

GAHC010187642021



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

Case No. : Crl.Pet./649/2021

SUBHASHIS KAR
S/O SHRI SUJAY KR. KAR
R/O GOSSAIGAON, HOUSE NO. 567, NEAR UCO BANK, WARD NO. 4, P.O.
AND P.S. GOSSAIGAON, DIST.KOKRAJHAR, ASSAM, PIN-783360

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE LD. PP, ASSAM, GUWAHATI

2:ATANU PAN
REGIONAL DIRECTOR
SEBI
SECURITY AND EXCHANGE BOARD OF INDIA
REGIONAL DIRECTOR
KOLKATA
EASTERN REGIONAL OFFICE
WEST BENGAL
PIN-70001

Advocate for the Petitioner : MR. K PAUL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT (CAV)

Date : 21-10-2022

Heard Mr. B. Sinha, learned counsel for the petitioner and also heard

Mr. B. Sharma, learned Addl P.P., for the respondent No.1 and Mrs. M. Hazarika, learned Senior Counsel, assisted by Mr. D. Khan, for the respondent No.2

2. This petition, under Sections 482 of the Code of Criminal Procedure, is preferred by Shri Subhashis Kar for quashing the complaint, dated 18.06.2021, of BI(EO) Guwahati P.S. Case No. 08 of 2021, corresponding to G.R. Case No. 9446 of 2021, registered under section 120(B)/420/468/471 IPC, read with section 4/5/6/ of PC & MCS(B), 1978 & Read With Section 5 of APID Act, 2013 and consequent Criminal Investigation thereon, and the Notice, issued to him under section 160 Cr.P.C. dated 15/09/2021, by the Inspector of Police, BI(EO), Assam directing the petitioner to appear before him on 22.09.2021.

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

“On 16.06.2021, one Shri Rajibaksha Rakshit lodged one complaint against the petitioner before the Regional Director SEBI, Eastern Regional Office, Kolkata alleging inter-alia that the petitioner has been collecting huge amount of money from the businessmen of Assam and North Bengal assuring to give huge return within 3 to 12 months and that the petitioner has been giving certificates issued by SEBI with seal and those certificates, with seal and department, are confirmed to be fake by one of his friend in SEBI. On receipt of the said complaint Mr. Atanu Pan, Regional Director SEBI, Eastern Regional Office lodged one complaint with the Superintendent of Police, BI(EO) Guwahati, Govt. of Assam, with the complaint of the Shri Rajibaksha Rakshit.

Upon the said complaint a case, being BI(EO) Guwahati P.S. Case No. 08 of 2021, corresponding to G.R. Case No. 9446 of 202, under section 120(B)/420/468/471 IPC, read with section 4/5/6/ of PC & MCS(B), 1978 read with Section 5 of APID Act, 2013 has been registered. Thereafter, the investigation is being carried out and then the I/O had issued Notice under section 160 Cr.P.C. to the petitioner to appear before him on 22.09.2021.”

4. Being highly aggrieved, the petitioners have preferred this present petition, under section 482 Cr.P.C. and contended to set aside the impugned judgments and orders on the following grounds:-

- (i) That, the FIR is false and baseless, fabricated, concocted and suffers from mala-fide;
- (ii) That, no prima-facie case is made out from the allegations made in the FIR;
- (iii) That, the FIR does not disclose ingredients of any offence and as such it cannot be a basis for investigation;
- (iv) That, even if the allegation made in the FIR is accepted in its face value, the same failed to disclose the ingredients of the offences under section 120(B)/420/468/471 IPC;
- (v) That, no purpose will be served even if the investigation is allowed to be continue as the chance of conviction of the petitioner is bleak and it would be an abuse of the process of the court;
- (vii) That, the FIR and the proceeding initiated thereafter caused injustice to the petitioner and it casts aspersion upon his character and it will cause immense hardship and irreparable loss to him ;

(viii) That, the FIR is bogus and filed with an ulterior motive and the chance of conviction of the petitioner is very bleak;

5. The respondent No.2 had filed affidavit-in-opposition denying the assertions made by the petitioner in his petition. It is stated that whether the allegations made in the FIR are false or motivated is a matter of investigation and the same is being carried out. It is also stated that the certificate which was purportedly issued by SEBI, and given by the petitioner, was examined and found to be fake wherein the credentials of SEBI have been misused by the petitioner to collect money from the public and to mislead them to believe that the same has been issued by SEBI. It is also stated that one Mr. Sajal Chakrabarty made payment of Rs. 5,75,483 for purchasing 2300 shares from SBI Account No. 36xxxxx0534, and the nature of payment would be ascertained only after investigation, and complete investigation may unearth a large scale fraud which needs to be appropriately dealt with, and therefore, it is contended to dismiss the petition.

