

IN THE GAUHATI HIGH COURT

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

CRP 16 (AP) 2015

(Originally WP (C) 466 (AP) 2013)

*Sri Krishna Kanta Das,
S/o Sri Teji Ram Das,
Presently residing at Shantipath, Amolapatty,
P.O.- Nagaon, P.S.-Itachali, Dist-Nagaon, Assam.*

.... petitioner

-Versus-

1. *The State of Arunachal Pradesh, represented by
The Commissioner and Secretary, Department of Home,
Arunachal Pradesh.*
2. *The Director General of Police, Arunachal Pradesh, Itanagar,
Dist-Papumpare.*
3. *The Officer-in-Charge, Doimukh Police Station, Doimukh,
Dist-Papumpare, Arunachal Pradesh.*
4. *The Officer-in-Charge, Itanagar Police Station,
Dist-Papumpare, Arunachal Pradesh.*
5. *The Officer-in-Charge, Ziro Police Station, Hapoli,
Dist-Lower Subansiri, Arunachal Pradesh.*
6. *M/S Gogoi Enterprise and M/S GIO Infratech having their
Office situated at House No.4, Rangpur Path,
Kahilipara, Guwahati, Assam represented by its sole
Proprietor Sri Prasenjit Gogoi Gogoi,
S/o Sri Sushil Gogoi, R/o BX+ 182, Duliajan Oil Company,
P.O/ P.S.-Balijan, Dist-Dibrugarh, Assam-786602.*
7. *Techi Kuli, Axis Bank, E-Sector, Itanagar.*
8. *Sri Tania Bendu, R/o Mowb-II, Itanagar.*
9. *Sri Nabam Tade, S/o Lt. Nabam Maji, Hosoi Vill,
PO-Doimukh, Papumpare District, A.P.*
10. *Sri Nabam Saha, S/o Nabam Tade, Hosoi Vill,
PO-Doimukh, Papumpare District, A.P.*
11. *Sri Nabam Tado, S/o Nabam Tade, Hosoi Vill,
PO-Doimukh, Papumpare District, A.P.*
12. *Sri Nabam Vijay, S/o Nabam Tade, Hosoi Vill,
PO-Doimukh, Papumpare District, A.P.*

..... Respondents

By Advocates:

For the petitioner : Mr. B. S. Sinha, Advocate
For the respondents : Mr. S. Tapin, Sr. Govt. Advocate.
For private respondents: None appeared.

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 02.11.2017

Date of Judgment : 07.11.2017

JUDGMENT & ORDER(CAV)

By this revision petition, which is re-registered as such on conversion from Writ application under Article 227 of the Constitution of India, on the order of a learned Single Judge of this Court, dated 16.06.2015, the

petitioner has prayed for a direction to the State respondent authorities to drop all the criminal proceedings initiated against him.

2. Heard Mr. B. S. Sinha, learned counsel appearing for the petitioner and Mr. S. Tapin, learned Sr. Govt. Advocate appearing for the State respondents. None appeared for the private respondents, although notice was published for their appearance, in newspapers.

3. The petitioner is a Guwahati based practising Advocate and legal advisor of the Guwahati based firms respondent No. 6 viz. M/S Gogoi Enterprise and M/S GIO Infratech under the sole Proprietorship of one Prasenjit Gogoi. In the month of February, 2009, the said sole proprietor of the firms with the help of some of his agents invited the private respondents, who are domicile of Arunachal Pradesh to his office and showed some work orders issued in his favour by various Mobile Companies for execution of works like installation of Optical Fibre Cables (OFC) in the State of Arunachal Pradesh.

4. Accordingly, the proprietor of the said firms executed some contract agreements with the interested parties before the Notary Public at Guwahati. The proprietor of the said firms issued Letter of Intent (for short, 'LOI') to the sub-contractors of Arunachal Pradesh, after accepting security deposits from them at his Guwahati office to execute the contract works in the form of Demand Drafts, Cheques and in cash. They deposited the security amounts in his various Bank accounts at Guwahati. On 18.04.2010 midnight, the respondent No.3/the Officer-in-Charge of Doimukh Police Station, Arunachal Pradesh conducted search for him at his parental home situated at Dhing, Nagaon District, Assam on the strength of a Warrant of Arrest issued in connection with Doimukh P.S. Case No. 15/10. Thereafter, the petitioner was again arrested by Itanagar Police Station, in connection with another case being Itanagar P.S. Case No.57/10 from his house, situated at Dhing, Nagaon District, Assam, in execution of a Warrant of Arrest. Again in connection with another case being Itanagar P.S. Case No. 74/10 u/s 420/34 IPC, the petitioner was arrested, where he was arrayed as an accused. The petitioner was again arrested by the respondent No. 5/ the Officer-in-Charge of Ziro Police Station, Arunachal Pradesh in connection with Ziro P.S. Case No. 30/10 u/s 420/468/34 IPC. According to the petitioner, except in Itanagar P.S. Case No. 74/10, he was not arrayed as an accused in any

