Bank of India, Dhupdhara Branch from the account of the petitioner bearing Account No. 11672049133 on 08.08.2023, the said cheque was dishonored and it was accordingly informed to the complainant/respondent No. 2 on 08.08.2023 itself. Thereafter, the complainant/respondent No. 2 on 16.08.2023 through his counsel sent a legal notice to the petitioner under Section 138 of the NI Act but, in spite of receipt of the notice by the petitioner, he did not reply. As such, the complainant/respondent No. 2 filed the said complaint petition under Section 138 of the NI Act against the petitioner claiming 20% of the total amount as interim relief.

4. The learned Chief Judicial Magistrate, Goalpara after recording the initial deposition, by order dated 07.09.2023 took cognizance of the offence under Section 138 of the NI Act and issued summon to the petitioner in the said C.R. (NI) Case No. 28/2023 preferred by the respondent No. 2.

5. The petitioner, on 04.12.2023 was allowed to go on bail by the learned Chief Judicial Magistrate, Goalpara in said C.R. (NI) Case No. 28/2023 and in the meanwhile, the complainant submitted all the relevant documents before the learned Trial Magistrate.

6. The petitioner has filed this criminal petition on 11.01.2024 praying amongst others to set aside

and quash the order dated 07.09.2023, by which the learned Chief Judicial Magistrate, Goalpara took cognizance of the offence under Section 138 of the NI Act against him in said C.R. (NI) Case No. 28/2023 and also against all the consequential actions in pursuance of the said order dated 07.09.2023, with an interim prayer to stay the further proceeding of said C.R. (NI) Case No. 28/2023.

7. Such prayer challenging the said order dated 07.09.2023 passed by the learned Chief Judicial Magistrate, Goalpara in C.R. (NI) Case No. 28/2023, as per the petitioner, is on the ground that he, due to certain need, took an amount of Rs.3,00,000/- from the father of the respondent No. 2, namely, Nebbas Ali and in that regard, one hand note was executed on 26.02.2022 between them in presence of witnesses, wherein it was clearly mentioned that a blank cheque bearing No. 745835 of SBI, Gumi Branch as a liability was given to said Nebbas Ali, i.e., father of the respondent No. 2, on the condition that the same would be returned along with the written hand note on the day when said Nebbas Ali would receive back the loan amount, with a further condition therein that no transaction can be made through the said cheque bearing No. 745835 of SBI, Gumi Branch issued by the petitioner.

8. It is stated by the petitioner that on 27.08.2022, he returned the said loan amount to the father of the respondent No. 2, Nebbas Ali and on the same day, Nebbas Ali returned the said hand note to the petitioner but he did not return the said cheque bearing No. 745835 stating that the said cheque was lost somewhere and could not be traced out.

9. It is alleged by the petitioner that instead of returning his said cheque bearing No. 745835 that was issued by the petitioner to the father of the compliant/respondent No. 2, Nebbas Ali, it is the complainant/ respondent No. 2, who fraudulently presented the said cheque in his bank account in the State Bank of India, Dhupdhara Branch on 08.08.2023 and when the said cheque was dishonored, the complainant/respondent No. 2 initiated the said proceeding of C.R. (NI) Case No. 28/2023 against the petitioner demanding for payment of Rs.10,00,000/- from him.

10. It is also submitted by the petitioner that though he immediately contacted with the father of the complainant/respondent No. 2 and though his father assured him to resolve the matter amicably, but instead of that the complainant/respondent No. 2 did not resolve the matter in spite of his repeated request. Having no alternative, the petitioner on 16.09.2023 lodged an FIR before the Officer-in-Charge of Goroimari Police Station stating the above facts and about misuse of his said blank cheque bearing No. 745835 by the complainant/respondent No. 2 that was given by the petitioner to Nebbas Ali, the father of the said complainant/respondent No. 2.

11. On the basis of the said FIR dated 16.09.2023, Goroimari P.S. Case No. 89/2023 under Sections 420/406/384/506 IPC, corresponding to G.R. No. 1182(k)/2023, PRC No. 686/2024 was registered against the said complainant Imran Hussain and his father Nebbas Ali.

12. It is stated that the respondent No. 2, Imran Hussain and his father Nebbas Ali in the meanwhile, obtained pre-arrest bail in said Goroimari P.S. Case No. 89/2023 from this Court vide orders dated 28.11.2023, 01.02.2024 and 22.04.2024 passed in AB No. 3948/2023.

13. Since the complainant/respondent No. 2 miserably failed to prove before the learned Trial Magistrate that the petitioner took loan from him and for the reasons stated above, it is submitted by the petitioner that the said proceeding under Section 138 of the NI Act pending against him before the learned Chief Judicial Magistrate, Goalpara being C.R. (NI) Case No. 28/2023 should be set aside and quashed.

14. Mr. A M Khan, learned counsel appearing for the respondent No. 2 however denied the fact submitted by the petitioner and submitted that on the basis of examination of the complainant and his witnesses, the learned Chief Judicial Magistrate, Goalpara took cognizance of the offence under Section 138 of the NI Act against the petitioner.

15. It is seen from the records of said C.R. (NI) Case No. 28/2023 pending before the Court of the learned CJM, Goalpara against the petitioner that the said case is fixed at the stage of cross examination of the complainant's witness.

16. It is well settled in law that while exercising the powers under Section 482 Cr.P.C, the Court is not required to conduct any trial and charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency/complainant, as the case may be. The High Court while exercising its power under Section 482 Cr.P.C. cannot go in detail in the allegations and the material collected during the course of the investigation against the accused and the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the High Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

17. As noted above, the proceeding of C.R. (NI) Case No. 28/2023 pending before the Court of the learned CJM, Goalpara against the petitioner is in the nascent stage and cognizance have already been taken under Section 138 of the NI Act against the petitioner. Considering the fact, the said C.R. (NI) Case No. 28/2023 is in the stage of cross examination of the prosecution witnesses by the

accused petitioner, therefore, he will have ample opportunity to defend himself against the said alleged accusation against him.

18. After hearing the learned counsels of the parties and on perusal of the relevant records of the case of C.R. (NI) Case No. 28/2023 pending before the Court of the learned CJM, Goalpara that was called for, this Court is of the opinion that it is not a fit case to exercise the inherent power of the Court under Section 482 Cr.P.C. in this petition as the Court has not find any such abuse of the process of the Court.

19. Accordingly, this Criminal Petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant