

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

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

1. Crl. Petn. No.17 (AP) 2011

Shri Anjan Kumar Das,
S/o Shri Rohini Kumar Das
R/o Santipur, Indira Gandhi Path,
PO & PS Bharalumukh, PIN 781009
District Kamrup (Metropolitan), Assam.

..... Petitioner.

2. Crl. Petn. No.18 (AP) 2011

Shri Anjan Kumar Das,
S/o Shri Rohini Kumar Das
R/o Santipur, Indira Gandhi Path,
PO & PS Bharalumukh, PIN 781009
District Kamrup (Metropolitan), Assam.

..... Petitioner.

By Advocates:

For the petitioner: Mr. P. D. Nair,
Mr. G. Alam,
Mr. H. Rahman,

3. Crl. Petn. No.07 (AP) 2012

Shri Kirri Dini Bogum,
Son of Late Takir Dini,
Resident of Likhali, PO & PS Likhali,
West Siang District, Arunachal Pradesh.

..... Petitioner.

-VERSUS-

The State of Arunachal Pradesh,
represented by the Public prosecutor,
Arunachal Pradesh.

..... Respondent.

By Advocates:

For the petitioner: Mr. R. Saikia,
Mr. T. Zirido,
Ms. D. Yoka,
Mr. M. Bagra,
Mr. K. Lollen,

For the respondent: Mr. K. Tado, Public Prosecutor, Arunachal Pradesh.

**:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR**

Date of hearing : **09.01.2018.**

Date of Judgment : **09.01.2018.**

JUDGMENT & ORDER (ORAL)

The above 03(three) criminal petitions under Section 482 CrPC are being arisen out of two FIRs, on the same set of allegations, based on which, the police registered and investigated 02(two) separate cases, I propose to dispose of the petitions by this common judgment and order.

Heard Mr. P. D. Nair, learned counsel appearing for the petitioners in Criminal Petition No.17(AP)2011 & Criminal Petition No.18(AP)2011.

Heard Mr. R. Saikia, learned counsel appearing for the petitioner in Criminal Petition No.07(AP)2012.

Heard Mr. K. Tado, learned Public Prosecutor, Arunachal Pradesh.

Perused the relevant records and the case laws cited by the petitioners.

2. By filing the criminal petition No.17(AP)2011 and criminal petition No.18(AP)2011, under Section 482 of the CrPC, the petitioners have prayed for quashing the FIR, dated 23.06.2007, registered as

Bomdila PS Case No.15/2007, under Sections 120B/468/471/419/420 IPC (corresponding to GR Case No.22/2007) and FIR, dated 22.02.2007, registered as Bomdila PS Case No.04/2007, under Sections 419/420 IPC (Corresponding to GR Case No.08/2007).

3. In criminal petition No.07(AP)2012, the petitioner has prayed for quashing of the FIR, dated 23.06.2007, registered as Bomdila PS Case No.15/2007, under Sections 120B/468/471/419/420 IPC, (corresponding to GR Case No.08/2007).

4. In criminal petition No.17(AP)2011, the petitioner has stated that the matter involved in the aforesaid Bomdila PS Case No.15/2007, is purely a civil dispute of contractual nature between the alleged victims and one Ajoy Talukdar. The FIR in the Bomdila PS Case No.15/2007 is stated to be a modified FIR of the one lodged in Bomdila PS Case No.04/2007 and is a second FIR on the same set of allegations. According to the petitioner, the instant criminal proceeding against him is a malicious prosecution and as such, liable to be quashed.

5. In criminal petition No.18(AP)2011, the petitioner has stated that the matter involved in the aforesaid Bomdila PS Case No.04/2007, is a civil dispute of contractual nature between the alleged victims and one Ajoy Talukdar and as such, criminal proceeding on a case of civil nature cannot be permitted to be instituted and continued. According to the petitioner, though there was no allegation against the petitioner, he has been arrayed as an accused in the charge sheet even though a compromise was worked out between him and the alleged victims. The petitioner has contended that the aforesaid criminal proceeding against him is a malicious prosecution, which is liable to be quashed.

6. In Criminal petition No.07(AP)2012, the petitioner has stated that an FIR was lodged at Bomdila Police Station against one 'Hutch India Construction and Allied Services' alleging that the said company has cheated 16(sixteen) persons including the wife and brother of the

informant and one Shri Nima Tsering by inducing them to pay an amount of Rs.2,00,000/- (Rupees Two Lakhs Only) each to the company for wrongful gain of the company and accordingly, same was registered as Bomdila PS Case No.04/2007, under Sections 419/420 IPC. The petitioner has further contended that when the investigation was on, in respect of the aforesaid first FIR, one of the victims namely, Shri Nima Tsering again lodged a subsequent FIR, dated 23.06.2007, on the same set of allegations made in the first FIR, which was also registered as Bomdila PS Case No.15/2007, under Sections 120B/468/471/419/420 IPC, which is not permissible as per the scheme of Section 154 CrPC and as such, the second FIR, dated 23.06.2007, and the charge sheet filed therein are liable to be quashed.

