



Serial No. 16
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CrI. Petn. No. 105 of 2023

Date of Decision: 19.06.2024

Shri Dinesh Kumar Mittal
S/o. Hukum Chand Mittal
R/o. 3/E Astha apartment near Arya
Hospital, District, Kamrup(M), Assam.

Vs. Shri Brening Agitok Sangma
S/o. (L) R. Marak,
R/o. Madanryting, Block-B,
Mawblei Road, East Khasi
Hills District,
Shillong-793007, Meghalaya

.....Petitioner.

.....Respondent

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. L. Talukdar, Adv.

For the Respondent(s) : Mr. L.M. Sangma, Adv

JUDGMENT & ORDER (Oral)

1. Heard Mr. L. Talukdar, learned counsel appearing for the petitioner and also heard Mr. L.M. Sangma, learned counsel appearing for the sole respondent.



2. This is an application under Section 482 Cr.PC read with Article 227 of the Constitution of India praying for quashing of the orders dated 10.02.2014 and 13.09.2019 passed by the learned Chief Judicial Magistrate, (CJM), Nongpoh in C.R. Case No. 5 of 2013 (Old 2 of 2012) and also order dated 28.02.2023 passed by the Sessions Judge, Nongpoh in Criminal Revisions Petition No. 4 of 2019. The petitioner has also made a prayer for quashing of the proceeding of C.R. Case No. 5 of 2013.

3. It appears from the materials on record that the C.R. Case No. 5 of 2013 (Old 2 of 2012) was initiated on the basis of the complaint filed by the respondent herein alleging that the petitioner had committed an offence under Section 120B/403/405/306/409/415/416/418/420/468 IPC.

4. It also appears that pursuant to the institution of the aforesaid CR case, the learned CJM by the impugned order dated 10.02.2014 passed an interim direction restraining the North Eastern Developmental Financial Corporation Ltd. (NEDFI), Ganeshguri, Gauhati as well as the State Bank of India, Byrnihat Branch from releasing the original documents deposited as additional securities to the petitioner herein. The petitioner sought to get the said order vacated by filing an application dated 27.09.2018 before the Court of the CJM. Pursuant to the filing of the said application and after hearing the parties, the learned CJM by order dated 13.09.2019 declined to vacate order dated 10.02.2014. The petitioner being aggrieved, challenged the said order dated 13.09.2019 before the Court of the Sessions Judge, Nongpoh in Criminal Revision Petition. No. 4 of 2019. The learned Session Judge vide impugned judgment dated 28.02.2023 declined to interfere with the order passed by the learned CJM on the ground that a civil suit for recovery of original documents of



the petitioner from the bank is pending before the Civil Judge, Kamrup District, Assam and therefore opined that the liberty for releasing the original documents to the petitioner shall be at the discretion of the concerned bank when the bank releases the loan amount or from the outcome of the civil suit.

5. Being dissatisfied with the impugned orders dated 10.02.2023 and 13.09.2019 of the CJM, Nongpoh and the Judgment and Order dated 28.02.2023 of the learned Sessions Judge, Nongpoh, the petitioner has preferred this instant revision petition before this Court.

6. Learned counsel appearing for the petitioner contended that the criminal court does not have the power to pass any order of injunction in a matter which is purely civil in nature. It is contended that the very initiation of the criminal proceeding by the Court of the CJM is wrong inasmuch as, the provisions contained in Section 200 Cr.PC has not been followed before the issuance of process in the matter. The learned counsel also contended that the learned CJM has also not recorded the statement of the complainant prior to ordering issuance of summon to the accused/petitioner herein which amounts to gross violation of enacted provision of law. He submitted that even the learned Sessions Judge has failed to appreciate the fact that an injunction order, which is purely civil in nature, could not have been passed by the learned CJM in a proceeding initiated under the provisions of Cr.PC for commission of alleged offences under the Indian Penal Code.

7. The learned counsel appearing for the respondent on the other hand submitted that the impugned orders were passed after taking into consideration the facts and circumstances of the case and after proper



appreciation of the materials on record. He also contended that since there is no dispute insofar as the facts and events of the case is concerned, the impugned orders cannot be faulted with and there is no requirement for this Court to interfere at this stage.

8. In terms of the order dated 13.05.2024 passed by this Court in the present proceeding, the petitioner has brought into record the initial orders passed by the Court of CJM in C.R. Case No. 5 of 2013 by way of an additional affidavit. A perusal of the order sheet of C.R. Case No. 5 of 2013, reveals that the learned CJM did not bother to adhere to the provisions of Section 200 Cr.PC before deciding to issue summon to the accused/petitioner. It is not reflected anywhere that the complainant was examined prior to the issuance of the process. There is no order of recording of prima facie satisfaction of the court in the matter prior to the order of issuance of process.

9. There is no law which empowers a criminal court to pass an order of injunction having purely civil consequence. The learned counsel for the respondent is also unable to point out existence of any such provision. Furthermore, it is noticed that the petitioner is not a resident of the State of Meghalaya and hence, it was incumbent upon the Court of CJM to also adhere to the provisions of law laid down in Section 202 Cr.PC. Section 204 CrPC mandates that before the criminal court decides to issue process, it is mandatory for the court to record its opinion as to the existence of sufficient reason for proceeding in the matter. In the present matter, the entire order sheet of C.R. Case No. 5 of 2013 brought into record by the petitioner, do not show compliance of any of the provisions of Section 200/202/204 CrPC and hence the proceeding initiated cannot



be sustained in law.

10. In view of what has been discussed above, the proceeding in C.R. Case No. 5 of 2013 (Old 2 of 2012) cannot be sustained in law and the same stands quashed. Resultantly, the impugned orders dated 10.02.2014 and 13.09.2019 passed by the learned CJM, Nongpoh and order dated 28.02.2023 passed in Criminal Revision Petition No. 4 of 2019 by the Sessions Judge, Nongpoh are also set aside and quashed.

11. This criminal petition stands allowed.

Judge

Meghalaya

19.06.2024

"N.Swer, Stenographer, Gr-II"