6. The petitioner had submitted his affidavit in reply denying the assertions made by the respondent No.2. It is stated that Sajal Chakrabarty, whose name has figured in the FIR, had not purchased any share amounting Rs. 5,75,483/ and no such amount is debited from his bank account, which is being annexed with the affidavit in reply as Annexure-1RA, and he had obtained a declaration from Sajal Chakrabarty and annexed the same as Annexure-2RA.

7. Mr. B. Sinha, the learned counsel for the petitioner, besides reiterating the points mentioned herein above, submits that no offence under any of

the sections, under which the FIR has been registered is made out against the petitioner and the Annexure 1RA and 2RA, which are annexed with the reply affidavit by the petitioner, has belied the same completely. Mr. Sinha further submits that the FIR has been filed with ulterior motive and therefore, it is contended to allow this petition.

8. Per contra, Mr. B. Sharma, the learned Addl. P.P., producing the Case Diary before this court, submits that investigation is being carried out and there is material to show involvement of the petitioner in collecting lacs of money promising good return within 3-12 months and he used fake Seal, Logo of SEBI. Mr. Sharma further submits that on three occasions notice was issued to the petitioner to appear before the I.O. but he did not turn up and Sajal Chakrabarty also never appeared before the I.O. Mr. Sharma further submits that account number of the petitioner is verified and found lacs of rupees were deposited in the same. Therefore, it is contended to allow the investigating agency to complete the investigation.

9. On the other hand, Mrs. M. Hazarika, the learned Senior Counsel appearing for the SEBI submits that no case for quashing is made out. It is further submitted that no illegality is committed in registering the FIR and in investigation of the same by the BI(EO). Referring to the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors. (2021 SCC OnLine SC 315)**, the learned Senior Counsel submits that the law relating to quashing of the FIR is well settled and in view of the ratio laid down in the aforesaid case, no case for quashing of the FIR of present case is made out, and therefore, it is contended to dismiss the petition.

10. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on

record. Also I have carefully gone through the affidavit in reply and documents annexed therewith. Further, I have gone through the case laws referred by Mrs. M. Hazarika, the learned Senior Counsel for the respondent No.2.

11. A careful perusal of the complaint lodged by Mr. Atanu Pan, Regional Director, Eastern Regional Office, SEBI, Kolkata following facts and circumstances emerged :-

- (i) That, SEBI has received one e-mail dated 16th June, 2021 from one Rajibaksha Rakshit;
- (ii) In the said complaint allegation has been made that one Subhasis Kar, from Gosaigaon, Kokrajhar, Assam is collecting large amount of money from the businessman of Assam and North Bengal and assuring huge return in 3 to 12 months;
- (ii) That, Shri Subhasis Kar has been issuing certificates, purportedly issued by SEBI;
- (iii) On examination of the certificates purportedly issued by SEBI, it was observed that the same has been printed along with the seal, logo, e-mail and phone number of SEBI;
- (iv) The certificates are found to be fake/forged and has not been issued by SEBI;
- (v) The credentials of SEBI are being misused by the perpetrators to collect money from various people and misleading them to believe that the certificates have been issued by SEBI;

12. These facts and circumstances, which emerged from a bare perusal of

the complaint, it cannot be said that the factual foundation of the offences, under which the case has been registered, are not laid therein. It appears that prima-facie, the factual foundation of the offences, under which the case has been registered, appears to be made out against the petitioner. Though it was submitted by the learned counsel for the petitioner that no such offences are made out from a bare perusal of the complaint and accepting the same in its entirety, yet in view of the given facts and circumstances discussed herein above, I am in respectful disagreement with such submission.

