

GAHC010028462015



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

Case No. : Crl.Pet./1026/2015

MARNYA CHIRAM
S/O- LT. T. CHIRAM, EXECUTIVE ENGINEER, PRESENTLY RESIDENT OF
OFFICE COMPOUND OF CHIEF ENGINEER, P.W.D., C-SECTOR, ITANAGAR,
PIN- 791111, DIST.- PAPUMPARE, ARUNACHAL PRADESH.

VERSUS

VIJAY KUMAR AGARWALA and ANR
S/O- SRI BANWARILAL AGARWALA, R/O- CHIWRAPATTY ROAD, P.O., P.S.
and DIST.- TINSUKIA, ASSAM, PIN- 786125.

2:TELI KECHI
W/O- TELI TADA CANDIR
PROPRIETOR OF M/S HUTO TRADING AGENCY
P.O. and P.S.- DOIMUKH
DIST.- PAPUMPARE
ARUNACHAL PRADESH- 788025

Advocate for the Petitioner : MR.T SIRAM, MS.G SUTRADHAR,MR.R HUSSAIN

Advocate for the Respondent : MR.A R SHOMER-1, MR.A J GHOSH(R-1),

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

Date : 21.08.2024

JUDGMENT & ORDER (CAV)

Heard Mr.R.Hussain, learned counsel for the petitioner and Mr. B.Sarma,

learned Additional Public Prosecutor for the State/respondent No.2. None appears for the respondent No.1.

2. By filing this application under Section 482 CrPC, the petitioner has prayed for quashing of the criminal proceeding in connection with Complaint Case No. 94^c/2015 under Section 406/420/447/294/506 IPC pending in the court of learned Judicial Magistrate, 1st Class, Tinsukia.

3. The fact of the case, in brief, is that proforma opposite party being proprietor of M/S Huto Trading Agency, entered into an agreement with Government of Arunachal Pradesh for construction of works and maintenance of road from old Abali to Ingino via Harupahar, Arango and Denlo, Arunachal Pradesh under PMGSY by the Executive Engineer, Rural Works Department, Roing, Arunachal Pradesh and accordingly, an agreement was executed to do that work.

3. The proforma opposite party No. 2 Teli Kechi executed irrevocable power of attorney in favour of opposite party No.1 and both the opposite parties entered into an agreement to complete the balance works. Thereafter, the opposite party No. 1 approached the petitioner for making payment to him in respect of the work done on the basis of power of attorney and the petitioner subsequently made payment to power of attorney holder i.e. opposite party No. 1. The further case of the opposite party No. 1 is that on 31.08.2015, at about 4.30 pm, while he was sitting in his shop, the petitioner threatened him and accordingly, the opposite party No.1 filed a complaint against the petitioner and the opposite party No.2.

4. It was urged by the learned counsel for the petitioner that on bare perusal of the complaint filed by the opposite party No.1, it reveals that no case

is made out under Section 406/420/447/294/506/34 IPC. But the learned trial court erroneously took cognizance of the same. It is further submitted that the petitioner is a government employee and discharged the official duty at the relevant time and as such, he is not personally liable even if any case is made out by opposite party No.1.

5. Learned counsel for the petitioner has further argued that the Government of Arunachal Pradesh through the Executive Engineer RWD entered into a contract with M/S Huto Trading Agency of Arunachal Pradesh in the year 2007. The opposite party No.1 is a stranger to that agreement. The complaint petition of opposite party No.1 disclosed that the original contractor (opposite party No.2) sub-let some portion of the work to him without any authority of law despite prohibition in the contract. The payments for work had also not been made to any other person except the contractor in terms of the agreement clause. As the opposite party No.1 is stranger to the agreement, as such, he has no such right to demand for payment from the Government or from the petitioner. If the opposite party No.1 has any grievance relating to payment, then he may claim either from the contractor or from the Government of Arunachal Pradesh but he has no right to make any claim against the petitioner who discharged his official duty and not acted in his personal capacity. Accordingly, the complaint of the opposite party No.1 is baseless and based on concocted story and filed with malafide intention to extract the public money from the petitioner as well as Government of Arunachal Pradesh.

