



GAHC010184572014

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

Case No. : Crl.Pet./151/2014

1. RAKESH KARWA
S/O SRI RAM GOPAL KARWA R/O AMOLAPATTY P.O. and P.S. SIBSAGAR
DIST. SIBSAGAR, ASSAM.

VERSUS

1. THE STATE OF ASSAM and ANR

2: SRI TAPAN KAUSHIK
AUTHORIZED SIGNATORY OF ANAND RATHI FINANCIAL SERVICE LTD.
4TH FLOOR
GANPATI ENCLAVE
BORA SERVICE
ULUBARI
GUWAHATI- 781006
AND HAVIN HIS PERMANENT ADDRESS AT HOUSE NO. 399/32
EKTA PATH
CIVIL LINES
ROORKEE- 247667
P.S. ROORKEE
DIST. HARIDWAR
UTTARANCHAL

Advocate for the Petitioner : MR. M MORE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT (CAV)

Date : 21-10-2022

Heard Mr. M. More, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Addl. P.P. for the respondent No.1, i.e. State of Assam and Mr. S. Suncheti, learned counsel for the private respondent.

2. This petition, under Section 482 read with section 397/401 of the Criminal Procedure Code, 1973 is preferred by Shri Rakesh Karwa for quashing the Charge Sheet No. 523, dated 25.11.2012 under section 468/471 IPC, and the FIR of Jorhat P.S. case No. 148/2010, dated 09.03.2010, and the entire proceeding of G.R. Case No. 268/2010, so far it relates to the petitioner is concerned, pending in the court of learned Chief Judicial Magistrate, Jorhat and the impugned order, dated 08.10.2013, passed by the learned Chief Judicial Magistrate, Jorhat, whereby the learned court below had framed charge under section 468/471/467/34 IPC.

3. The factual background, leading to filing of the present petition, is briefly stated as under:-

“On 09.03.2010, one Tapan Kaushik of Anand Rathi Financial Service Ltd. lodged one F.I.R. with the Jorhat Police Station, alleging *inter alia* amongst others that one Raju Dutta of Rowriah, Jorhat had committed forgery with their organization through false signature of Mr. Sanjoy Lahoty, on a false DI slip, which has been used by him to transfer 992 shares of ONGC, of worth Rs.10,00,000/ from the demate Account of Mr. Sanjoy Lahoty, No. 1201060000248894, with Anand Rathi Financial Services Ltd. in to his own demat Account No. 44505202 having D.P. ID IN 302902(ICICI Bank, Jorhat) via DI Slip No. 887872, dated 21.07.2008. He had send DI Slip through courier from Jorhat to their regional office and the same was executed in their regional office

—Anand Rathi Financial Services Ltd., Kolkata. The case came to the notice of the Regional Office, Kolkata when the client complained about the missing of the share from his account as on 29.12.2008, and after receiving instruction from the Branch Office at Guwahati, the FIR has been lodged. Upon the said FIR, the officer-in-Charge, Jorhat Police Station had registered a case , being Jorhat P.S. case No. 148/2010 under sections 468/471 IPC, and endorsed S.I. Nayan Tamuli to investigate the same. The I.O. then visited the place of occurrence, examined the witnesses, and arrested accused Raju Dutta and Rakesh Karowa (present petitioner) and forwarded them to the court. Then on completion of investigation the I.O. laid charge sheet against the accused Raju Dutta and Rakesh Karowa to stand trial, under section 468/471 IPC, before the court of learned Chief Judicial Magistrate, Jorhat. Then the learned court below, complying the provision of section 207 Cr.P.C, and after hearing learned Advocates of both side, had framed charge against both the accused under section 468/471/467/34 IPC., and on being read and explained over the same to the accused persons they pleaded not guilty to the same. Thereafter, the learned court below had posted the case for evidence.”

