

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Petn. No.28/2022

Shri Anagh Sasi De, son of Late Amiya Mukul De, aged about 54 years, resident of Dhaleswar Road No.6, P.O.-Dhaleswar, P.S.-East Agartala, District-West Tripura; At present staying at H-13, Mansha Bhawan, Lane No.2, Saiyadul Ajab, Saket, South Delhi, Pin-110030.

..... Petitioner(s)

V E R S U S

1. The State of Tripura.
2. Superintendent of Police, North Tripura District, Dharmanagar.
3. The Officer-in-Charge, Kanchanpur Police Station, P.O. & P.S.-Kanchanpur, District-North Tripura.
4. Sri Rabendra Reang, son of Sri Dhon Chandra Reang, resident of Vill-Jamarai para, P.O. & P.S.-Kanchanpur, District-North Tripura.
5. Sri Namaratan Chakma, son of Sri Melaram Chakma, resident of Vill-Sukramani Para, P.O. & P.S.-Kanchanpur, District-North Tripura.

.....Respondent(s)

For Petitioner(s) : Mr. Sankar Lodh, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.,
Mr. S. Datta, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **28th March, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

By means of this petition filed under Section 482 of Cr.P.C., the petitioner has challenged the order dated 09.03.2022 passed by the learned

Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura in case No. CR 17 of 2021 whereby the learned Magistrate has forwarded the complaint petition for investigation under Section 156(3) of Cr.P.C. to the concerned Police Station.

2. The case of the petitioner, in brief, is that on 22.12.2021 the private respondents No.4 and 5 namely Sri Rabendra Reang and Sri Namaratan Chakma lodged a written complaint before the SDJM, Kanchanpur, North Tripura against the petitioner alleging, inter alia, that few months ago they applied for loan before the Tripura Gramin Bank, Kanchanpur Branch and the petitioner was the Branch Manager of that Bank. While taking loan, the respondents No.4 and 5 were forced to put their signatures on the blank withdrawal slip. It was further alleged that on being learnt about sanction of loan amount of Rs.19,000/-, they visited the Bank and came to know from the petitioner that the loan amount was deposited in their respective accounts. But when they went to withdraw the amount, the same was found missing and on being inquired, the petitioner failed to give any satisfactory reply. Thereafter, the respondents No.4 and 5 filed complaint against the petitioner and another before the SDJM, Kanchanpur who took cognizance and vide order dated 09.03.2022 sent the complaint petition to O/C, Kanchanpur P.S. for investigation under Section 156(3) of

Cr.P.C. Accordingly, the O/C, Kanchanpur P.S. registered Kanchanpur P.S. Case No.2022/KCP/016 dated 12.04.2022 against the petitioner and another under Sections 201, 409, 420, 467, 468, 506 & 34 of IPC. Aggrieved thereby, the petitioner has preferred this petition. Hence, this case.

3. Petitioner has prayed for the following reliefs:

"(I) ISSUE NOTICE, calling upon the respondents and each one of them, to show cause as to why an appropriate Direction/Order, shall not be issued, for quashing/setting aside the impugned Order dated 09.03.2022, passed by the Id. Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura (Shri Raja Gupta) in C.R. 17 of 2021 (Annexure-5 supra), and consequent FIR, i.e., *Kanchanpur P.S. Case No.2022/ KCP/ 016 dated 12.04.22* (Annexure-6 supra), registered against the petitioner and another, under Sections 201, 409, 420, 467, 468, 506 & 34 of the Indian Penal Code, 1860;

(II) Pass an Order staying the further proceeding of *Kanchanpur P.S. Case No.2022/KCP/016* (Annexure-6 supra) and also taking any punitive action in furtherance thereof till disposal of the petition;

(III) After hearing the parties, be pleased to make an Order absolute in terms of (I) above;

(IV) Call for the records appertaining to this petition;

(V) Costs of and incidental to this proceeding;

(VI) Any other relief(s) as to this Hon'ble High Court may deem fit and proper."

4. Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner. Also heard Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondents No.1 to 3 and Mr. S. Datta, learned counsel appearing for the respondents No.4 & 5.

5. It is not disputed that the subject matter involved in this petition wherein complaint was filed before the Court below and thereafter the same was referred for investigation to the concerned police station by passing an order which is under challenge before this Court, is squarely covered by a judgment of this Court in the case of *Sentu Dey vrs. State of Tripura and others* reported in *2021 SCC OnLine Tri 290* wherein the learned Single Judge has observed as under:

" 32. With this legal background, we may revert to the facts of the present case. We may recall that on the first instance when the complaint was placed before the learned Magistrate, on 27.11.2020, he recorded that he had perused the case record, received some of the documents which were ordered to be kept along with the case record. He thereupon stated -

“Let the case be fixed for examination U/S 200 Cr.P.C.

Fix 02.01.2021 examination U/S 200 Cr.P.C.”

33. A perusal of this order dated 27.11.2020 would immediately show that the learned Magistrate had decided to

examine the complainant or possibly the witnesses, if any, under Section 200 of Cr.P.C. on 02.01.2021. This he had decided after perusal of the case record and receipt of some of the documents, which were kept along with the rest of the record of the case. It is thus clear that the Magistrate had taken cognizance of the offences disclosed in the complaint. His action of perusal of the case record which led to his decision to examine the witnesses under Section 200 of Cr.P.C. at a later date clearly establishes application of mind on his part on the allegations made in the complaint and which led to his making up his mind about the requirement of carrying out examination under Section 200 of Cr.P.C. Had the Magistrate perused the case records and was of the opinion that before deciding to take cognizance of the offence it was necessary to call for the police investigation, it was open for him to do so. However, in such a case, his decision would have been entirely different. The very fact that after perusal of the case record he was persuaded that there is a requirement of examination under Section 200 of Cr.P.C, would establish that he had already taken cognizance of the offence. It is well settled that the stage of examination of witness under Section 200 of Cr.P.C. would not arise before taking cognizance by the Magistrate. Thus, these two twin facts namely, the perusal of the case record by the Magistrate and the decision that he arrived on upon perusal of the case records of examining the witnesses under Section 200 of Cr.P.C. would leave no manner of doubt that on 27.11.2020 itself he had taken cognizance of the offences. It was thereafter not open for him to change the course and revert back to the initial option of

requiring police investigation and calling for police report. Unfortunately, on 02.01.2021 this is precisely what he did. In the said order, he has recorded that after hearing the learned P.P. and after perusal of the complaint, he was of the opinion that before taking cognizance, the matter may be investigated by the police. In the process, the learned Magistrate lost sight of the fact that the stage of taking cognizance had already been crossed on 27.11.2020 itself.

34. In the result, the impugned order dated 02.01.2021 is quashed. However, this does not put an end to the complaint lodged before the concerned Magistrate, who shall proceed further in accordance with the law from the stage of taking cognizance of the offences disclosed.

35. Petition allowed in above terms and disposed of accordingly. Pending application(s), if any, also stands disposed of."

6. In view of the same, the impugned order dated 09.03.2022 passed by the learned Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura in case No. CR 17 of 2021 is quashed. However, this does not put an end to the complaint lodged before the concerned Magistrate who shall proceed further in accordance with the law from the stage of taking cognizance of the offences disclosed. The respondent-complainants are also at liberty to take steps in accordance with law.

7. Accordingly, the petition is allowed and disposed of in view of above terms.

8. Send down the lower Court records forthwith.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pulak



सत्यमेव जयते