6. It is also the submission of learned counsel for the petitioner that the opposite party filed the complaint case against the petitioner by suppressing the material facts and also making false statements therein inasmuch as the opposite party No.1 despite the knowledge, has not disclosed that the

contractor i.e. opposite party No.2 has cancelled the power of attorney given to him and appoint another attorney holder namely, Rajju Lenggi. In absence of challenging the power of attorney, the opposite party No.1 has no legal right to make any claim in relation to the contract in question.

7. According to the learned counsel for the petitioner, the complaint case was filed by the opposite party No.1 on 01.09.2015 but prior to that the petitioner was transferred from Roing Division to the Chief Engineer Office, Itanagar. On 28.05.2015, the petitioner joined his duty at Itanagar and the petitioner is still in service and presently posted at Itanagar.

8. The learned counsel for the petitioner also contended that the complaint relates to contractual disputes which is of purely civil in nature and even if all the allegation in the complaint as true, they do not constitute any criminal offence as defined under Section 406/420/447/294/506 of the IPC and as such, the entire proceeding is nothing but abuse of the process of the court and the entire proceeding of the complaint is liable to be quashed.

9. The last limb of argument of the learned counsel for the petitioner is that the petitioner is a public servant within the meaning of Section 21 IPC and there is no material available in the complaint to show that any previous sanction from the State Government was obtained by the opposite party No.1 before filing the complaint and as such, in view of the provision of Section 197 of the CrPC, the trial court has no jurisdiction to take cognizance of the alleged offence against the petitioner.

10. In support of his submission, learned counsel has referred the following case laws:

1. (2014) Cri.L.J 576 (*A.C. Narayanan vs- State of*

Maharashtra)

2. (2010) 8 SCC 442 (*Rajeshwar Tiwari & Ors. Vs- Nanda Kishore Roy*)
3. (2006) 6 SCC 736, (*Indian Oil Corporation vs- NEPC India Ltd. & Ors.*)
4. AIR 1990 SC 673 (*Southern Roadways Ltd., Madurai vs. S.M. Krishnan*)
5. (2023) Live Law SC (485) (*A.Srinivasulu vs State represented by the Inspector of Police*)

11. In response, learned Addl.P.P. submits that though it is alleged by the learned counsel for the petitioner that the case relates to a breach of contract which is purely civil in nature but the allegation made in the complaint cannot be stated to be proved without the trial. It would be premature to hold that the learned Magistrate had no materials before him for constituting an offence under Section 406/420 IPC inasmuch as the very reading of the extracted portion of the complaint petition by itself is sufficient for making out an offence under Section 406/420 IPC. Added to it, when such statement got support by some witnesses in course of enquiry under Section 202 CrPC, it cannot be said that learned Magistrate had committed any error in taking cognizance of the offence under Section 406/420/447/294/506/34 IPC. Hence, learned Addl.P.P. prays for dismissal of the criminal case.

12. As a matter of fact, at the stage of taking cognizance, when the accused is yet to appear, the magistrate has only to look into the averments in the complaint petition and the statement of the witnesses examined in course of enquiry under section 202 CrPC for finding out a *prima facie* case of the offence

alleged in the petition of complaint and he cannot at that stage refuse to take cognizance only on the ground that even if the *prima facie* case constituting the offence is made out, the same could be better gone into in a civil suit.

13. As a matter of fact, even exercise of power by this Court under Section 482 CrPC is well circumscribed as was held by the Hon'ble Supreme Court in the case of *R.P.Kapur vs. State of Punjab* reported in AIR 1960 SC 866, wherein quashing of a criminal proceeding was held to be permissible only on following three grounds:

" (i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises: it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question.

