

GAHC010027342019



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

Case No. : Crl.Pet./144/2019

SANJAY KUMAR JAIN
S/O SRI CHAINSUKH JAIN, R/O REHABARI, PS PALTANBAZAR, IN THE
DISTRICT OF KAMRUP (M), ASSAM

VERSUS

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

2:SWAPAN DUTTA
S/O SRI ANIL DUTTA
R/O WEST BANSBARI
DIBRUGARH
PS DIBRUGARH IN THE DISTRICT OF DIBRUGARH
ASSAM
PIN-78600

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 07-03-2024

Heard Mr. GN Sahewalla, learned senior counsel assisted by Ms. G.

Dugar. Also heard Mr. D. Das, learned APP for the State respondent.

2. Though service in respect of respondent no.2 stands completed way back on 05.06.2020, no counsel has entered appearance for the respondent no.2.

3. This is a petition under section 482 of the Cr.P.C. seeking quashing of the FIR dated 19.05.2018 in connection with Dibrugarh P.S. case no. 713/2018 registered under section 120B/468/420/406/379 IPC.

4. The principle for exercise of power under Section 482 Cr.PC to quash the FIR is well settled by number of cases of the Hon'ble Apex Court. These parameters are here under:-

(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 uncontested 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 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."

5. The case of the prosecution is that the informant on 19.05.2018 filed an FIR alleging that he lost his signed cheque book and accordingly the matter was reported to the Bank authority to stop payment. However, on 18.05.2018, he came to know that one leaf of the said stolen cheque book bearing 101362 was forged and manipulated to the extent of Rs.38,27,200/- and deposited in his bank account to withdraw the said amount by the petitioner. It is further alleged that in this manner he has been cheated by the petitioner.

6. Mr. GN Sahewalla, learned senior counsel submits that the ingredients of the offences alleged in FIR are lacking on the body of the FIR and hence no criminal offence whatsoever is made out against the petitioner.

7. Mr. D. Das, learned APP submits that he has received no instructions to oppose the said petition.

8. I have heard the submission made at the bar and have perused the materials available on record.

9. The FIR dated 19.05.2018 is reproduced hereunder for reference:

“To

The Superintendent of Police

Dibrugarh District,

Dibrugarh, Assam.

Dated 05/19/2018

Sir,

I have the honour to state that since December, legal 2017 to 1st week of February, 2018, I was in Margherita Rehabilitation Centre, P.O. and P.S.Margherita, Dist. Tinsukia, Assam due to my mental disorderness. On 28/03/2003 one my check Book of Union Bank, Dibrugarh Branch, Dibrugarh against S.B. Account No. 7402 containing Check No. 101362 etc.etc. was lost, and the matter was reported to Bank Authority to stop payment of the Checks of that Check Book. Now a days, the said old Cheque is not acceptable by the Bank due to introducing Core Banking system and all the subsequent Bank Cheque Books are made for present Core Banking system & the Checks are MICR Cheque.

On 18/05/2018, I have come to know that one leaf of the said stolen check Book bearing No.101362 was forged and manipulated to the extent of Rs. 38,27,200/- and deposited in my aforesaid Bank Account to withdraw the said amount by Sri Sanjoy Kumar Jain, son of Late Chain Sukh Jain of M/S Yash Enterprise at R.K.Tower, A.K.Azad Road, Rehabari, Guwahati, Assam with the conspiracy of others and started blackmailing me in various ways. Thus; said Sanjoy Kumar Jain and his Associates have not only cheated me, but also forged and manipulated my aforesaid stolen check.

I, therefore request you to take necessary action against the aforesaid person and his associates, Recover my aforesaid check and Check and Book immediately, and the same may be examined by the FSL to collect Evidence how old of that Check is.

Yours faithfully.

(Sri Swapan Dutta)

S/O Sri Anil Dutta,

R/O West Bashibari

P.S. & Dist. Dibrugarh

Assam."

