

GAHC020001472022



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

Crl.Pet/3/2022

- 1) The Branch Manager, Federal Bank,
Dimapur, Nagaland
- 2) Mr. Abraham Joseph VJ.SP-3280,
Asst. Vice President & Branch Head,
Federal Bank, Dimapur, Nagaland
- 3) The Executive Director & Chief Operating Officer,
CEO's Secretariat, Federal Bank Ltd.,
Federal Towers, Bank Junction,
Aluva-683101, Ernakulam District,
Kerala, India
- 4) The Managing Director & CEO,
Federal Bank Ltd., Corporate Office,
Federal Towers, Aluva-683101,
Ernakulam District, Kerala, India

Petitioners

-Versus-

- 1) The State of Nagaland
Represented by the P.P., High Court

2) Shri. K. Saku Jamir,
S/O Lt. Korabong, Permanent
R/o PWD Link Road,
Dimapur, Nagaland

Respondents

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For Petitioner	: Mr. Angshuman Bora, Senior Advocate Mr. Pfosekho Pfotte, Advocate
For respondent(s)	: Mr. Bendangwabang, Advocate Mr. Kevi Angami, PP, Nagaland
Date of hearing	: 15.05.2023
Date of judgment	: 22.05.2023

JUDGMENT AND ORDER (CAV)

(Mridul Kumar Kalita, J)

1. Heard Mr. Angshuman Bora, learned senior counsel and Mr. Pfosekho Pfotte, learned counsel for the petitioners. Also heard Mr. Bendangwabang, learned counsel for the respondent No.2 as well as Mr. Kevi Angami, learned Public Prosecutor, Nagaland for the respondent no. 1.
2. This criminal petition has been registered on filing of an application under section 482 of the Code of Criminal Procedure, 1973 by the petitioners praying for quashing of the criminal proceedings in CR Case

No.11/2021 pending in the Court of learned Chief Judicial Magistrate, Dimapur as well as for setting aside the order dated 11.11.2021 passed by learned Chief Judicial Magistrate, Dimapur, in CR Case No. 11/2021, whereby cognizance under sections 419 /420 /421 /423 /467 /458 /477 /483 /493 of the Indian Penal Code was taken against the present petitioners.

3. The facts relevant for adjudication of this criminal petition, in brief, are as follows-

i. That the respondent no. 2 namely, Shri K. Saku Jamir had instituted a complaint case in the Court of learned Chief Judicial Magistrate, Dimapur at Dimapur, Nagaland arraigning (1) The Branch Manager, Federal Bank, Dimapur (2) Mr. Abraham Joseph VJ, SP-3280, Assistant Vice President & Branch Head, Federal Bank, Dimapur, Nagaland as defendants and (3) The General Manager, Federal Bank Limited, Post Box No.103, Federal Towers, Aluva-683101, Ernakulum, Kerala, India (4) The Executive Director & Chief Operating Officer, CEO's Secretariat, Federal Bank Limited, Post Box No.103, Federal Towers, Aluva-683101, Ernakulum, Kerala, India (5) The Managing Director & CEO, Federal Bank Limited, Post Box No.103, Federal Towers, Aluva-683101, Ernakulum, Kerala, India, as pro-forma defendants. It is pertinent to mention herein that in a criminal case the parties, against whom the allegations are made, ought to have been referred to as "accused" and not as defendants or pro-forma defendants as has been done in the aforementioned criminal complaint case.

ii. It has been stated in the complaint petition, that the

complainant (*respondent no.2 in the instant criminal petition*) took a cash certificate (*cash certificate receipt no. G867467 against account no. 11880300251016*), on 06.04.2015, for fixed deposit of an amount of Rs. 5,00,000/- in the Dimapur branch of Federal Bank Limited for a period of six years. In the year 2021, when the complainant/respondent no.2 approached the bank for redeeming the cash certificate on its maturity, he came to know that without any consent from him, the bank illegally and arbitrarily adjusted a loan purported to have been taken by him against said cash certificate.

