



GAHC010198772021

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

Case No. : WP(C)/6497/2021

PRAHLAD SHARMA @ PRAHLAD RAI SHARMA
S/O BEGRAJ SHARMA, R/O JOYDOL APARTMENT, BISHNU RABHA PATH,
BELTOLA TINALI, P.S. BASISTHA, GUWAHATI, DIST. KAMRUP (M), ASSAM,
PIN 781028

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PP, ASSAM, GUWAHATI

2:THE OFFICER IN CHARGE

DISPUR P.S.
DISPUR
GUWAHATI
ASSAM
PIN 781006

3:THE STATE OF HARYANA

REPRESENTED BY THE SECY.
GOVT. OF HARYANA
DEPTT. OF HOME HARYANA CIVIL SECRETARIAT
SECTOR-1
CHANDIGARH
PIN 160001

4:THE OFFICER IN CHARGE

SECTOR 10 A POLICE STATION
GURUGRAM
HARYANA 122001



5:DINESH SING CHAUHAN
S/O PRATAP SINGH
R/O GALI NO. 2
BASAI ENCLAVE
GURUGRAM
HARYANA 122001

6:THE INVESTIGATION OFFICER

SECTOR 10-A POLICE STATION
GURUGRAM
HARYANA 12200

For the Petitioner (s) : Mr. A.K. Purkayastha, Advocate.

For the Respondent (s) : Mr. A. K. Bishaya, Advocate.

Date of hearing & Judgment : **09.10.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner challenging the FIR dated 28.06.2021 lodged by the Respondent No. 5 before the Officer-In-Charge of Sector 10-A Gurugram Police Station at Haryana.

2. This Court have duly perused the translated copy of the FIR which has been enclosed as Annexure-3 to the writ petition. From a perusal of the said FIR, it reveals that the Respondent No. 5 claims that he has a broom making factory at Gali No. 1, Vikash Nagar,



Gurugram and carries on business in the name and style of " D.S. Enterprise". It is alleged in the FIR that a person named Ritu Moni Kalita had contacted the Respondent No. 5 and asked him to take raw materials for making broom from him. The Respondent No. 5 thereupon went to Jagiroad to meet the said Ritu Moni Kalita. It is further alleged that the said Ritu Moni Kalita came to the Respondent No. 5 and informed the Respondent No. 5 that if he puts Rs.3,00,000/- in the account of Shri Ritu Moni Kalita, the said person would send the raw materials for making broom to Gurugram. It was alleged that the Respondent No. 5 deposited Rs. 2 lakhs on 26.02.2020 and Rs. 1 lakh on 29.02.2020 in the said Ritu Moni Kalita's Bank Account No.20338340324 located at VIP Road. It is further alleged that the said Ritu Moni Kalita assured the Respondent No. 5 that he would send the entire consignment to Gurugram after 2 days. The Respondent No. 5 further alleged that he called the said Ritu Moni Kalita and the said person informed that after 3 days the truck would be leaving and the Respondent No. 5 was further asked to deposit Rs.40,000/- in the account and put Rs. 20,000/- in the account of the transporter i.e. the Petitioner. The Respondent No. 5 further alleged that he had deposited Rs.40,000/- in the account of the said Ritu Moni Kalita and Rs. 20,000/- in the Account No. 07572020000199 bearing IFSC Code -0002930 of the said Assam Haryana Road ways. Pursuant thereto, the Respondent No. 5 called



the said Ritu Moni Kalita who instructed the Respondent No. 5 to talk to the Petitioner. The Respondent No. 5 spoke to the Petitioner who informed him that another amount of Rs.2,50,000/- had to be deposited in the account of Ritu Moni Kalita then the truck would come. It was specifically alleged that the Petitioner informed the Respondent No. 5 that on payment of the said amount he guaranteed that the truck would come. Under such circumstances, the Respondent No. 5 again deposited another amount of Rs.2,30,000/- in the account of the said Ritu Moni Kalita. However, the goods were not delivered on one hand and the Respondent No.5 was threatened by the Petitioner and the said Ritu Moni Kalita for which the said FIR was lodged alleging that the said Ritu Moni Kalita and the Petitioner had cheated the Respondent No. 5 with an intention of harming his business and also cheated with the amount of Rs. 5,90,000/-. The said FIR upon being lodged before the Officer-in-Charge of the Police Section Sector 10-A Gurugram was registered as FIR No.0427/2021 under Section 406 of Indian Penal Code. The Petitioner being aggrieved at the FIR being lodged against him has approached this Court by filing the present writ petition.

