

(2001) 10 GAU CK 0012

In the Gauhati High Court

Case No : Criminal Revision No. 570 of 1999

Narosa Farms and Another

APPELLANT

Vs

N.E.R. Agricultural Marketing Corpn. Ltd.

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2001) 3 GLT 365

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : R.P. Sarmah and A.R. Medhi, for the Appellant; N. Dutta, K. Bhattacharjee, T.C. Barman and S.C. Biswas, for the Respondent

Judgement

P.C. Phukan, J.—I have heard learned Counsel for the parties.

2. This revision petition is filed for quashing the proceedings initiated u/s 138 of the Negotiable Instruments Act, 1881 in C.R. Case No. 1993C/98 pending before the Court of Chief Judicial Magistrate, Ka Mr. up at Guwahati.

3. The Respondent/complainant lodged a complaint through its attorney holder against M/s Narosa Farms as well as against the proprietor Abhiram Veer in the Court of the Chief Judicial Magistrate, Ka Mr. up at Guwahati, stating inter alia, that the accused were appointed as distributors to the complainant's products for the State of Uttar Pradesh and Bihar, that on 12.3.97, 13.3.97, 27.3.97 and 31.3.97 the complainant despatched four consignments of supari and other products valued at Rs. 53, 18,222.90 which was duly received by the accused. Thereafter, the accused made part payment. Then the accused issued a post dated payee cheque No. 701825 dated 15.4.98 amounting to Rs. 1 lakh on Punjab National Bank, Mahanagar, Lucknow in favour of the complainant to liquidate his balance amount of the liability. That the complainant deposited the said cheque to Central Bank of India, Dispur Chariali Branch for collection, but the same was returned to the complainant under Memo dated 18.5.98 for

insufficient fund. After receipt of the dishonoured cheque the complainant served notice on the accused by 1.7.98 demanding the payment of Rs. 1 lakh within 15 days from the date of receipt of the same. The said notice of demand dated-30.6.98 had been received by the accused. It is alleged that the accused avoided the demand notice and intentionally failed to make payment of the amount of Rs. 1 lakh to the complainant within 15 days from the date of receipt of the notice u/s 138 of the Negotiable Instrument Act, 1881.

4. On receipt of the complaint the learned Chief Judicial Magistrate examined the complainant and on perusal of the initial deposition, contents of complainant petition as well as the materials before him, found a prima facie case against the accused M/s Narosa Farms as well as its proprietor u/s 138, N.I. Act, took cognizance of the said offence and accordingly issued process by his order dated 9.6.98 hence the instant revision.

5. It is stated on behalf of the revision Petitioner that the third and fourth consignments were despatched by Respondent-complainant on their own which the accused-Petitioner had not placed any order, that the same were of inferior quality and were sent after delay of about 3 months when the price of the goods decreased by about Rs. 8 lakhs. The Petitioners showing good will gesture issued the post dated cheques with an instruction that the payments were only to be made from sale proceeds; and as in the instant case the sale was yet to complete, the payments were made under protest. The dispute was still continuing and the Respondents showed no inclination to solve the matter but were eager to compel the Petitioner to make the payment. It has further been stated that the Petitioners did not receive any notice from the Respondents.

6. Pressing for dismissal of this revision petition Mr. N. Dutta, learned senior counsel has referred to a decision in Indian Research Institute Ltd. and Others Vs. Swapan Paul, wherein it has been held:

Upon consideration of the accusation made in the complaint, a prima facie case is disclosed. At this stage, it is not necessary to scrutinise the allegations for the purpose of deciding as to whether such allegations are likely to be upheld in the trial. Evidence are yet to be laid in support of the accusation made in the complaint petition constituting criminal offence. There may be a tinge of civil wrong and act may constitute both civil as well as criminal wrong but that by itself can not oust the Criminal Court in trying a criminal offence. Section 482 of the Code of Criminal Procedure entrusted upon the High Court the inherent power to remedy manifest injustice when there is an abuse of the process of the Court. The inherent power of the High Court can be exercised when the allegations either in the FIR or the complaint together with other materials collected in course of investigation on its face value do not constitute the offence alleged or when a cognizance of offence is taken despite a statutory embargo. The High Court no doubt can exercise such extra ordinary power as and when the situation calls upon. The criminal proceeding is now only at the threshold, at this stage, it is not open for the Court to shift the evidence or to appreciate the

same and arrive at a conclusion that no criminal offence is made out. The High Court except in a very extra ordinary circumstances exercise its jurisdiction u/s 482 Code of Criminal Procedure for quashing a prosecution after it is launched.

7. In the instant case, it can not be said that the allegation in the complaint together with other materials collected in course of investigation on its face value do not constitute the offence alleged. There appears no extra ordinary circumstances calling for exercise of this Court's jurisdiction u/s 482 Code of Criminal Procedure for quashing the proceedings.

8. In the result, this revision petition is dismissed. Interim order if any stands vacated.

9. Send down the lower Court records immediately along with a copy of the order of this Court.

10. Parties are directed to appear before the Court concerned on 19.11.2001 for the purpose of receiving further direction from that Court.

This criminal revision stands disposed of.