iii. It is also stated in the complaint petition that the complainant/respondent no.2 had availed a loan of Rs.3,00,000/- from the Dimapur branch of Federal Bank Limited, on 01.07.2019, against account no. 11887500044521 and the said loan was cleared on 30.04.2020. However, on 30.04.2020, the bank opened another loan account, i.e., account no. 11887500045288 in the name of complainant/respondent no.2 for an amount of Rs. 3,00,000/- without any consent from him. It is further alleged that on 12.04.2021, the cash certificate was closed and an amount of Rs.3,26,082/- was adjusted against the loan account, i.e., account no. 11887500045288 there from, which according to the complainant/respondent no.2 he had never avail. It is also stated that the complainant/respondent no.2 approached the bank to provide him necessary documents in respect of the loan account, i.e., account no. 11887500045288 purported to be availed by him, however, the bank failed to provide any such document and

accordingly the complainant/respondent no.2 lodged a criminal complaint against the present petitioners alleging commission of offence under sections 419/ 420/ 421/ 423/ 467/ 458/ 477/ 483/ 491 of the Indian Penal Code.

iv. The said complaint case was registered as CR Case No. 11/2021 in court of learned Chief Judicial Magistrate, Dimapur. The complainant/respondent no.2 Mr. K. Saku Jamir was examined under section 200 of the Code of Criminal Procedure, 1973 and two more persons namely, Mrs. Amenia Saku and Akangwati Jamir were also examined as witnesses for the complainant/respondent no.2 and thereafter by order dated 11.11.2021, learned Chief Judicial Magistrate, Dimapur took cognizance under sections 419 /420 /421 / 423 /467 /458 /477 /483/ 491 of the Indian Penal Code against the accused/defendants and pro-forma defendants (*present petitioners*) and issued summons against them and fixed 13.12.2021 for appearance of the accused persons.

4. Being aggrieved by the order dated 11.11.2021, passed by learned Chief Judicial Magistrate, Dimapur, the petitioners have preferred the present criminal petition under section 482 of the Code of Criminal Procedure, 1973, praying for reliefs already stated in paragraph 2 herein above. It is stated by the petitioners that though in the complaint case the pro-forma defendant no. 3 has been shown as the "General Manager, Federal Bank Limited", Post Box No.103, Federal Towers, Aluva-683101, Ernakulum, Kerala, India, however, no such post of General Manager is in existence in the Federal Bank Limited.

5. The petitioners have also stated that complainant/respondent no.2

had availed a loan of Rs. 3,00,000/- (Loan account No. 11887500044521) on 01.07.2019 via online paperless mode as advance against his own deposit account bearing account no. 11880300251016. It is further stated that another amount of Rs. 3,00,000/- was granted to the complainant/respondent no.2 by loan account no. 11887500045288 on 30.04.2020 and proceeds were credited to the savings account of the complainant/respondent no. 2 bearing account no. 11880100240177 and immediately the said amount was debited from his said saving account for "payoff" of the previous advance against deposit loan account bearing account no. 11887500044521. It is further stated that the branch office of the Bank tried to contact the complainant/respondent no.2 several times over phone for closure of the particular loan account, however, on not getting any response, the said loan account, i.e., loan account no. 11887500045288 was closed by adjusting the dues from the deposit account bearing account no. 11880300251016 and the remaining proceeds of the deposit after the payment of the dues were credited in the savings account of the complainant/respondent no.2 on the same day, i.e., on 12.04.2021. The petitioners have denied that the actions of bank involved any deficiency, neglect, mischievous act, misconduct, impersonation, cheating or fraud and have stated that the bank acted in accordance with normal banking practices and no offence has been committed by the bank as alleged by the complainant/respondent no.2.