4. Being highly aggrieved, the petitioner/accused Shri Rakesh Karowa has preferred the present petition on the following grounds:-

- (i) That, the FIR, the Charge Sheet, and the documents seized in the case, even if taken on their face value and accepted in its entirety, do not disclose commission of any offence under section 468/471 IPC, by the petitioner;
- (ii) That, none of the witnesses examined by the I.O. have ever made any accusation/whisper against the petitioner and

the charge sheet was filed against him without applying mind;

(iii) That, there is no elements to constitute any of the ingredients of the offences under section 468/471 IPC against the petitioner;

(iv) That, no incriminating documents have been recovered from the possession of the petitioner or in the name of the petitioner;

(v) That, the FIR and the charge sheet is altogether silent about involvement of the petitioner and the learned court below had without considering the materials on record and without applying judicial mind and acting like a post office, had framed the charges against the petitioner mechanically and therefore, it is contended to allow the petition.

5. Mr. M. More, the learned counsel for the petitioner submits that the alleged occurrence took place in the year 2008 and the FIR was lodged only on 9th March, 2010, and no explanation is offered for such inordinate delay. Mr. More further pointed out that nothing has been seized from the possession of the petitioner. Mr. More further submits that none of the witnesses examined by the I.O. under section 161 Cr.P.C. had implicated the petitioner with the offences alleged in the FIR. Mr. More also pointed out that one Sanjoy Lahoty, whose signature was allegedly forged, has not been examined by the I.O. here in this case, and as such no offence can be said to be made out against the petitioner. Therefore, it is contended to allow this petition. Mr. More also referred following case laws to bolster his submission:-

- (i) Union of India vs. Prafulla Kumar Samal and Another; reported in (1979) 3 SCC 4;
- (ii) P. Vijayan vs. State of Kerala and Another, reported in (2010) 2 SCC 398;
- (iii) Suresh Budharmal Kalani @ Papu Kalani vs. State of Maharashtra, reported in (1998) 7 SCC 337;
- (iv) State of M.P. through CBI and Another vs. Paltan Mallah and Another, reported in (2005) 3 SCC 169
- (v) Smti. Manita Borah vs. State of Assam and 5 Others, Crl. Pet./19/2020;
- (vi) State of Gujarat vs. Ajaybhai Champaklal Champaneri, R/C Criminal Revision Application No. 472 of 2022,

6. On the other hand, Mr. S. Sancheti, learned counsel for the respondent No.2, submits that there is sufficient material against the petitioner and that accused Raju Dutta was his employee. Therefore, it is contended to dismiss the petition.

7. Per contra, Mr. P. Borthakur, learned Addl. Public Prosecutor for the State respondent submits that having found prima-facie material against the petitioner, the I.O. had laid charge sheet against the petitioner and the learned court below also, having found made out a prima-facie case against the petitioner and accused Raju Dutta had framed charge, under section 468/471/467/34 IPC and that this is not fit case for quashing the FIR and the Charge Sheet and the impugned order of framing charge against the petitioner, and therefore, it is contended to dismiss the same.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and the record of learned court below and the impugned order of framing charge dated 08.12.2013, and also carefully gone through the case laws referred by the learned counsel for the petitioner.

9. The law regarding discharge of the accused under Section 227 of the Cr.P.C. has been well settled by Hon'ble Supreme Court in umpteen cases and one of the lead case in this regard is **Union of India vs. Prafulla Kumar Samal**, reported in **(1979) 3 SCC 4**, wherein the Hon'ble Supreme Court held that:-

“7. **Section 227** of the Code runs thus:-

"227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities, which is really his function after the trial starts. At the stage of **section 227**, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

10. In **Stree Atyachar Virodhi Parishad v. Dalip Nathumal Chordia and Anr.**, reported in **1989 SCC (1) 715**, Hon'ble Supreme Court had laid down

the parameters within which the revisional courts are expected to remain, while examining orders framing charge under [Section 228](#) of the Code. The law as to under what circumstances the Courts should pass discharge order under [Section 227](#) of the Code and on what material an order for charge should be passed under [Section 228](#) of the Code has been propounded in various judgments of the Hon'ble Supreme Court.