7. Mr. P. D. Nair, learned counsel appearing for the petitioners in Criminal Petition Nos.17 & 18(AP)2011 submits that the offences alleged in the first FIR, dated 22.02.2007, and second FIR, dated 23.06.2007, are same wherein the informants lodged an allegation of cheating against the representatives of Hutch India Construction and Allied Services and as such, fresh registration of Bomdila PS Case No.15/2007 and the charge sheeted filed therein are not at all permissible under the provisions of CrPC. According to Mr. Nair, the second FIR, dated 23.06.2007, being Bomdila PS Case No.15/2007, registered on the same set of allegations is liable to be quashed and set aside, as there cannot be more than one FIR for the same offence/transaction. Mr. Nair further submits that the earliest information which moved the machinery of investigation into motion is to be treated as FIR under chapter XII of the CrPC and all the subsequent information lodged in connection with the same offence are to be treated as statement under Section 162 CrPC. Mr. Nair has relied upon the decisions of the Supreme Court rendered in ***T. T. Antony Vs. State of Kerala & Ors.***, reported in ***(2001) 6 SCC 181***

and ***Babubhai Vs. State of Gujarat & Ors.***, reported in ***(2010) 12 SCC 254.***

8. Mr. R. Saikia, learned counsel appearing for the petitioner in criminal petition No.07(AP)2012 relied on the submission made by Mr. P. D. Nair, the learned counsel for the petitioner in the above noted two criminal petitions. Mr. Saikia has, however, relied upon the ratio of the judgment of the Apex Court rendered in ***Rameshchandra Nandlal Parikh Vs. State of Gujarat & Anr.***, reported in ***(2006) 1 SCC 732.***

9. Mr. K. Tado, learned Public Prosecutor, Arunachal Pradesh submits that the contents of both the FIRs filed in Bomdila PS Case No.04/2007 and Bomdila PS Case No.15/2007 are being based on same set of allegations, the 2nd FIR needs to be rightly quashed, as no person can be vexed twice for the same offence. Mr. Tado in unequivocal words submits that the petitioners' prayer for quashing of the second FIR in respect of the petitioner Shri Anjan Kumar Das and also in Bomdila PS Case No.04/2007 in respect of the petitioner Shri Kirri Dini Bogum may be allowed.

10. For better appreciation of the facts of the case, it is apposite to look into the FIRs, dated 22.02.2007 and 23.02.2007.

The FIR, dated 22.02.2007, vide Bomdila PS Case No.04/07, corresponding to GR Case No.08/07, of the Court of learned Judicial Magistrate, First Class, Bomdila, reads as follows-

"To,

*The Superintendent of Police,
West Kameng District, Bomdila.
Arunachal Pradesh.*

Dated 22.02.2007.

*Sub: Complaint against Shri Vijay Bhatta of Hutch
Company.*

Sir,

*I have the honour to state that one Shri Vijay
Bhatta designated as the Regional Director (N.E) of Hutch*

Company naming the firm as M/S Hutch India Constructions and Allied Services in the North Eastern region of India happened to call me and my friend Sri Kiri Dini Bogum at Luit Hotel, Tezpur, Assam, saying that the installation of Towers of Hutch Company would be launched in Arunachal Pradesh at the earliest and for this a Liasoning Agent was required. After having series of discussions me the undersigned was appointed and authorized to liase lands and buildings for installations of Towers. He also told he to collect Bank Drafts of Rs.3,00,000/- (Three Lakhs) to be purchased from any state Bank of India as security deposit payable at Guwahati Branch against every land and building acquisitioned.

Later on, on my request to reduce the amount as such as possible, he reduced the amount to Rs.2,00,000/- Two Lakhs only. I accordingly started discussing with my friends here in West Kameng District regarding the scheme. During the course of discussions some of my friends agreed to offer lands and buildings for installations of Hutch Towers giving security deposit of Rs2,00,000/-. The Total security deposited are given hereunder

