

GAHC010064852024



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

Case No. : Crl.Pet./356/2024

DR. NILUTPAL SUT AND 3 ORS
S/O LATE KINARAM SUT, (CMD) CHAIRMAN, CUM MANAGING
DIRECTOR, CRITICAL CARE HOSPITAL, LOKHRA, GUWAHATI, ASSAM,
PIN-781040

2: DR. HITESH SHARMA
S/ Olate Kali Kanta Deba Sarma
MEDICAL DIRECTOR (MD)
CRITICAL CARE HOSPITAL
LOKHRA
GUWAHATI
ASSAM
PIN-781040

3: DEEPJYOTI MISHRA
S/O PRABHAT CHANDRA MISHRA
FINANCIAL AND PLANNING DIRECTOR
CRITICAL CARE HOSPITAL
LOKHRA
GUWAHATI
ASSAM
PIN-781040

4: DR. AMLAN JYOTI BHAGAWATI
S/O MR. DWIJENDRA NATH BORA
CEO OF CRITICAL CARE HOSPITAL
LOKHRA
GUWAHATI
ASSAM
PIN-78104

VERSUS

THE STATE OF ASSAM AND ANR

REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:DR. PRAVEEN SHARMA
S/O LATE INDERCHAND SHARMA
PERMANENT ADD- 170
GANGA NIWAS
RAJAS SOCIETY
KATRAJ
PUNE
PRESENT ADD- CHHAYGAON
P.O.-CHAYGAON
P.S.-CHAYGAON
DIST- KAMRUP
ASSA

Advocate for the Petitioner : MR. T DEURI, MS. L WANGSA,MS A DAS

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

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

19.11.2024

Heard Mr. T. Deuri, learned counsel for the petitioners. Also heard Mr. A. M. Khan, learned counsel for the respondent no. 2.

2. By filing this petition u/s 482 of Cr.PC, 1973, the petitioners have prayed for quashing of the entire proceeding of Complaint Case being CR Case No. 7490/ 2022 pending in the court of learned JMFC, Kamrup (M) and also quashing of the order dated 19/08/2023 for taking cognizance and issuing summons against the accused/petitioners for the offence u/s 403/406/420/34 IPC.

3. The accused/petitioner No. 1 is the Chairman cum Managing Director of Critical Care hospital, Lohkra, accused/ petitioner No. 2 is the Medical Director, the accused/ petitioner No. 3 is the Financial and Planning Director and accused/ petitioner No. 4 is the CEO of Critical Care Hospital, Lohkra.

4. The background of the case is that on 07/12/2022 the respondent No. 2 had filed a complaint in the court of learned CJM, Kamrup (M) stating inter alia that the respondent No. 2 was engaged as a Neurosurgeon in Critical Care Hospital. In the offer letter, it was agreed that the respondent no. 2 would be paid Rs. 7, 00,000/- per month subject to TDS/ PF/ Professional tax deductions as remuneration for his service. The salary of the respondent No. 2 was credited by deducting TDS/ PF/ Professional tax deductions. However, on 20/09/2022, the respondent No. 2 had received a demand notice issued by the Assistant Director of Income Tax, CPC, Bengaluru, informing the respondent no. 2 that for the Annual year 2022-2023, the tax payable by him was Rs. 2, 74, 830/-. It was alleged that although the accused/ petitioners had deducted the tax from his salary regularly, but the accused/ petitioners had not deposited the same to the Income Tax department. It was further alleged that the respondent No. 2 was terminated on 18/11/2022 without any prior notice or intimation and his salary from 01/09/2022 to 18/11/2022 amounting to Rs. 18, 20,000/- was not paid to him. Accordingly, the aforesaid complaint case was filed.

5. Learned counsel for the petitioners had submitted that even if the facts disclosed in the complaint do not prima facie make out the ingredients of offence u/s 403/ 406/ 420/ 34 IPC as such the impugned criminal proceeding in CR case no. 7490/ 2022 is liable to be set aside.

6. It is further submitted that a plain reading of the complaint makes it clear

that there was neither fraudulent nor dishonest intention on the part of the accused/ petitioners at the beginning of the transaction with the respondent No. 2 nor there is a breach of contract. Moreover, a mere breach of contract cannot give rise the criminal prosecution for cheating u/s 420 IPC unless fraudulent or dishonest intention is shown right at the beginning of the transaction.

7. According to learned counsel for the petitioners, the Assessment Year 2022-2023, the tax of Rs. 2,96,333/- of the respondent No. 2 which was deducted at source was duly deposited in the Central Government Account through Challan. Further, the tax of Rs. 4, 11, 206/- for the Assessment Year 2023-2024, of the respondent No. 2 which was deducted at source was also deposited in the Central Government Account through Challan. Thus, the allegation that the accused/ petitioners had deducted the tax from the salary of the respondent No. 2, regularly, but, the accused/ petitioners had not deposited the same to the Tax Department is not true.