other case aforementioned. All the aforesaid 4 (four) cases arose out of the same transaction that related to execution of Agreements promising to provide sub-contracts to the informants of those cases and accepting security deposits from them for the aforesaid purpose, OFC laying works in Arunachal Pradesh, to which he was not even remotely concerned.

5. The petitioner has contended that from the statements made in the FIRs, it is apparent that the entire matter relating to these cases is purely of civil in nature inasmuch as, the cause of action arose out of agreements and recovery of money that was deposited by way of security, which was refundable after completion of the contractual works only at the risk of Prasenjit Gogoi, the sole Proprietor of the respondent No.6 firms. The petitioner has further contended that the Arunachal Pradesh Police have no jurisdiction to register any case on the FIRs, aforementioned, and neither the Police of Arunachal Pradesh have authority in law to register and investigate the cases nor the Courts in Arunachal Pradesh have territorial jurisdiction to try the cases as pursuant to execution of the agreements, the transactions had taken place at Guwahati and as such, the Police of Guwahati only have the jurisdiction to register and investigate the cases and the Courts at Guwahati have the exclusive jurisdiction to try those cases. Hence, the instant petition is filed with a prayer to drop the criminal proceedings initiated against him.

6. The State respondents in their affidavit-in-opposition have averred that after completion of investigation, in the cases being Itanagar P.S. Case Nos. 57/10 u/s 420/34 IPC & 74/2010 u/s 420/34 IPC have been charge-sheeted on having found prima-facie case against the present petitioner and others. It has been stated that the petitioner was arrested in connection with the aforesaid cases after observing all legal formalities of arrest and it is denied that he was subjected to any form of torture, physical and mental, while in Police custody. It has been stated that the petitioner was taken into custody on 24.05.2011 in Ziro P.S. Case No. 30/10 u/s 420/468/34 IPC, on the strength of Production Warrant issued by the Court, observing necessary legal formalities. During investigation in Itanagar P.S. Case No. 74/10 u/s 420 IPC, sufficient prima facie incriminating evidence emerged against the petitioner for having played a role of insisting and assuring on behalf of the respondent No. 6 firms Prasenjit Gogoi, the proprietor of M/S Gogoi

Enterprise, when the so called work order for laying of OFC was not given to the informant, despite his constant persuasions and assurance being given that the work order would be awarded to him shortly and failing which he would take the responsibility of returning the entire amount of money to him, on behalf of the said firms and Prasenjit Gogoi, but, later on, he failed to fulfil his commitments and thereby, in furtherance of common intention, they deceived the informant of the case, namely, Tania Bendu, who deposited an amount of Rs.47lakhs in favour of M/S Gogoi Enterprise and M/S GIO Enterprises in the form of various Bank Drafts. It has been further stated that the informants of both the cases of Itanagar P.S., lodged by Tech Kuli of Itanagar and Sri Tania Bendu of Mowb-II, Itanagar respectively relate to the commission of cognizable offences attracting the ingredients of the offence of cheating as the proprietor of M/s Gogoi Enterprises and M/S GIO Infratech, Guwahati never executed the agreements as 'vendor' of Reliance Telecom Company, for the work of laying 'Optical Fibre Cable line', from Itanagar-Ziro-Raga Road, measuring 480 Kms and therefore, on non receipt of work orders as repeatedly assured, when the firms were contacted by the informants of the cases with request to award the work orders, they were not responded and that amounted to dishonest inducement to extract them of money (i.e. cash amount of Rs.40 lakhs in respect of Tech Kuli and Rs. 47 lakhs in respect of Tania Bendu), which criminal acts attract the offence of Section 420 of the IPC, and as such, the offence is not of Civil nature. According to the State respondents, the petitioner as a legal advisor of the firms drafted and finalized the deed of agreements and got the same executed between the parties, in presence of Notary Public at Guwahati on 09.05.2009, knowing the same to be false documents. According to the State respondents, the petitioner acted in a manner attracting the penal provisions of Sections 197/198/199/200 IPC. It is stated that the Clause-30 of the said deed of agreements whereby the Courts at Guwahati were agreed to be vested with exclusive jurisdiction in case of a legal dispute between the parties is not valid under the law. Hence, prayed to dismiss the instant revision petition.