| Sl. No. | Name | Draft No. | Amount | Dated |
|----------------|---------------------------|------------------|---------------|--------------|
| 1. | Sri Dorjee Phuntso | 472858 | Rs.2,00,000/- | 17.11.2006 |
| 2. | Smti Rinchin Chomm | 474890 | Rs.2,00,000/- | 20.11.2006 |
| 3. | Dr. Netan Dorjee Minto | 474914 | Rs.2,00,000/- | 21.11.2006 |
| 4. | Dr. Netan Dorjee Minto | 474915 | Rs.2,00,000/- | 21.11.2006 |
| 5. | Shri T. T. Lama | 474977 | Rs.2,00,000/- | 21.11.2006 |
| 6. | Shri Phuntso Dorjee | 474902 | Rs.2,00,000/- | 21.11.2006 |
| 7. | Shri Dorjee Nima | 852005 | Rs.40,000/- | 21.11.2006 |
| 8. | Shri Dorjee Nima | 852004 | Rs.40,000/- | 21.11.2006 |
| 9. | Shri Dorjee Nima | 852003 | Rs.40,000/- | 21.11.2006 |
| 10. | Shri Dorjee Nima | 852006 | Rs.40,000/- | 21.11.2006 |
| 11. | Shri Dorjee Nima | 852007 | Rs.40,000/- | 21.11.2006 |
| 12. | Shri Rinchin Nima | 852705 | Rs.2,00,000/- | 09.12.2006 |
| 13. | Shri Rinchin Nima | 852682 | Rs.2,00,000/- | 09.12.2006 |
| 14. | Shri Dorjee Wangdi Kharma | 475774 | Rs.2,00,000/- | 12.12.2006 |
| 15. | Smti Sonam Dini | 094359 | Rs.2,00,000/- | 17.12.2006 |
| 16. | Shri Kirjum Dini | 094359 | Rs.2,00,000/- | 17.12.2006 |

Total Rs.24,00,000/-

(Rupees Twenty Four Lakhs) only

That sir, the man Shri Vijay Bhatta has been disappearing since for the last two months and now we are not in the position to trace him out.

I therefore, on behalf of the security depositors request you kindly to help in finding out his where about for which we shall very very grateful to you.

I have enclosed some of the materials which I got from the person for your ready reference.

Telephone Nos. used by Sri Vijay Bhatta

- 1. 09854065523*
- 2. 09954117866*
- 3. 09999035644 (latest)*

*Yours faithfully,
Sd/- Dorjee Tsering.*

FIR, dated 23.06.2007, vide Bomdila PS Case No.15/2007, corresponding to GR Case No.22/2007.

"To,

*The Officer-in-charge,
Police station, Bomdila.
West Kameng District.*

Dated 23.06.2007.

Sub: Complaint against Anjan Kumar Das, Ajoy Talukdar, Uday Chandra Pathak, Kiri Dini Bogum and Dorjee Tsering for cheating by using forged documents..

Sir,

I beg to lay a few lines for your perusal please; that sir, during the month of November 2006, Sri Dorjee Tsering of Bomdila has approached me and said that the 'Hutch India Ltd' will be spreading its network in West Kameng and Tawang District for which the construction of towers will be required. Sri Dorjee Tsering further said that he was appointed as the liaison officer/agent of a firm namely 'M/S Hutch India Construction and allied service' and the firm will set the towers constructed through private contractors. The lands will be required to construct the towers and the land donors will be paid a sum of Rs.10,000/- per months as the rent of the land (however the amount may increase also in the course of time). All the construction materials will e supplied by the aforesaid firm but the persons constructing the towers will have to deposit a sum of Rs.2,00,000/- (Rs. Two lacs) as the security deposits, which will be refunded after six months with 8% interest. After a few days one Sri Vijay Bhatta who introduced

himself the 'Director' of the aforesaid firm along with Sri Kirri Dini Bogum came to the house of Sri Dorjee Tsering at Bomdila and had conducted a meeting with the local people. On 19.12.2006 another meeting was conducted at Parbti Nagar, Tezpur in this connection. Sri Vijay Bhatta, Sri Dorjee Tsering along with Sri Kiri Dini Bogum were also present in the meeting and they (Sri Vijay Bhatta, Sri Dorjee Tsering and Sri Kirri Dini Bogum) have convinced me with lots of false promises, showing some documents of 'Hutch India Ltd' (which were found to be forged later on) to deposit Ts Two lacs and start the construction of the tower. An agreement of deed was also prepared in the Court of Sri P. Sora, JMFC, Bomdila, where Sri Dorjee Tsering has signed as the witness, but Sri Vijay Bhatta was not present in the Court for signing the agreement as his signature was already there in the agreement paper, but the JMFC had countersigned on it. Accordingly I have prepared a Bank Draft of Rs. Two lacs at the SBI Bomdila Branch payable at SBI Guwahati Branch in the name of 'M/S Hutch India Construction and allied services' and handed over the draft to Sri Dorjee Tsering. But till date no response from the firm has been received. Seeing the delay, I have conducted an enquiry and the following facts were revealed.