In exercising its jurisdiction under S. 561- A, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of

the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and content that on a reasonable appreciation of the evidence the accusation made against the accused would be sustained." The Apex Court has reiterated the same principles in the case of Nagawwa's case (supra) wherein it was held that the magistrate while issuing process against accused must satisfy himself as to whether the allegation in complaint petition on being proved would ultimately end in the conviction of the accused. It was held therein that the order of magistrate issuing process against accused could be quashed only under the following circumstances:-

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

14. Again in the case of *State of Haryana vs. Bhajan Lal*, reported in 1992 Supp. (1) SCC 335, it was expressed by the Apex Court that such allegation made in the FIR or complaint could be quashed if they were so absurd and inherently impossible on the basis of which no prudent man can ever reach to a conclusion that there is sufficient ground for proceeding against a person. In paragraph 102 of *Bhajan Lal* (supra), the Apex Court had laid down the following test for quashing of a prosecution by the High Court in exercise of

power under Article 226 of Constitution of India or under Section 482 CrPC:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter -XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is

sufficient ground for proceeding against the accused.

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

15. The same view was again reiterated with added emphasis in the case of Indian Oil Corporation (*supra*) where the Supreme court had held as below:

*"12. The principles relating to exercise of jurisdiction under Section 482 of the code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few- *Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre*, *State of Haryana vs. Bhajan Lal, Rupan Deo Bajaj vs. Kanwar Pal Singh Gill*, *Central Bureau of Investigation vs. Duncans Agro Industries Ltd.* *State of Bihar vs. Rajendra Agrawalla*, *Rajesh Bajaj vs. State NCT of Delhi*, *Medchi Chemicals & Pharma (P) Ltd. vs. Biological E. Ltd.* *Hridaya Ranjan Prasad Verma vs. State of Bihar*, *M. Krishnan vs. Vijay Singh and Zandu Pharmaceutical Works Ltd. vs. Mohd. Sharaful Haque*. The Principles, relevant to our purpose are:-*

*(i) a complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out the case alleged against the accused.*

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of

the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) the complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out:(a) purely a civil wrong; or (b) purely criminal offence; or

(c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

16. The Hon'ble Apex Court in the case of *R.Kalayani vs- Janak C.Mehta* reported in (2009) 1 SCC 516, while laying down the law with regard to exercise the power under Section 482 CrPC, had held as follows:

"15. Propositions of law which emerge from the said decisions are:-

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

17. Thus, from the aforesaid judgments of the Apex Court, it stands well settled that if the facts stated in the complaint petition would make out the ingredients of the offence alleged therein, the High Court in exercise of its power under Section 482 CrPC would not quash a proceeding merely because the same had a tinge or the attributes of a dispute of civil nature.

18. In this context, this court must clarify that under a given state of facts arising out of contractual disputes may furnish a cause of action for seeking remedy in civil law but at the same time that may also involve a criminal offence. The Apex Court has in fact in that context in the case of *R.Kalayani (supra)* and *Indian Oil Corporation (supra)* made it clear that as the nature and scope of civil proceeding is entirely different from criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings.

19. Hon'ble Apex Court in the case of *K. Ashoka –vs- N.L.Chandrashekhar & Ors* reported in (2009) 5 SCC 199 wherein the Apex Court relying on the judgment of *Indian Oil Corporation (supra)*, held that if the petition of complaint had contained the allegation of fraudulent intention to cheat and defraud which had also an element of inducement, the offence of cheating was very well constituted.

20. At the stage of taking cognizance by the learned Magistrate or its judicial review by the High Court under Section 482 CrPC, there would be no requirement to see as to whether there is proof of such allegation or as to what would be the ultimate outcome in the trial. The High Court in fact while exercising power under Section 482 CrPC is not expected to conduct a mini trial. That being so, once the trial court was satisfied that the complaint makes out a *prima facie* case of criminal breach of trust, criminal trespass or criminal intimidation etc, there would be no scope for interfering with the impugned order taking cognizance.

21. For the reasons indicated above, this court does not find any merit in this criminal petition and therefore, is dismissed.

22. It is however, made clear that nothing said in this judgment will adversely affect the merit or defence of the petitioner in the course of trial and the learned trial court would decide the case on the basis of the evidence on record.

23. The criminal petition is disposed of accordingly.

24. Interim order, if any, is hereby vacated.

Trial court is directed to proceed with the case in accordance with law.

JUDGE

Comparing Assistant