7. The petitioner in his affidavit-in-reply contended that the registration of the criminal cases is illegal as the offences alleged by the informants had taken place at Guwahati, Assam and as such, the Police of Arunachal

Pradesh have no jurisdiction to register any case inasmuch as when the petitioner was not a party to the agreements and further, the Clause 30 of the agreements vested exclusive jurisdiction with the Courts situated at Guwahati to try the disputes, if any arising thereof. It has been further contended that as this Court in criminal petition No. 13/12 appreciated the pleadings of the petitioner and granted liberty to approach this Court with an appropriate application, , the instant writ petition has been filed for seeking justice. The petitioner has further contended that the respondent No. 6 and the parties concerned had infact forged the documents.

8. Mr. B. S. Sinha, learned counsel for the petitioner, interalia, submitted that the FIRs based on which the criminal proceedings have been drawn up by the respondent-State of Arunachal Pradesh do not reveal allegation of any criminal act against the petitioner, who is a practising Advocate and who discharged his duty as a legal Advisor to the respondent No.6-firms only, had no complicity to the criminal acts committed by the Proprietor of the said firms and therefore, he was wrongfully confined and subjected to torture in Police custody for no fault of him. Mr. Sinha has further submitted that the Police of Arunachal Pradesh registered the cases without having territorial jurisdiction over the place of occurrence, which is situated at Guwahati, Assam and the factual matrix of the cases disclosed only Civil wrongs for which remedy lies in Civil action. Mr. Sinha has relied on the ratio of the judgments delivered by the Apex Court in ***Umaji Keshao Meshram and Ors-vs- Smt. Radhikabal and Anr***, reported in (1986) 1 731; ***Chandrasekhar Singh and Ors-vs- Siva Ram Singh***, reported in 1979 CriLJ 13 and in ***CBI-vs- K. Narayana Rao***, reported in (2012) 9 SCC 512 as well as ***M/S Pepsi Foods Ltd and Anr-vs-Special Judicial Magistrate and Others***, reported in (1998) 5 SCC 749.

9. Mr. S. Tapin, learned Sr. Govt. Advocate submits that 2 (two) questions are basically involved in the instant criminal proceeding, namely, whether the petitioner, who is an Advocate rendered only legal advice to the respondent No. 6-firms or he in the capacity as a legal Advisor of respondent No.6-firms and its proprietor Prasenjit Gogoi got himself involved in criminal acts of cheating of the victim-informants as is revealed from the FIRs. Mr. Tapin, learned Sr. Govt. Advocate, further submitted that the petitioner has deliberately withheld his appointment accepting letter from this Court as per Annexure-A, whereby he was offered the post of Office Co-Ordinator-cum-Legal Advisor to firms located at Guwahati instead of as

mere Legal Advisor. Mr. Tapin further submitted that the petitioner's criminal acts extended from Guwahati to Itanagar and further, in the backdrop of the facts, the Arunachal Pradesh Police have jurisdiction to register the cases on the FIRs, they received and investigate into the same u/s 181 (4) Cr.P.C.

10. In the case of **Umaji Keshao Meshram (Supra)**, the Supreme Court elucidating the jurisdiction under Article 227 of the Constitution of India held:-

".....Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to tribunals as well. Though, the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner tantamount to overstepping the limits of jurisdiction."

11. In the case of **Chandrasekhar Singh (Supra)**, the Apex Court held:-

"(i)that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal Procedure".

12. In the case of **CBI (Supra)**, the Apex Court held that a lawyer owes an 'unremitting loyalty' to the interest of the client and it is his responsibility to act in a manner that would best advance the interest of the client and further, that criminal proceedings shall be quashed if there is no prima facie case for proceeding in respect of the charges alleged against him.

13. In the backdrop of the above facts and the mandates of the Supreme Court, I find it apposite to look at the allegations delineated through the FIRs.

14. The first undated FIR lodged by Nabam Tade and two others before the District Magistrate, Yupia Papumpare District, Arunachal Pradesh alleged

that the respondent No. 6 Prasenjit Gogoi, the sole Proprietor of M/S Gogoi Enterprise, who is carrying the business in the name and style of GIO Infratech, committed cheating of them by falsely promising to provide OFC works, got executed a deed of agreement and received a sum of approximately Rs.34 lakhs out of 8,40,00000/- and then snapped all correspondence with them. Further, the aforesaid Bank transaction was caused to be done through the account of one Nowjun Baruah, w/o Jyoti Baruah.