A) As many as ten such persons have deposited such drafts to Sri Dorjee Tsering and a huge amount (Rs Twenty Lacs) were collected by Sri Dorjee Tsering and handed over the draft to Sri Vijay Bhatta. B) Sri Vijay Bhatta has been identified as one Ajoy Talukdar, S/o Sri Sanakananda Talukdar, a resident of House No.01 Amika Giri Nagar Path, R. G. Road, Guwahati, who along with another Anjan Kr. Das a resident of Santipur Guwahati, had opened an SBI account at SBI Baralumukh Branch in the name of one Uday Chandra Pathak, who is the servant of Anjan kr. Das. All the bank drafts were transferred to the accounts of Sri Uday Chandra Pathak and get the entire amount withdrawn and dived among themselves.

Hence, it is requested that, the necessary legal actions may be taken against the culprits as per the law.

Received on 23.06.07 at 1015 hrs and regd.

Vide BDL. PS C/No.15/07 U/S 120(B)/498/471

/419/420 IPC. Self will investigate the case.

Sd/- Illegible

(Rinchin Nima)
S/o Sri Tsering Dorjee)
Vill – Dirang, PO/PS Dirang,
West Kameng District (A.P.)

Sd/- Illegible.

23.06.07.

Officer-in-charge,
Police station, Bomdila.”

11. On scrutiny of the contents of the above two FIRs, it appears that the matter involved in the said two FIRs relate to alleged *prima facie* cheating of the informants to the tune of several lakhs promising for installation of towers of a company named, M/S Hutch India Construction and Allied Services through private contractors by way of acquiring land on lease @Rs.10,000/-, per month, as rent and on depositing a sum of Rs.2,00,000/- as security deposit with the said company. In this way, as per the first FIR, dated 22.02.2007, a total sum of Rs.24,00,000/- was collected as security deposits from different persons, inclusive the informants, but after collecting the aforesaid huge amount of money in the name of installation of towers of the said company in Arunachal Pradesh, the persons who contacted the depositors inclusive the present informants have remained untraced. The collected amount in the form of bank drafts was also transferred to the account of one Uday Chandra Pathak, who was claimed to be the proprietor of M/S Hutch India Construction and Allied Services, in whose name, the bank account was standing. Based on the aforesaid FIRs, and after investigation, the police have submitted charge sheets against the petitioners indicating thereby their *prima facie* involvement in the alleged offences, subject, of course, to consideration of evidence mentioned in Section 173 CrPC by the learned trial Court at the time of framing the charges.

12. In ***T. T. Antony*** case, reported in ***(2001) 6 SCC 181***, the Apex Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or

more cognizable offences is permissible. Likewise, in ***Babubhai*** Case reported in ***(2010) 12 SCC 254*** reiterated the same legal position holding that subsequent to registration of an FIR, any further complaint in connection with the same or connected offence relating to the same incident or incidents which are parts of same transaction is not permissible, but if two FIRs pertain to two different incidents/ crimes, second FIR is permissible. A subsequent FIR is permissible if the offence or occurrence complained of is not related to the same offence and did not pertain to the same parties as alleged in the first report as held in the case of ***Rameshchandra Nandlal Parikh Vs. State of Gujarat & Anr.***, reported in ***(2006) 1 SCC 732***.

13. Perusal of the above two FIRs, it is apparent that although the alleged offences pertain to the series of transactions arising out of the same set of allegations, police registered 02(two) separate cases and investigated and further, on completion of investigations, having found *prima facie* evidence, laid 02(two) separate charge sheets. Therefore, for ends of justice, this Court finds it expedient that both the cases are to be tried together by the same competent Court having jurisdiction over the place of occurrence.

14. To sum up, it can be said that there cannot be a second FIR in respect of the same event, which constitutes a cognizable offence, because whenever any further information is received by the investigating agency, it is always in furtherance of the first information report. Therefore, the investigating agency ought to have proceeded only on the information given in the first FIR as all other subsequent information were hit by Section 162 CrPC for the simple reason that it is the duty of the investigating officer not merely to investigate the cognizable offence reported in the FIR, but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and the investigating officer has to file one or more reports under Section 173 CrPC. In the instant petitions, it appears that the second FIR is undoubtedly is the

extended version of the First Information Report and the entire matter involves mixed questions of law and facts which cannot be resolved in proceedings under Section 482 CrPC.

15. For the reasons, set forth above, the petitions are **dismissed** with direction to the Court of learned Judicial Magistrate, First Class, Bomdila, West Kameng District, Arunachal Pradesh to try both the cases, arising out of Bomdila PS Case No.04/2007 and Bomdila PS Case No.15/2007, together by the same Court.

16. The petitioners are directed to appear in the Court of learned Judicial Magistrate, First Class, Bomdila, West Kameng District, Arunachal Pradesh, on 22.01.2018 to receive further instructions.

Return the LCRs along with a copy of this judgment and order.

JUDGE

Cha Gang