(2024) 03 GAU CK 0071

In the Gauhati High Court

Case No : Criminal Petition No. 1004 Of 2022

Suprio Ghose @ Supriyo Ghosh	APPELLANT
Vs	
State Of Assam And Anr.	RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 420, 506
Code Of Criminal Procedure, 1973 — Section 200, 202, 482

Citation : (2024) 03 GAU CK 0071

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : S A Sikder

Final Decision : Disposed Of

Judgement

1. Heard Mr. Avik Ghatak, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor for the respondent No. 1.

2. Notices were served to opposite party (OP for short) No. 2 but the OP No. 2 is not represented.

3. The petitioner in this case is Suprio Ghose alias Supriyo Ghosh. He has filed this application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for quashing the CR Case No. 174/2020 filed by the OP No. 2 Sri Banwarilal Sutodiya, the Director of Sri Ram Tea Company Private Limited.

4. The case of the petitioner is that he used to work as the Assistant General Manager at Assam Tea Brokers Private Limited, Kolkata, till his retirement in the year 2022. The OP No. 2 works for Shri Ram Tea Company Private Limited. The Koyah Tea Estate situated at Hailakandi under Lala Police Station, is a tea estate under the Shri Ram Tea Company Private Limited with its office at Kolkata. The Koyah Tea Estate is a producer of green tea and a manufacturer of bulk tea.

5. The OP No. 2 sold 9780 kgs of tea to the firm belonging to the co-accused of

the petitioner namely M/S Aryan for an amount of Rs.32,25,425/- (Rupees Thirty Two Lacs Twenty Five Thousand Four Hundred Twenty Four) and the liability of Rs.29,93,228/-(Rupees Twenty Nine Lacs Ninety Three Thousand Two Hundred Twenty Eight) was accepted by the petitioner's co-accused by a letter dated 03.12.2019. A sum of Rs.9,32,196/- (Rupees Nine Lacs Thirty Two Thousand One Hundred Ninety Six) was paid by the co-accused and the balance amount of Rs.22,93,228/- (Rupees Twenty Two Lacs Ninety Three Thousand Two Hundred Twenty Eight) was yet to be paid with the interest rate being 18% per annum. The petitioner and his co-accused visited the office of the OP No.2 and they had a discussion over the matter. The co-accused Sri Abhijit Ghosh assured that the payment would be made on 13.02.2020 and when the OP No. 2 requested for payment to be made in instalments, there was a heated exchange and the co-accused Sri Abhijit Ghosh verbally abused the OP No. 2 and also threatened him with dire consequences and as such the complaint petition was filed.

6. After the said incident, a complaint, more particularly, Annexure-3 of the petition was filed by the OP No. 2 before the learned Chief Judicial Magistrate, Hailakandi and the case was transferred for disposal to the Court of the learned Judicial Magistrate 1st Class (Magistrate for short) on 28.02.2020. The OP No. 2 was examined under Section 200 of the CrPC on 28.02.2020 along with two other complaint witnesses. On finding sufficient grounds to proceed, cognizance was taken against the petitioner and his co-accused Abhijit Ghosh for offences under Sections 420/34 of the Indian Penal Code (IPC for short). The petitioner appeared before the learned trial Court and was thereafter, enlarged on bail.

7. It is contended that this case was filed against the petitioner with the objective of harassing the petitioner and the co-accused and this has impelled the petitioner to prefer this petition on the following amongst other, grounds:

(i) The CR Case No. 174/2020 will be an abuse of the process of the Court as it was initiated with malafide with the objective of harassing the petitioner.

(ii) The allegations in the complaint petition ex facie do not constitute any offence to proceed or for initiation of such a proceeding under Section 420/34 of the IPC.

(iii) A bare perusal of the petition reveals that a civil dispute has been given a criminal colour as it has been mentioned in the complaint petition that the accused have already paid a substantial portion of the amount due.