10. The following facts can be ascertained from a bare perusal of the FIR:-

1. The informant lost his Cheque book of Union Bank Dibrugarh Branch containing Cheque No. 101362 etc. etc.
2. He accordingly reported the Bank authorities to stop payment of the cheques of that cheque book.
3. After 2 months he came to know that one leaf of the said stolen cheque book bearing No. 101362 was forged and manipulated to the extent of Rs. 38,27,200/- and deposited in his Bank account by the petitioner to withdraw the said amount.
4. However, the said cheque was not honoured by the bank in terms of the 'stop payment instruction'.
5. There is no allegation that the petitioner forged the signature of the informant.

11. Section 120B provides punishment for criminal conspiracy. The essential ingredients of the offence of criminal conspiracy are the agreement to commit an offence. In the present case, there appear no such agreements alleged in the FIR. As such, no case under Section 120B is made out.

12. Section 468 provides punishment for forgery for purpose of cheating. The basic element of forgery are:- (1) the making of a false document a part of it and (2) such making should be with such intention as is specified in the section i.e. (a) to cause damage or infringe to (i) the public, or (ii) any person: or (b) to support any claim or title; or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or that fraud may be committed.

13. In the present case, there are no allegations with regard to making of a false documents or false electronic record by the petitioner in the FIR. As such, no offence under Section 463 is made out.

14. Section 420 provides punishment of cheating and dishonestly inducing delivery of property.

15. Section 415 of the IPC defines cheating. The essential ingredients of cheating are; (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived.

16. In the present case there is no averments in the FIR as regards fraudulent and dishonest intention of cheating. That being so, no case of cheating is made out on the face of the FIR.

17. Section 406 of IPC provides for punishment for criminal breach of trust. The basic requirements to bring home the accusations under Section 405 of the Code are the requirements to prove conjointly: (i) entrustment (ii) whether the accused was actuated by dishonest intention or not, misappropriate it or concerted it to his own use to the detriment of the persons who entrusted it.

18. In the present case, as per the averments made in the FIR, the cheque was not debited from the account of the informant. Further, there was no entrustment. Therefore, no offence under Section 406 IPC can be said to be made out on the face of the averments set out in the FIR.

19. Section 379 provides for punishment for theft. Section 378 provides that

whoever takes out any movable property from the possession of any person is said to commit theft.

In the present case, the informant reported that his cheque book containing cheque No. 101362 etc. was lost. It further appears that the informant by letters dated 19.02.2018 (Annexure 5) and 19.02.2018 (Annexure 6) to the writ petition reminded the petitioner to pay the amount due to him against the loan advanced by him to the petitioner through cheque No. 101361, 101364 and 101365. It is apparent that the aforesaid cheques were part of the same cheque book containing cheque No. 101362. The said allegation on the face of it appears to be vague, absurd and frivolous. Be that as it may, the ingredients of Section 379 are also not attracted on the face of the FIR. Reference has also been made to the decision of the Apex Court in the case of *Sunil Bharti Mittal vs Central Bureau of Investigation* reported in (2015) 4 SCC 609, wherein the Apex Court has laid down the principles applicable to the High Courts to invoke its jurisdiction under Section 482 of the Code of Criminal Procedure. Paragraphs Nos. 29 and 30 of the aforesaid judgment is abstracted hereunder for ready reference:-

“29. *It is true that the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending.*

30. *Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in the progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of*

sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint."

20. In view of the above, this Court is of the opinion that the FIR does not disclose any criminal offence whatsoever at all and has been manifestly attended with malafide and therefore, such criminal proceedings should not be encouraged.

21. Therefore, in view of the aforesaid, allowing further investigation to continue would amount to an abuse to the process of the Court and accordingly the FIR which was registered as Dibrugarh P.S Case No. 713/2018 dt. 19.05.2018 is set aside and quashed.

22. In view of the reasons stated above, the criminal petition accordingly stands allowed and disposed of.

JUDGE

Comparing Assistant