3. It is the case of the Petitioner that the Petitioner is no way involved as regards the allegations so made in the said FIR inasmuch as the Petitioner have only received an amount of Rs. 20,000/- in his account standing in the name of Assam Haryana Road Line as



advance. It is under such circumstances that the instant writ petition was filed seeking the following reliefs :-

- (A) A Writ in the nature of Certiorari and/or any other appropriate writ, direction or order declaring that the impugned FIR dated 28.06.2021 which was registered under Sector 10A Police Station, Gurugram, Haryana being P.S. Case No. 0427/2021 under Section 406 IPC and the consequent investigation thereon to be not maintainable for want of jurisdiction in view of Article 226 of the Constitution.
- (B) A Writ in the nature of Certiorari or any other writ of like nature should not be issued declaring the impugned notice dated 31.07.2021 issued by the Respondent No. 4 at Guwahati under Section 41(1) of the Code of Criminal Procedure, 1973 shall not be declared to be not maintainable in law for want of jurisdiction in view of Article 226 of the Constitution.
- (C) As to why the impugned FIR dated 28.6.2021 and consequent P.S. Case No. 0427/2021 registered under Section 406 IPC by the Officer- In-Charge of Sector 10A Police Station, Gurugram, Haryana as well as the Notice dated 31.07.2021 under Section 41(1) of the Code of

Criminal Procedure, 1973 issued by the Respondent No. 4 at Guwahati should not be quashed as non-maintainable in law for want of jurisdiction in view of Article 226 of the Constitution.

(D) Directing and commanding the private Respondent No. 5 to withdraw the impugned FIR as well as the investigation made therein against the Petitioner.

(E) As to why a Writ and/or in the nature of prohibition and/or any Writ, order or direction of like nature, should not be issued prohibiting or restraining or preventing Respondent Nos. 1, 3 4 and 6 more particularly the Respondent No. 4 and 6 from conducting any further investigation against the Petitioner in view of non-disclosure of any prima facie case of cognizable offence in the impugned FIR dated 28.06.2021 in view of the well settled law.

4. From a perusal of the writ petition and hearing the contentions of the learned counsel for the Petitioner, it reveals that the challenge to the FIR and the initiation of the criminal investigation are two fold : (i) The first ground is that the Gurugram Police Station could not have lodged the FIR in view of the judgment in the case of **Navinchandra N. Majithia Vs. State of Maharashtra** reported in **(2000) 7 SCC**

640. (ii) The second ground is that the impugned FIR dated 28.06.2021 does not disclose any offence against the Petitioner.

5. Before dealing with the grounds aforementioned, this Court finds it relevant to take note of the recent judgment of the Supreme Court in the case of **Nihareeka Infrastructure Pvt. Ltd. Vs. State of Maharashtra** reported in **2021 SCC Online SC 315**. At paragraph 57, the Supreme Court had after taking into account all the judgments right from the judgment of the Privy Council in the case of Khawaja Nazir Ahmed Vs. The Emperor culled out the various principles when the Court under Article 226 of the Constitution or under Section 482 of the Code of Criminal Procedure, 1973 should interfere with the FIR and the initiation of investigation. Taking into account the above, this Court finds it relevant to reproduce paragraph 57 of the said judgment hereinunder :

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

- iv) *The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*
- 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 and a rarity than an ordinary rule;*
- viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr. P.C.*
- ix) *The functions of the judiciary and the police are complementary, not overlapping;*
- 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;*
- xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the*

investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be 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; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

6. From a perusal of the above quoted principles laid down in the judgment by the Supreme Court in the case of **Nihareeka Infrastructure Pvt. Ltd.** (supra), it was interalia observed that a police has a statutory right and duty under the relevant provisions of the Code of Criminal Procedure, 1973 (for short 'the Code') contained

in Chapter XIV of the Code to investigate into the cognizable offences. It was observed that the Court should not thwart any investigation into the cognizable offences. It was also observed that 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. The Supreme Court went to the extent of observing that save in exceptional cases where non-interference would result in miscarriage of justice, the Court and judicial process should not interfere at the stage of investigation of an offence.

7. In the backdrop of the above, let this Court therefore take note of the contentions which have been raised by the Petitioner. The first contentions so raised is that the impugned FIR dated 28.6.2021 and the registration of the said FIR alongwith the consequent investigation was not maintainable for want of jurisdiction in view of Article 226 of the Constitution. The said contention has been made on the basis of the judgment of the Supreme Court in the case of **Navinchandra N. Majithia**(supra).

8. This Court have duly perused the said judgment rendered in the case of **Navinchandra N. Majithia**(supra). The facts leading to the said judgment was that an FIR was lodged by a company at Shillong with the Shillong police alleging that the Mumbai Company had cheated the Shillong police to the tune of Rs.9 crores. As the