13. Further, it appears from the submissions of learned counsel for the petitioner as well as from the affidavit in reply and also from the contentions made in the petition it appears that the petitioner had disputed the allegations made in the FIR. It is his pleaded case that the said allegations in the FIR are false and made with ulterior motive. Now, the question is, can this court, while dealing with a petition under section 482 of Code of Criminal procedure, decide disputed question of facts.

14. That with respect to the disputed question of facts, there is a well settled proposition of law through a string of judgments delivered by the Supreme Court in the cases of ***R.P. Kapur v. State of Punjab***, reported in [**AIR 1960 SC 866**](#), ***State of Haryana v. Bhajan Lal***, reported in [**1992 Supp \(1\) SCC 335**](#), and ***The State of Bihar v. P. P. Sharma***, reported in [**1992 Supp \(1\) SCC 222**](#), and ***Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq***, reported in [**\(2005\) 1 SCC 122**](#), that the same (disputed question of facts) cannot adjudicated by the court under section 482 Cr.P.C.

15. Here in this case the F.I.R., prima facie, discloses the commission of cognizable offences by the petitioner. And as such the investigation must go on. In the case of **Dineshbhai Chandubhai Patel Vs. The State Of Gujarat**, reported in **(2018) 3 SCC 104**, following earlier decision in **State Of West Bengal & Ors vs. Swapan Kumar Guha & Ors.**, reported in **(1982) 1 SCC 561**, it has been held that High Court cannot decide the issue arising out of the case like an investigating agency or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

16. In the case of **Swapan Kumar Guha (supra)**, it was held that right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power to investigate into cognizable offences.

17. In the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors. (2021 SCC OnLine SC 315)**, the Hon'ble Supreme Court has held as under:

- “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 a cognizable offence;**
- ii) Courts would not thwart any investigation into the cognizable offences;**
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court**

will not permit an investigation to go on;

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;

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 and one ought not to tread over the other sphere;

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. 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 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;

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

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under [Section 482](#) Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under [Section 438](#) Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final

report/chargesheet is filed under [Section 173](#) Cr.P.C., while dismissing/disposing of the quashing petition under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii)"

18. It appears from the averments made in the affidavit in reply and also from the annexure, annexed therewith, that no amount of Rs. 5,75,483./ has been debited from the account of Sajal Chakrabarty. It is the case of the defence. It has already been held in the forgoing paragraph that this court cannot decide the disputed question of facts in a petition under section 482 Cr.P.C. Similarly, this court is also not entitled to appreciate the case of defence of the petitioner.

19. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Mohd. Akram Siddiqui v. State of Bihar** reported in **(2019) 13 SCC 350**, where it has been held as under:-

“5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by

this Court in Yin Cheng Hsiung v. Essem Chemical Industries; State of Haryana v. Bhajan Lal and Harshendra Kumar D. v. Rebatilata Koley to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered."

20. In the case of **CBI v. Arvind Khanna**, reported in **(2019) 10 SCC 686**, Hon'ble Supreme Court has held as under :-

"17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 Cr.P.C, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for."

21. The proposition of law, which can be crystallized from the discussion made here in above, is that this court cannot embark on an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. As held herein above, factual foundation of the offences, under which the case has been registered, has been laid in the complaint. At this stage, investigation is being carried out and the facts are hazy and are also disputed. Whether said factual foundation of the offences laid in the complaint would be

sufficient to disclose the ingredients of the offences against petitioners, has to be considered at the stage of trial. Such an enquiry cannot be embarked on at this stage as held by Hon'ble Supreme Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd.** (Supra), **Mohd. Akram Siddiqui** (supra) **Arvind Khanna** (Supra). Moreover, the petitioner could not make out very exceptional circumstances to interfere with the case at the very threshold, as held in the case of **State of Haryana and Ors. Vs. Bhajan Lal and Ors.,** reported in **AIR 1992 SC 604** and **M/s Neeharika Infrastructure Pvt. Ltd. (Supra).**

22. In the result, I find no merit in the present Criminal Petition, and accordingly, the same stands dismissed. Stay, if any, granted earlier, stands vacated. The parties have to bear their own costs.

JUDGE

Comparing Assistant