

GAHC010100262025



undefined

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

Case No. : W.P.(CrI.)/17/2025

SMT. SUJATA DEB ROY
W/O SHRI ARUP DEB ROY, HOUSE NO. 18, KAHILIPARA COLONY,
KALIMANDIR, BINOVANAGAR, KAMRUP (M), ASSAM-781008

VERSUS

RAJ KALRA
S/O SH. JAGADISH KALRA, PROP. OF M/S GIRDHAR MILK FOODS,
CHHOTALA ROAD, NEAR VILL- JALPAD, PANIPAT, HARYANA, PIN-

Advocate for the Petitioner : MR. N NATH, MS N RABHA,MR N TALUKDAR

Advocate for the Respondent : ,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

19.05.2025

1. Heard learned counsel, Mr. N. Nath for the petitioner- Sujata Deb Roy, who has filed this application under Article 226 of the Constitution of India with a prayer for quashing the NACT Case No. 94/2022 pending in the file of JMFC, Panipat UID: HR-0472 instituted by the complainant - Raj Kalra seeking

prosecution against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (the Act of 1881 for short).

2. The genesis of the case was that there were business transaction between the petitioner and the complainant arrayed as respondent in this case. A deal was struck between both the parties to purchase the Agmark Shree Nandan Desi Ghee from the complainant on credit basis for an amount of Rs.32,51,189.76 (Rupees Thirty Two Lakh Fifty One Thousand One Hundred Eighty Nine and paisa Seventy Six Only) vide invoice No. 287 dated 06.03.2018. The complainant demanded the amount from the petitioner but the petitioner postponed the matter on one pretext or the other and later on, the petitioner returned ghee worth Rs. 21,37,163.39 (Rupees Twenty One Lakh Thirty Seven Thousand One Hundred Sixty Three and paisa Thirty Nine only), vide Debit Note dated 10.10.2018 after adjusting a sum of Rs. 11,14,026.37 (Rupees Eleven Lakh Fourteen Thousand Twenty Six and paisa Thirty Seven only). It is contended that the petitioner failed to pay the amount of Rs.11,14,026.37 (Rupees Eleven Lakh Fourteen Thousand Twenty Six and paisa Thirty Seven only) despite several demands from the complainant and finally a cheque bearing No. 676243 dated 26.10.2021 for Rs. 11,14,026/- (Rupees Eleven Lakh Fourteen Thousand and Twenty Six only) drawn on the United Bank of India, Ulubari Guwahati was issued in favour of the complainant. The petitioner however stopped the payment of the amount and the cheque was returned to the complainant. Legal Notice was issued to the petitioner who avoided to accept the notice and later the notice was returned with the report "insufficient address".

3. It is submitted that the petitioner was not aware of the service of notice but the complainant brought up this case against the petitioner which was

registered as NACT No. 94/2022 registered under Section 138 r/w Section 142 of the Act of 1881. It is submitted that the cheque was issued as security and not in discharge of any debt, so no case under Section 138 NI Act arises against the petitioner. The payee was M/s Giridhar Milk Foods but the petition was instituted by the complainant Raj Kalra as proprietor of M/s Giridhar Milk Foods. Thus, the learned trial court has erred in taking cognizance and issuing notice to the petitioner. It is contended that a bare perusal of the order of taking cognizance dated 21.02.2022 clearly reveals that the trial court had committed a manifest error in equating the sending of notice with the receiving of notice.

4. It is submitted that the Article 226 (2) of the Constitution of India clarifies that the power conferred by Sub Article (1) to issue directions, the orders or writs to any party may also be exercised by a High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

5. It is further submitted that the petitioner may face immense difficulties as being a middle aged woman and as she will have to travel up to Haryana to contest the proceeding which will indeed be a futile exercise as there are sufficient grounds for quashing the entire complaint instituted against the petitioner. The petitioner has also relied upon the case of ***Shri Sashikant Prasad and Shri Ramakant Prasad vs. Md. Quadir*** reported in ***2013 0 SC 606*** (judgment dated 04.10.2013). The relevant paragraphs of the judgment are extracted herein below:

“6. There is no dispute to the proposition that a FIR or a complaint can be challenged in a petition under Section 482 of the Cr.P.C. or by filing a

petition under Article 226 of the Constitution of India. Since the present petition has been filed under Article 226 of the Constitution of India, we may briefly dilate on the broad parameters for invoking the writ jurisdiction.

7. Article 226(1) of the Constitution of India provides that every High Court shall have the power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including any Government within those territories, directions, orders or writs for enforcement of any of the right conferred by Part-III of the Constitution of India and for any other purpose. Sub Article (2), however, clarifies that the power conferred by Clause 1 to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power notwithstanding that the seat of such Government or authority or residence of such person is not within those territories.

8. In other words, the High Court would have jurisdiction to issue directions, orders or writs to any Government, authority or person which may be outside its territorial jurisdiction if the cause of action or a part of it arises within its territorial jurisdiction. This aspect of the matter, has been elaborately explained by the Hon'ble Supreme Court in the case of Navin Chandra N. Majithia vs. State of Maharashtra, report in AIR 2000 SC 2966, wherein their Lordships had also gone into the concept of 'cause of action'."

6. It is further submitted that the cause of action partly arises in the State of Assam and as the cheque was presented in the State of Haryana at Panipat, a part of the cause of the action also arises in the State of Haryana.

7. I have considered the submissions at the bar with circumspection, the petitioner has prayed for stay of the order dated 21.04.2022 in connection with NACT Case No. 94/2022.

8. I have also scrutinized the complaint petition marked as Annexure 'A' of the petitioner.

9. There is no dispute that a part of the cause of action arose in the State of Assam as well as the State of Haryana, but at this juncture I am not inclined to grant any interim stay order.

10. The petitioner has the option to be represented by a lawyer in the State of Haryana if travelling becomes too difficult for her. At this juncture I deem it appropriate to issue notice to the respondents and call for the scanned copies of the trial court records.

11. Petitioner to take steps to issue notice to the respondents. Returnable within 4 (four) weeks and meanwhile call for the trial court records.

12. List the matter after 4 (four) weeks.

JUDGE

Comparing Assistant