6. Mr. Angshuman Bora, learned senior counsel for the petitioners has submitted that as the respondent no. 2 had availed the 1st loan of Rs. 3,00,000/- on 01.07.2019 against the fixed deposit which was to mature on 06.04.2020, hence, the respondent no. 2 was supposed to repay back

his 1st loan on or before 06.04.2020, however, extended time was given to respondent no. 2 till 30.04.2020 by the bank. It is when the respondent no. 2 failed to repay the same amount, the Federal Bank provided the same amount to the respondent no.2 by opening a new loan account (2nd loan) for Rs. 3,00,000/- and from the said loan amount only, the 1st loan of Rs. 3,00,000/- was cleared. It is therefore, submitted by learned senior counsel that no new liability was created against respondent no.2. It is also submitted that though the respondent no. 2 has stated in the complaint petition that the 1st loan was cleared on 30.04.2020, however, he is totally silent, as to how he repaid his 1st loan. Learned senior counsel has submitted that from the statement of savings account of the complainant/respondent no. 2 bearing account no. 11880100240177, which is annexed as annexure-9 with the criminal petition, it is clear that the 1st loan of Rs. 3,00,000/- (Loan account no. 11887500044521) was paidoff on 30.04.2020 only from the amount deposited in the savings bank account of the respondent no.2 from the 2nd loan account of Rs. 3,00,000/- against loan account no. 11887500045288. It is, therefore, submitted by learned senior counsel for the petitioners that the respondent no. 2 has only benefitted from the fact that a 2nd loan was advanced to him by the bank to payoff his 1st loan and no criminal offence was committed in doing so either by the Federal Bank Limited or any of its officers.

7. Mr. Angshuman Bora, learned senior counsel for the petitioners has also submitted that though in the complaint petition filed by the respondent no.2, the primary allegations were leveled against the Federal

Bank Limited regarding opening of a 2nd loan account i.e., loan account no. 11887500045288 for Rs. 3,00,000/- without any consent from respondent no.2, however, the Federal Bank Limited has not been arrayed as an accused in the said complaint petition. Learned senior counsel has submitted that when the main allegations are leveled against the bank and the bank itself has not been made an accused in the complaint petition and when no specific allegation is leveled against any of the officers of the bank who are shown as accused in the complaint petition, no proceedings may be initiated against such employees of the bank. In support of his contention, learned senior counsel has cited rulings of Hon'ble Supreme Court of India in (1) "**Sharad Kumar Sanghi Vs. Sangeeta Rane**" reported in **(2015) 12 SCC 781** (2) "**Shiv Kumar Jatia Vs. State of NCT of Delhi**" reported in **(2019) 17 SCC 193** and (3) "**Aneeta Hada Vs. Godfather Travels and Tours Private Limited**" reported in **(2012) 5 SCC 661**.

8. In **Sharad Kumar Sanghi Vs. Sangeeta Rane**" reported in **(2015) 12 SCC 781**, Hon'ble Supreme Court of India has observed as follows:

"11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. [Aneeta Hada v. Godfather Travels and Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] in the context of the Negotiable Instruments Act, 1881.

13. When the company has not been arraigned as an

accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant."

9. In "***Shiv Kumar Jatia Vs. State of NCT of Delhi***" reported in **(2019) 17 SCC 193**, Hon'ble Supreme Court of India has observed as follows:

"21. By applying the ratio laid down by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

10. Mr. Angshuman Bora, learned senior counsel for the petitioners has also submitted that there is nothing to show in the criminal complaint petition, filed by the complainant/respondent no.2, that the present petitioners, who hold different positions in Federal Bank, made any

representation in their personal capacities and there is no specific allegation made against any of the petitioners, in complaint petition, that they have done anything personally. Learned senior counsel has submitted that unless specific allegations are made against the present petitioners and specific roles are attributed to them in the complaint petition the criminal proceedings ought not to have initiated against them. In support of this contention, learned senior counsel has cited ruling of Hon'ble Supreme Court of India in "**Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Limited and Others**" reported in **2021 SCC Online SC 806**, wherein Hon'ble Supreme Court has observed that in absence of any specific allegation and specific role attributed to the office bearer of the company, the Magistrate was not justified in issuing processes against them. Learned Senior counsel has also cited ruling of Hon'ble Supreme Court of India in "**Sunil Bharti Mittal v. CBI**" reported in **(2015) 4 SCC 609**, wherein it was observed as follows:

“(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person.