8. It is also contended that in the month of November, 2021, the respondent No. 2, had joined as a Neurosurgeon in Critical Care Hospital and Research Institute which is a unit of M/S- Manashi Medi Equipments Pvt. Ltd. The respondent No. 2 was regularly paid his salary from the month of November, 2021 till the month of October, 2022 after deducting his Income Tax, Professional Tax etc. It is noteworthy to mention herein that the respondent No. 2, had worked for a period of 6 days in the month of September, 2022, as such, the gross salary of Rs.1, 40,000/- was paid to him. The respondent No. 2, had worked for period of 4 days in the month of October, 2022, as such the gross salary of Rs. 93,333/- was paid to him. The respondent No. 2, had not worked for a single day in the month of November, 2022, as such, the gross salary was

not paid to him. As such the respondent No.2 is not entitled to any outstanding salary amounting to Rs. 18,20,000/- . Hence, the learned counsel for the petitioner prays for quashing of the criminal proceeding pending in the court of JMFC, Kamrup (M) against the accused/petitioners.

In support of his submission, learned counsel for the petitioners has placed reliance on the following case laws -

- a. (2000) 4 SCC 168 (Hridaya Ranjan Prasad Verma and others vs. State of Bihar)
 - b. (2005) 10 SCC 228 (Anil Mahajan vs. Bhor Industries Ltd and another)
 - c. (2019) 9 SCC 148 (Satish Chandra Ratanlal Shah vs. State of Gujarat and another)
9. In response, learned counsel for the respondent No. 2, has submitted that as per the cardinal principle of law, at the stage of discharge or quashing of the criminal proceedings, while exercising the powers u/s 482 Cr.PC, the court is not required to conduct the mini trial. This is not the stage when the prosecution or the investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the parties. At the stage, while exercising the powers u/s 482 Cr.PC, the 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.

10. It is also the submission of learned counsel for the respondent no. 2 is that the respondent no. 2 had joined the Critical Care Hospital and Research

Institute in the year 2021 and as per the agreement between the respondent No. 2 and the accused/petitioners, the respondent no. 2 would be paid the monthly salary subject to tax deductions. But the petitioners did not pay the said tax to the concerned authority in spite of collecting the amount of tax from the salary of the respondent No.2. On receipt of the notice from the Income Tax department, the respondent No. 2, lodged the complaint on 07/02/2022 and subsequently, the petitioners had deposited the income tax on 29/02/2024. According, to learned counsel for the respondent No. 2, which clearly shows that the petitioners had alleged intention for misappropriation of money since inception, which attracts the provisions of section 403/ 406/ 420 IPC. Hence, learned counsel has prayed for dismissal of the criminal petition.

Learned counsel for the respondent No. 2 has also relied on a case law –

(1) (2023) 0 Supreme SC 334 (CBI vs. Aryan Singh etc)

11. Law is well settled in this regard that the power under Section 482 of Cr.P.C. is extra ordinary in nature and it is settled proposition of law that this power has to be exercised sparingly and only in the case where attaining facts and circumstances satisfy that possibilities of miscarriage of justice will arise in case of non-use of power. The Court can interfere with the findings of the Courts in such exceptional cases where it appears that the orders if not corrected would be great injustice to someone, where in passing the order, the Court is capricious and arbitrary or where order passed by learned Courts below have been based on no evidence or material at all available on record or order has been passed on such evidence or material which is wholly irrelevant or arbitrary or where the orders suffers from fundamental legal defects or where the evidence produced in support of the claim, if taken at their face value makes

out absolutely no case or where the orders 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 opponent.

12. In **Krishnanan Vs. Krishnaveni (1997 AIR SCW 950 : AIR 1997 SC 987)**, it was held that Ordinarily, when revision has been barred by S. 397(3) of the Code, a person accused/complainant cannot be allowed to take recourse to the revision to the High Court under S. 397(1) or under inherent powers of the High Court under S. 482 of the Code since it may amount to circumvention of the provisions of S. 397(3) or S. 397(2) of the Code. However, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under S. 397(1) read with S. 401 of the Code. It may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out.

13. In **Mahesh Chaudhary v. State of Rajasthan and Another reported in (2009) 4 SCC 439**, it was held that power under Section 482 of Cr.P.C. is to be exercised to prevent abuse of process of Court or to secure ends of justice. Court can quash charge-sheet if allegations in FIR or complaint petition do not

disclose commission of offence even if on face value they are taken to be correct in their entirety. While doing so, High Court is not to embark upon appreciation of evidence but to consider only material on record as a whole though the High Court is required to consider as to whether the allegations made in the FIR or the complaint petitioner fulfill the ingredients of the offences alleged against the accused. Further held, dispute being primarily of civil nature is not by itself a ground to quash criminal proceedings because in cases of forgery and fraud, there would always be some element of civil nature.

14. Reverting to the case in hand, the allegations against the accused/petitioners are required to be proved during trial and it is not the stage to quash the proceeding against the petitioners without giving chance to the other side to prove the same by adducing evidence. Keeping in view the settled position of law as aforesaid, no inference can be drawn in favour of the accused/petitioners that the complaint case does not disclose any offence as alleged.

15. In view of the above, this court does not find any merit in the present petition and deserves to be dismissed. The criminal petition stands dismissed and disposed of accordingly.

JUDGE

Comparing Assistant