(iv) A mere breach of contract does not fall within the definition of cheating and instead of brining up a civil suit, the criminal case has been brought up against the accused with intent to coerce the accused with undue demands.

(v) 'Mens rea' to cheat is the most vital ingredient from the very inception, which is lacking in this case. No allegations of inducement or threat or even cheating have been levelled against the petitioner in this case. The allegations are basically against the accused No. 1 i.e. the co-accused of the petitioner Sri

Abhijit Ghosh.

(vi) Section 420 of the IPC presupposes dishonest intention at the very inception of the transaction concerned but it is apt to reiterate that no such intention has been attributed to the petitioner herein to the extent that he either induced the OP No. 2 to enter into the business transaction with promises of future payment and induced him to deliver property/bulk tea in this case.

(vii) It is further contended that the petitioner cannot be roped in, in connection with this case by incorporating Section 34 of the IPC without intention being attributed to the petitioner. There is no allegation projecting the meeting of minds between the petitioner and his co-accused to commit the offence under Section 420/34 of the IPC. It is further contended that the impugned order of the trial Court clearly reveals that although the complaint case was filed under Sections 420/506/34 of the IPC, cognizance was taken under Section 420/34 of the IPC, which reflects that the complaint was filed levelling exaggerated and embellished charges against the petitioner and his co-accused. It is submitted that further proceeding will indeed be an abuse of the process of the Court and the Criminal Case being CR Case No. 174/2020 ought to be quashed and set aside.

8. I have considered the submissions at the bar with circumspection.

9. I have perused the scanned copies of the records of the CR Case No. 174/2020. Two accused are arrayed in the CR Case No. 174/2020. The prime accused is Sri Abhijit Ghosh and the present petitioner is arrayed as the accused No. 2.

10. It is contended that the accused No. 1 Sri Abhijit Ghosh, proprietor of M/S Atyan acknowledged the liability of due payment by letter dated 03.12.2019 for a total amount of Rs.29,93,228/- (Rupees Twenty Nine Lacs Ninety Three Thousand Two Hundred Twenty Eight). Abhijit Ghosh with the help of the present petitioner (accused No. 2) made a payment of Rs.9,32,196/- (Rupees Nine Lacs Thirty Two Thousand One Hundred Ninety Six) during the period from 25.11.2019 up-to 19.02.2020 and the balance amount due was Rs.22,93,228/- (Rupees Twenty Two Lacs Ninety Three Thousand Two Hundred Twenty Eight) with an interest rate of 18% per annum. The interest on the principal amount stands to the tune of Rs.1,99,825/- (Rupees One Lac Ninety Nine Thousand Eight Hundred Twenty Five).

11. It is further contended through the complaint petition that the OP No. 2 reminded the accused to repay the amount due. The accused also assured that they would make the payment, but on 13.02.2020 when the complainant requested the accused to pay the amount due, in instalments of Rs.3,00,000/- per week to meet the labour expenses of the tea garden, due to the slump in tea prices, the accused No. 1, Abhijit Ghosh became furious and verbally abused the complainant and also threatened him with dire consequences.

12. A bare reading of the complaint petition, Annexure-3, reveals that the allegation is basically against the accused No. 1. It is true that the allegation is not relating to cheating but the allegation is that the accused No. 1 verbally abused the complainant/OP No. 2 herein when a demand was made to pay Rs.3,00,000/- (Rupees Three Lacs) per week to complete the payment due to the OP No. 2. The record also reveals that on 28.02.2020 the complainant was examined under Section 200 of the CrPC and the CW.1 was also examined under Section 202 of the CrpC.

13. I have also perused the statements of the complainant, CW.1 and CW.2. The allegation is basically against the prime accused Abhijit Ghosh with undertones of prevarication of statements. In his statement under Section 200 of the CrPC, the complainant has stated that Abhijit Ghosh who promised to pay the entire amount within one month had made only a part payment and promised to pay the remaining balance amount within December, 2019. The deal was struck between both the parties in the month of September, 2019. The allegation basically against the petitioner is that the complainant/OP No. 2 sold bulk tea of Rs.30,00,000/- (Rupees Thirty Lacs) to Abhijit Ghosh through the broker Sri Suprio Ghose alias Supriyo Ghosh. This is the reason why the learned trial Court issued summons to the petitioner by pressing into service the provisions of Section 34 of the IPC.