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an

accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] , the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

11. Mr. Angshuman Bora, learned senior counsel for the petitioners has also submitted that the present petitioner cannot be held vicariously liable for any act done by the bank unless specific allegations are made against the present petitioners and unless the relevant statutes specifically provided for the same. He has submitted that in the instant case the cognizance has been taken by learned Chief Judicial Magistrate, Dimapur of offences under Indian Penal Code, however the Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the managing director or the directors of the company, when the main

allegations are against the company.

12. Learned senior counsel for the petitioners has also submitted that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. He has also submitted that in order to issue summons against the present petitioners, learned Chief Judicial Magistrate, Dimapur ought to have recorded his satisfaction about the *prima facie* case against each of the petitioner against whom the processes were issued, however, in the instant case, the learned Magistrate erred in issuing process against the petitioners by merely stating that there is a *prima facie* case without mentioning against which of the petitioners there are materials in the complaint petition. In support of his contention, learned senior counsel has cited the ruling of Hon'ble Supreme Court of India in "***Pepsi Foods Ltd. v. Special Judicial Magistrate***", reported in (1998) 5 SCC 749, wherein it was held as follows:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

13. Learned senior counsel also cited ruling of Hon'ble Supreme Court of India in "***GHCL Employees Stock Option Trust v. India Infoline Ltd.***", reported in **(2013) 4 SCC 505**, wherein it was observed as follows:

"19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. Recently, in Thermax Ltd. v. K.M. Johnny [(2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650 : (2011) 11 Scale 128] while dealing with a similar case, this Court held as under: (SCC p. 429, paras 38 & 39)

"38. Though Respondent 1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with the appellant Company by initiating the criminal prosecution, it is pointed out that Appellants 2 to 8 are the ex-Chairperson, ex-Directors and senior managerial personnel of Appellant 1 Company, who do not have any personal role in the allegations and claims of Respondent 1. There is also no specific allegation with regard to their role.

39. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant Company."

14. Learned senior counsel has also submitted that the petitioners being employed as officers of the Federal Bank Limited in various capacities had only performed their official functions and the complaint petition filed by respondent no.2 does not disclose commission of any offence by them in

their individual capacity. In support of the said contention learned senior counsel has cited the ruling of Hon'ble Supreme Court of India in "***M.N. Ojha Vs. Alok Kumar Srivastav***" reported in **(2009) 9 SCC 682**, wherein it was observed as follows:

"33. This is one case where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realise and recover the amounts due to the Bank from the borrower as well as the guarantors. The complaint obviously has been filed as a counterblast to the proceedings already initiated by the Bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation."

15. Mr. Angshuman Bora, learned senior counsel for the petitioners has also submitted that the complainant/respondent no.2 had failed to disclose any ingredients of any offence alleged against the present petitioners in the complaint filed by him in the court of learned Chief Judicial Magistrate, Dimapur. It is submitted by learned senior counsel for the petitioners that the main grievance of the respondent no.2 is that the 2nd loan was given to him without any consultation with him and bank failed to provide him necessary documents in connection with the 2nd loan given to him. Mr. Angshuman Bora, learned senior counsel has fairly submitted that the bank might have erred in not obtaining the consent of the respondent no. 2 before giving 2nd loan to him, however, this error, in itself, does not constitute any of the offences alleged against anyone amongst the present petitioners. He has submitted that by mere quoting the penal sections from the Indian Penal Code without any specific

allegation of facts constituting the offences alleged against any of the petitioners, the respondent no.2 has abused the process of law by initiating criminal prosecution against the present petitioners. Learned senior counsel for the petitioners, in support of his submission, has cited following rulings of Hon'ble Supreme Court of India:-