15. The second FIR, dated 09.04.2010, lodged by one Nabam Vijay of Gumto Village, Doimukh, Arunachal Pradesh, through the learned Judicial Magistrate, First Class, Doimukh, Papumpare District, Arunachal Pradesh alleged of cheating of him by Prasenjit Gogoi and two others, namely, Jyoti Baruah and Raju Baruah, who making false promise to provide OFC works got executed with them a deed of agreement in the month of May, 2009 and received Rs.6,345,000/-, out of total amount of Rs.75,000000/- by them in the form of cash and Demand Drafts, but neither awarded the work as promised nor returned the money on their repeated request.

16. The third FIR, dated 20.03.2010, was lodged by one Techii Kuli before the Officer-in-Charge, Itanagar P.S., Arunachal Pradesh alleging, *inter-alia*, that one Jyoti Baruah of Guwahati received a sum of Rs.32,60,500/- making a false promise to award contract work of laying OFC of Reliance company on the road of Itanagar-Kimin-Raga-Ziro, Arunachal Pradesh and the said **transaction was done at Itanagar**. The aforesaid amount was paid at Itanagar in favour of M/S GIO firm through, Jyoti Baruah and Nowjan Baruah in the following manner:-

(a) M/S NGUFFA firm had paid a sum of Rs.5,000/- (five thousand) only on 27/10/2009 to M/S Gogoi Enterprise (GIO Infratech) for Vendor registration.

(b) M/S NGUFFA firm has paid a sum of Rs.16,37,500/- (Rupees Sixteen Lakhs thirty seven thousand five hundred) only on 27/10/2009 to M/S Gogoi Enterprise (GIO Infratech) for security deposit.

(c) M/S NGUFFA firm had paid a sum of Rs.2,00,000/- (Rupees Two lakhs) only on 27/10/2009 to M/s Gogoi Enterprise (GIO Infratech) for security deposit.

(d) A sum of Rs.13,00,000/- (Rupees Thirteen lakhs) only was deposited in the account of Mrs. Nowjan Baruah, W/o Jyoti Baruah for the same business bearing account No. 20012541890, SBI, Naharlagun on 30/10/2009 to GIO Infratech firm, Gauhati.

(e) Last transaction was a sum of Rs.1,18,000/- (Rupees one lakh Eighteen thousand) only from Shri Tech Kuli for some business to Mrs. Nowjan Baruah, W/o Jyoti Baruah on 23/11/2009.

17. Based on the above third FIR, Itanagar P.S. Case No. 57/10 u/s 420/34 IPC was registered.

18. The fourth FIR, dated 16.04.2010, lodged by one Tania Bendu before the Officer-in-Charge, Itanagar P.S. against Prasenjit Gogoi and the present petitioner Krishana Kanta Das alleged, *inter-alia*, that in the month of May, 2010, both of them approached him and Gogoi introduced himself as the Proprietor of Gogoi Enterprises and GIO Infotech based at Guwahati. Gogoi offered to him the contract work for construction of Optical Fibre Cable Network from Itanagar to Ziro, Raga road, measuring 480 Kms amounting to Rs.11,52,00000/-. In the meantime, Gogoi informed him that his company is a Vendor of Reliance Telecom (Reliance Mobile) and on his request, he (informant) deposited Rs.47,00,000/- in favour of the said Enterprise **before entering any agreement**. Initially, he was reluctant to deposit the said amount, **but on insistence and assurance given by the petitioner Krishna Kanta Das, the legal advisor to the said firm**, he believed them to be the real Vendor of the said Reliance Telecom Company and deposited the amount in the form of various Demand Drafts and in cash. It was further alleged that after execution of agreement, no work was issued and **whenever, he contacted Prasenjit Gogoi, he always asked him to contact the petitioner i.e. the petitioner Krishna Kanta Das for detail discussion and as per his suggestion, whenever he contacted the petitioner, the petitioner assured him that if Mr. Gogoi could provide him with the work, then he would take the responsibility in getting back the amount he paid from Mr. Gogoi**. However, later on, the informant had come to know that they were, in fact, part of a big racket, operated by Prasenjit Gogoi and the petitioner Krishna Kanta Das ostensibly as vendor of Reliance Telecom Pvt. Ltd. Thereafter, both of them went underground and threatened him of his life and also kept their office under Lock and Key for many months. The aforesaid FIR was registered as Itanagar P.S. Case No. 74/10 u/s 420/34 IPC and after investigation, a Charge-Sheet being Itanagar P.S. Charge-Sheet No. 59/2012 u/s 420/34 IPC was submitted against the petitioner.

19. It is noticed that the petitioner was also arrested in connection with Ziro P.S. Case No. 30/10 u/s 420/468/34 IPC, that arose out of similar transactions and purpose.

