

GAHC010229142021



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

Case No. : WP(C)/161/2022

M/S GABION TECHNOLOGIES INDIA PVT LTD AND 2 ORS
38, 2ND FLOOR, MOHHMADPUR, NEAR BIKAJI KAMA PALACE, NEW
DELHI-110066

2: BIPRAJIT NATH
S/O SRI ANIRUDDHA NATH
WORKING AS AREA MANAGER
GABION TECHNOLOGIES INDIA PVT LTD
ABC
SAHARIA PATH LAB
NEAR NESSA PETROL PUMP
G.S. ROAD
BHANGAGARH
DIST- KAMRUP(M)
ASSAM-781005

3: MADHUSUDAN SARDA
S/O SHYAM SARDA
WORKING AS DIRECTOR
GABION TECHNOLOGIES INDIA PVT LTD
38
2ND FLOOR
MOHHMADPUR
NEAR BIKAJI KAMA PALACE
NEW DELHI-11006

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY GOVT. OF NAGALAND

2: THE OFFICER-IN-CHARGE
TULI POLICE STATION
DIST-MUKOKCHUNG

NAGALAND

3:M/S KEYSTONE INFRA PVT LTD
COLLEGE TINIALI
AMGURI TOWN
WARD NO-7
DIST- SIVASAGAR
ASSAM-78568

Advocate for the Petitioner : MR A KAKOTI

Advocate for the Respondent : GA, NAGALAND

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 31.01.2022

Heard Mr. A Kakoti, learned counsel for the petitioner and Ms. M Kechi, learned Government Advocate, Nagaland appearing for respondent Nos.1 and 2.

In view of the order which this Court proposes to pass, service of notice upon respondent Nos.3 is not required.

The instant writ petition has been filed challenging the GD Entry No.2/2021 dated 01.09.2021. The basic case of the petitioner is that the respondent No.3 in collusion with respondent No.2 are trying to put the criminal law into motion in respect to a dispute which is purely of civil in nature, which is not permissible.

This writ petition was filed on 29.12.2021. An additional affidavit was filed by the petitioner on 20.01.2022 wherein it has been mentioned that on 05.01.2022 the respondent No.3 had filed an FIR before the respondent No.2 which have been registered and numbered as FIR No.1/2022 under Sections 420/409 Cr.P.C.

The learned counsel for the petitioner draws the attention of this Court to the contents of the said FIR and submits that a perusal of the said FIR would clearly go to show that the dispute in question is in relation to certain claims of the respondent No.3 which cannot come within the purview of a criminal dispute.

He further submits that pursuant to the said FIR, the respondent No.2 had issued a notice dated 06.01.2022 upon one of the Directors of the petitioner company and had directed him to appear before the Tuli Police Station on or before 05.02.2022 along with relevant documents for recording of the statements and in the said notice it was also mentioned that the allegation in the written complaint against the petitioner was that the petitioner company had not performed the contract as was required to be done as per the MOU.

Admittedly the FIR being registered as Tuli PS Case No.1/2022 has not been put to challenge except the statement made in paragraph 13 of the additional affidavit to the effect that the challenge to the FIR No.1/2022 should also be included in addition to the main prayer of the instant writ petition.

I have heard the learned counsel for the petitioner and also Ms. M Kechi, learned Government Advocate, Nagaland.

Without going to the question of merits of the instant writ petition as well as without making any comments on the merits of the contentions made against the FIR as to whether it would come within the ambit of the civil dispute or criminal dispute, it is the opinion of this Court that in absence of a substantial challenge to the FIR No.1/2022 by way of the remedies available to the petitioner under the provisions of the Code of Criminal Procedure, 1973, it would not be proper on the part of this Court to initiate the extra ordinary jurisdiction of this Court under Article 226 of the

Constitution of India.

At this stage Mr. Kakati, learned counsel for the petitioner humbly submits that the notice dated 06.01.2022 would show that one of the Directors of the petitioner had been asked to appear before the Tuli Police Station on or before 05.02.2022 and the petitioner could only come to learn about the initiation of the FIR on receipt of the said notice on 17.01.2022 and immediately thereupon have brought to the attention of this Court by filing an additional affidavit on 20.01.2022 and as such, till the petitioner can take appropriate steps as regards the challenge to the FIR No.1/2022 and/or institute the remedies available under the Cr.P.C., 1973, the petitioner should be given a limited protection.

I have heard the learned counsel for the parties on that aspect of the matter and I am of the opinion that interest of justice would be met in the peculiar circumstances of the instant case to direct that for a period of 20 days from the date of passing of the instant order, the respondent No.2 shall not take any coercive action against the petitioner in respect of Tuli PS Case No.1/2022 registered under section 420/409 IPC. Thereupon the respondent No.2 who is the Investigating Officer shall take appropriate steps as envisaged under law. The petitioner shall be at liberty to seek appropriate remedies as envisaged under law and the competent court may pass such order as deemed fit without being influenced by the observations made herein above.

With the above observation, the instant writ petition stands disposed of. No costs.

JUDGE

Comparing Assistant