14. It is true that a mini trial cannot be held at this juncture, but at the same time, the complaint petition and the statements of the complainant and the witnesses recorded under Section 200 and 202 CrPC clearly reveals that no specific allegation has been made against the petitioner. It appears that further proceeding against the petitioner will indeed be an abuse of the process of the Court.

15. The petitioner has relied on the decision of Hon'ble the Supreme Court in Rekha Jain Vs. State of Karnataka and Another reported in (2022) SCC OnLine SC 585 wherein it has been held and observed that:

"4. Learned counsel appearing on behalf of the appellant – accused – Rekha Jain has vehemently submitted that considering the allegations in the complaint/FIR as they are, there are no allegations that accused Rekha Jain induced the complainant to deliver the gold jewellery. It is submitted that the entire allegations can be said to be against Kamalesh Mulchand Jain, who happens to be the husband of the appellant – Rekha Jain. It is submitted that therefore, when there are no allegations of inducement by present Appellant – Accused Rekha Jain, it cannot be said that the appellant – accused – Rekha Jain has committed any offence as alleged for the offence under Section 420 of IPC.

5. It is submitted that therefore the High Court has committed a grave error in not quashing the criminal proceedings against the appellant – accused Rekha Jain for the offence under Section 420 of IPC."

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“10. At the outset, it is required to be noted that the offence alleged against the appellant – accused – Rekha Jain is for the offence under Section 420 of IPC. She has been now chargedsheeted for the said offence. However, considering the allegations in FIR/complaint, it can be seen that the entire and all the allegations are against the accused Kamalesh Mulchand Jain. In the complaint/FIR, there are no allegations whatsoever to the effect that the accused - Rekha Jain induced the complainant to part with the gold jewellery. Therefore, in the absence of any allegation of inducement by the accused Rekha Jain, she cannot be prosecuted for the offence under Section 420 of IPC. There must be a dishonest inducement by the accused.

11. As per Section 420 of IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed the offence under Section 420 of IPC. Therefore, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. In the present case, there is no allegation at all against accused – Rekha Jain of any inducement by her to deceive and to deliver the gold jewellery. The allegations of dishonest inducement and cheating are against her husband – accused – Kamalesh Mulchand Jain. Therefore, considering the allegations in the FIR/complaint as they are, and in the absence of any allegation of dishonest inducement by Rekha Jain, it cannot be said that she has committed any offence under Section 420 of IPC for which she is now chargesheeted. Therefore, the High Court has committed a grave error in not quashing the criminal proceedings against Rekha Jain for the offence under Section 420 of IPC. This is a fit case where the High Court could have exercised its powers under Section 482 of Cr.PC and to quash the criminal proceedings against Rekha Jain for the offence under Section 420 of IPC.”

16. Reverting back to this case, it is held that there is no specific allegation in the complaint petition under Section 420 of the IPC against the petitioner. The statements of the complainant and the witnesses CW.1, CW.2 and CW.3 does not at all implicate that the petitioner had induced the OP No. 2 as a broker to deal in bulk tea and thereafter, refused to pay or failed to pay for the bulk tea, and thus by cheating OP No. 2 committed offence under Section 420 of the IPC. This indeed appears to be a fit case to invoke the jurisdiction under Section 482 in favour of the petitioner. It appears that further proceeding will indeed be an abuse of the Court. Thereby, further proceeding of CR Case No. 174/2020 so far as the present petitioner Suprio Ghose alias Supriyo Ghosh is concerned, is set aside and quashed.

In view of the above observations, this petition is disposed of.

No order as to costs.