20. The facts reveal that those FIR/complaints pertained to multiple monetary transactions between the informants/complainants and Prasenjit Gogoi and others including the present petitioner, in connection with OFC laying works in the State of Arunachal Pradesh in the year 2009. The informants/complainants entered into agreements by executing deed of agreements before the Notary Public at Guwahati, Assam, whereby it was assured to provide the contract works. In the deed of agreement, dated 09.05.2009, executed between Prasenjit Gogoi and the informant Tania Bendu, it is noticed that the petitioner identified the LTI of the informant by putting his signature and the subsequent FIR, dated 16.04.2010, the said informant, as stated above, alleged in detail the personal role played by the informant in the transaction.

21. On the other hand, in the FIR, dated 20.03.2010, it was specifically mentioned that the transaction was made at Itanagar indicating, as a whole, that prima-facie the transactions by the informants were done at both the places viz. Guwahati, Assam and Itanagar, Arunachal Pradesh.

22. It appears that those allegations contained in the FIRs are pertained to various monetary transactions between the informants and the respondent No. 6 firms, of which the present petitioner was admittedly the legal advisor. In the Deed of Agreement, dated 09.05.2009, executed between the respondent No.6 firms represented by its Proprietor Prasenjit Gogoi and one of the informants, namely, Tania Bendu, mentioned above, the petitioner as an Advocate identified their signatures before the Notary Public at Guwahati. In the FIR, dated 16.04.2010, Tania Bendu has narrated in detail the facts and circumstances in which they were persuaded to enter into the agreement and pay security money in the name of the respondent No. 6 firm.

23. The informants/complainants have alleged that they were induced to pay money in cash and demand drafts as security deposits and also executed agreements, persuading them to believe as Vendor of the Reliance Company for the purpose of cable laying contract works in Arunachal

Pradesh, which transactions they, later on, found to be absolutely bogus. The FIR lodged by Tania Bendu revealed that the present petitioner had initiated a personal role, beyond his professional obligations as a Legal Advisor of the respondent No.6 firms to convince him to step in the transactions, which turned out to be wholly on false representation of facts and thereby cheated him to the tune of Rs.51,50,000/-. The Police, after completion of the investigations, having found prima facie evidence, submitted Charge-Sheets in Itanagar P.S. Case Nos. 57/2010 and P.S. Case No. 74/2010 u/s 420/34 IPC.

24. With regard to the question of territorial jurisdiction, it is noticed that transactions between the parties took place partly in Guwahati and partly at Itanagar, more specifically as it appears from the allegations made in the FIR lodged by Tech Kuli, it cannot be inferred that the jurisdiction in the proceedings initiated by the Arunachal Pradesh authorities against the petitioner, more particularly at Doimukh, Itanagar and Ziro Police Stations have been erroneously assumed, as stated in the petition. In ***Asit Bhattacharjee -vs- Hanuman Prasad***, reported in **2007 CrLJ 3181**, the Apex Court held that under Section 181 (4) Cr.P.C., offence of cheating and criminal misappropriation can be tried and investigated at a place where fraudulent representation was made or where property had been entrusted or was to be accounted for.

25. In the above prima facie backdrop, the FIRs and consequent criminal proceedings cannot be dropped under Article 227 of the Constitution of India, merely on the unsubstantiated plea of availability of alternative civil remedy to the informants to enforce their rights, when that have given rise to criminal liability.

26. As stated above, the petitioner has prayed for quashing of all the criminal proceedings initiated by the Arunachal Pradesh Authorities against him at different Police Stations, mentioned above. The investigation in all the cases, except in Itanagar P.S. Case Nos. 57/2010 and 74/2010, as submitted are yet to be completed. In all the aforesaid cases, apart from the petitioner, other persons are also alleged to be involved. Therefore, in the opinion of this Court, at the present stage, it would not be appropriate to interfere in

the Police investigation/ Court proceedings by way of quashing of all proceedings in the interest of justice and in piecemeal manner.

27. For the reasons, set forth above, **the petition stands dismissed.**

28. However, having regard to the fact that a number of criminal cases have been registered against several persons, in addition to the present petitioner, who are not before this Court, the question of consideration of jurisdiction is kept open for consideration and decision by the learned Court(s) below, in accordance with law. It is further clarified that the petitioner shall have the right to approach this Court in due course for redressal of his grievances, if any, which may be in the nature of challenge to the territorial jurisdiction of Courts in Arunachal Pradesh or necessity of trial of all cases at one Court for convenience of all concerned, as it may appear to be appropriate.

JUDGE

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