11. In the case of **State of Gujarat vs. Mansukhbhai Kanjibhai Shah**, reported in **(2020) 20 SCC 360**, a three Judges Bench of Hon'ble Supreme Court has held that the jurisdiction of this Court with regard to Section 227 of the Cr.P.C. is limited and should not be exercised by conducting roving inquiries on the aspect of factual inferences. Same view is taken in various case by the Hon'ble Supreme Court and it is now well settled that while considering submissions for exercise of revisional powers against an order of framing charge the High Court must remind itself that no interference in the order of trial Court would be called for unless some glaring injustice is staring in its face. The view taken by the trial Court on the question of charge should not be substituted by the Revisional Court with its own if the view taken by the Trial Court is such that could possibly be taken under the facts and circumstances of the case.

12. In the case of **[Smt. Om Wati and Anr. v. State, through Delhi Administration and Ors.](#)**, reported in **2001 AIR SCW 1230**, it has been cautioned the High Courts in the following words:

"We allow this appeal by setting aside the order of the High Court and upholding the order of the trial Court. We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial

against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law."

13. Further, in the case of **Sajjan Kumar vs. CBI**, reported in **(2020) 9 SCC 368**, the Hon'ble Supreme Court, inter alia, observed that:-

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

* * *

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial".

14. It is to be mentioned here that while exercising revisional jurisdiction the High Court cannot substitute its view for that of the trial court if two views are possible. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Helper Girdharbhai vs. Saiyed Mohmad Mirsaheb Kadri and Ors.**, reported in **AIR 1987 SC 1782**.

15. Keeping these salutary principles in mind, also in the light of fact and circumstances on the record of the learned court below, while the impugned order of framing charge against the petitioner dated 08.10.2013 is examined, this court left unimpressed by the submission of learned counsel for the petitioner that without any application of mind and without there being any incriminating material against the petitioner, the learned court below has framed charges against him.

16. It appears that the FIR was lodged on 9th march, 2010, and missing of the



shares from the account of Sanjoy Lahoty took place on 29.12.2008. No doubt there was some delay in lodging the FIR. But, it appears that some explanation is also forth coming for the same. And at this stage it cannot be said that the explanation, so forthcoming, is relevant or not, since the evidence of the prosecution witnesses are yet to be recorded. Delay is fatal only when there is no explanation for the same.

17. It is a fact that as pointed out by the learned counsel for the petitioner, nothing has been seized by the I.O. from the possession of the petitioner and whatever has been seized during investigation, the same was from other witnesses. But, nevertheless, from the FIR, the Charge Sheet, the Seizure List and from the materials collected during investigation, as it appears from the record of the learned court below and also from the case diary, following facts and circumstances emerged:-

- (i) That, Rakesh Karowa was the franchisee of Anand Rathi Financial Services Ltd., Kolkata and he opened his office at Jorhat and Sivasagar.
- (ii) His office in Jorhat was being operated from the Kuber Building situated at Old Balibat.
- (iii) That, Raju Dutta, who had studied up to class-VI, was appointed as Peon by Rakesh Karowa in his Jorhat Office of Anand Rathi Financial Services Ltd. and he was working in that capacity till April 2008, thereafter, he left the job as he had not been paid salary for two months, on account of loss in the share market by Rakesh Karowa.
- (iv) That, as advised by Rakesh Karowa, Shri Raju Dutta had opened one Saving Bank Account at the ICICI Bank, Jorhat and deposited a sum of Rs, 10,000/-, in the said Account, which was given by accused Rakesh

Karowa and he had deposited the cheque book with Rakesh Karowa in his office;