investigation was not carried out by the police on the basis of the FIR filed by the Shillong Company, a writ petition was filed before the Shillong Bench of this Court as it then was for appropriate directions. A Coordinate Bench of the Shillong Bench of this Court passed a direction thereby directing the Meghalaya police to undertake the investigation at Mumbai and the costs of such investigation shall be borne by the Shillong Company. A Writ Appeal thereupon was filed by the State of Meghalaya challenging the order of the Single Judge but the said Appeal was dismissed. Subsequently the Meghalaya police took steps to investigate the matter as per the directions passed in the order by the Single Judge. The appellant before the Supreme Court, Mr. Navinchandra N. Majithia moved a writ petition before the Bombay High Court for quashing of the FIR and further proceedings. The said writ petition was however dismissed by the Bombay High Court on the ground that there was no jurisdiction under Article 226 of the Constitution to deal with the FIR registered at Shillong. The appellant i.e. Navinchandra N. Majithia thereupon filed two Special Leave Petitions. One challenging the order of the Bombay High Court whereby the writ petition was dismissed on the ground of jurisdiction and the other challenging the order passed by the Division Bench of this Court whereby the Writ Appeal filed by the State of Meghalaya was dismissed. Both the Special Leave Petitions were disposed of by two separate judgments by the Supreme Court on the question of

jurisdiction. The judgment is reported in **(2000) 7 SCC 640** which is the one the Petitioner relies upon. The other judgment was rendered in respect to the order dismissing the Writ Appeal by the Division Bench of this Court which is reported in **(2000) 8 SCC 323**. The latter one however is not relevant for the purpose of this case.

9. Mr. A.K. Purkayastha, the learned counsel appearing on behalf of the Petitioner submits that the Petitioner herein relies upon the concurring opinion of his Lordship Justice K.T. Thomas as he then was. In that regard, reference was made to paragraphs 43, 44 and 45 of the said judgment. Taking into account that those three paragraphs have been cited to buttress the contention of the Petitioner, the same are quoted hereinunder.

“43. We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case.

44. In the present case, a large number of events have taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong. If the

averments in the writ petition are correct then the major portion of the facts which led to the registering of the FIR have taken place at Bombay. It is unnecessary to repeat those events over again as Mohapatra, J. has adverted to them with precision and the needed details,

45. In the aforesaid situation it is almost impossible to hold that not even a part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition filed by the petitioner. Even the very fact that a major portion of the investigation of the case under the FIR has to be conducted at Bombay itself, shows that the cause of action cannot escape from the territorial limits of the Bombay High Court.”

10. From a perusal of the above quoted paragraphs, it would be seen that the Supreme Court only held that the filing of the FIR at a particular State cannot be the situs for exercising the writ jurisdiction under Article 226 of the Constitution. It was further observed that the place of residence of a person moving a High Court is also not the criterion to determine the contours of the cause of action in that particular writ petition. It was observed that the High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within territorial limits of its jurisdiction. Therefore, the above observations of the Supreme Court relates to maintainability of a writ petition challenging the FIR. The said aspect however is completely different from what has been sought to be portrayed by the learned counsel for the Petitioner inasmuch as it is the submission of the counsel for the Petitioner that an FIR cannot be

maintained under Article 226 of the Constitution. It is also well settled that the maintainability of the FIR would depend upon whether from a reading of the said FIR the commission of an offence is disclosed or not. Therefore, the first ground so raised in the writ petition in the opinion of this Court is totally misconceived.

11. This Court also finds it relevant to observe that another submission was forwarded by the learned counsel for the Petitioner that the Gurugram Police had no jurisdiction to entertain the FIR as no part of the cause of action arose within the jurisdiction of the Gurugram Police Station. The said contention is misconceived for two reasons. Firstly, from a perusal of the FIR, it reveals that there are allegations that the said Ritu Moni Kalita had visited the Respondent No.5 and further payments were made as per the allegations from Gurugram. Secondly, if an FIR discloses a commission of an offence, the FIR cannot be quashed merely on the ground that the Police Station had no jurisdiction.

12. Now coming to the second contention which was forwarded by the learned counsel for the Petitioner that the FIR does not disclose the commission of any prima facie case against the Petitioner. This Court had in the forgoing section of the instant judgment had dealt with in the recent judgment of the Supreme Court in the case of **Niharika Infrastructure**(supra), wherein at paragraph 57, the Supreme Court had dealt with the principles. Now coming to the FIR



which have been enclosed as Annexure-3 to the writ petition, it is apparent that there are allegations to the effect that the Petitioner alongwith Sri Ritu Moni Kalita had cheated the Respondent No. 5 by dishonestly inducing the Respondent No. 5 to pay an amount of Rs. 5,90,000/- and giving an assurance that upon payment of the said amount, the raw materials for broom making would be sent to the Respondent No. 5. On the basis of the said assurances, as could be seen from the allegations made in the FIR, the Respondent No. 5 had altered his position by paying the amount of Rs.5,90,000/- but did not receive the raw materials for making the broom. These are all allegations which are required to be investigated upon and as held by the Supreme Court in **Niharika Infrastructure Ltd.** (supra), it would not be proper in exercise of the power under Article 226 of the Constitution to thwart such investigation at this stage.

13. Consequently, this Court finds no merit in the writ petition for which the writ petition is dismissed. No costs.

JUDGE

Comparing Assistant