- (v) And against the said saving bank Account of ICICI Bank, Raju Dutta had open demate Account, and thereafter, Rakesh Karowa took his signature in as many as five cheque of the cheque book, and informed him that the same will be required for transaction;
- (vi) That, in the month of October 2007, Rakesh Karowa called him to Jyoti Cloth of Sivasagar, and through the Manager of the said shop, he asked him to practice writing of the name of Sanjoy Lahoty, but he did not agree to the same.
- (vii) That, Sanjoy Lahoty had one demate Account with Anand Rathi Financial Services Ltd.;
- (viii) That, Sanjoy Lahoty had 1711 numbers of shares of ONGC and out of the same, 992 shares have been withdrawn by off market transfer on 21.07.2008, by someone, by forging his signature, vide slip No. 887872. Shri Sanjoy Lahoti came to know about the same on 26.12.2008. Thereafter, on enquiry he came to know that one Raju Dutta from Jorhat, with demate Account No. 44505202, having DPCD No. 302902 (ICICI Bank, Jorhat) has done the forgery using forged DI Slip;
- (ix) That, 992 shares were transferred On 21.07.2008 and the shares were sold on 23.07.2008, at Rs. 9,58,509/ and on 24th and 25th July the whole amount was withdrawn, by Raju Dutta;
- (x) That, thereafter, citing loss in the share market, Rakesh Karowa had closed his office and business at Jorhat;

18. While the impugned order is examined in the light of the facts and circumstances discussed herein above, and also in the light of the principles of law, discussed here in above, this Court is of the view that the learned Court below has committed no illegality or impropriety while framing charge against the petitioner under Section 468/471/467/34 IPC. Opening of a Saving Account in the ICICI Bank, Jorhat, in the name of accused Raju Dutta, who was working in his office as Peon, and who studied up to Class VI, by giving him Rs, 10,000/ and opening of Demate Account against the said Saving Account and keeping the cheque books with him and with his signatures and calling him to a cloth store of Sivsagar and asking him to practice writing of the name of Sanjoy Lahoty through the Manager of the said store, and subsequent transfer of 992 shares of Sanjoy Lahoty to the Demate Account of Raju Dutta on 21.07.2008 and subsequent online selling of the same on 23.07.2008, and withdrawal of entire sale proceeds, amounting Rs. 9,58,509.89, from the account of Raju Dutta and subsequent closing of the office and business, not only discloses grave suspicion against the petitioner, which have not been properly explained, but also reveals deep rooted and well planned conspiracy, and as such the learned Court below is fully justified in framing charges and proceeding with the trial against the petitioner along with accused Raju Dutta. No interference in the order of trial Court is called for, as no glaring injustice is staring in its face, as held by Hon'ble Supreme Court in the case of **Mansukhbhai Kanjibhai Shah** (supra) .

19. I have carefully gone through the other case laws referred by Mr. More, the learned counsel for the petitioner. I have carefully gone through the case laws referred by him and I find that the ratio laid down therein would not come into his aid as the same are to be treated to be restricted to its own facts. When and



how the FIR and Criminal proceeding is to be quashed, and the power of High Court under section 482 Cr.P.C. in that regard, is elaborately dealt with in the case of **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & Ors. (2021 SCC OnLine SC 315)**, by a three Judge Bench of Hon'ble Supreme Court as under:-

“ *****

- (iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

- (x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

- xiii) The power under [Section 482](#) Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court



in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

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20. In the light of the principles, discussed herein above, while the facts and circumstances emerged from the FIR, the Charge Sheet, the Seizure List and from the materials collected during investigation, and also the submissions of learned Advocates of both sides are considered, the submissions so advanced by Mr. More, the learned counsel for the petitioner, left this court unimpressed. And accordingly, I am unable to record concurrence with the same.

21. In the result, I find no merit in this petition and accordingly, the same stands dismissed. The parties have to bear their own costs. Stay granted earlier, stands vacated. The parties are directed appear before the learned court below with in a period of 15 days from today.

22. Since more than nine years elapsed from the date of framing of charges on 08.10.2013, we would like to request the learned court below to endeavour to dispose of the case within a reasonable time, if necessary by taking recourse to Section 309(1) Cr.P.C. The Registry shall send down the LCR, to the learned court below, by a special messenger with a copy of this judgment and order.

JUDGE

Comparing Assistant