- (1) "**Visa Holdings (P) Limited Vs. State of Kerala**" reported in **(2015) 8 SCC 293,**
- (2) "**Sushil Sethi Vs. State of Arunachal Pradesh**" reported in **(2020) 3 SCC 240,**
- (3) "**MNG Bharteesh Reddy Vs. Ramesh Ranganathan**" reported in **2022 SCC Online SC 1061,**
- (4) "**Neelu Chopra Vs. Bharti**" reported in **(2009) 10 SCC 184.**

The observation made by the Hon'ble Supreme Court of India in "**Neelu Chopra Vs. Bharti**", which is relied upon by learned senior counsel for the petitioners is quoted herein below:

"9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants."

16. Countering the submissions made by the learned counsel for the petitioners that no one has been individually arrayed as an accused in the complaint petition, Mr. Bendangwabang, learned counsel for the respondent no. 2 has submitted that Mr. Abraham Joseph VJ, who is petitioner no. 2 in the instant criminal petition has been impleaded as an accused in his own name in the complaint petition filed by the respondent no. 2 before learned Chief Judicial Magistrate, Dimapur. He has also alleged that the affidavit supporting the present criminal petition has been sworn by one Mr. Jithin V. Jimmy, Branch Head, Federal Bank, Dimapur without any authority and he has no *locus standi* to represent the petitioners in the instant criminal petition. However, learned counsel for the petitioners has submitted that in affidavit-in-reply on behalf of petitioners, Mr. Jithin V. Jimmy has stated that he is the petitioner no. 1 in the instant case in his capacity as Branch Manager, Federal Bank, Dimapur and he is the authorized power for attorney holder of the Federal Bank Limited. A copy of said power of attorney is submitted as Annexure-11 along with his affidavit-in-reply. Though, Mr. Bendangwabang, learned counsel for the respondent no. 2 by citing a ruling of Karnataka High Court in "***Samantha Christina Delfina Willis and Another Vs. State of Karnataka and Others***" [WP (C) No. 24602 of 2021(GM-RES)] has submitted that a power of attorney holder has no *locus standi* to file writ petition for others and as Mr. Jithin V. Jimmy has not been named in the complaint petition filed by respondent no.2, he has no *locus standi* to take any steps in the instant criminal petition. However, considering the fact that the petitioner no. 1 of the instant criminal petition as well as the

accused no. 1 (shown as defendant) in the complaint petition filed by respondent no.2 before learned Chief Judicial Magistrate, Dimapur is the Branch Manager, Federal Bank, Dimapur, Nagaland and no person has been named in his personal capacity, this Court is of the opinion that Mr. Jithin V. Jimmy, who is the present incumbent Branch Manager has the *locus standi* to take steps in this criminal petition for his own behalf and on behalf of other petitioners.

17. Mr. Bendangwabang, learned counsel for the respondent no. 2 has also submitted that the 2nd loan which is shown to have been given to the respondent no. 2 by the Federal Bank was never availed by the respondent no. 2 and bank has failed to provide any documentary proof of processing of the said loan to the respondent no.2 in spite of repeated correspondences by the respondent no.2 with the bank in this regard. It is also submitted that though the 2nd loan shown to have been given to respondent no.2 is stated to be adjusted against the cash certificate dated 06.04.2015, however, the bank never insisted the respondent no.2 for surrendering the original cash certificate. Hence, it is submitted that the bank had created a false loan against the account of the respondent no. 2 in violation of the normal banking norms and regulations. It is also submitted that the bank never intimated the respondent no.2 for liquidating of his loan which was availed on 01.07.2019. It is also submitted by Mr. Bendangwabang, learned counsel for the respondent no. 2 that on 12.04.2021, an amount of Rs. 7,84,695/- was credited against the cash certificate in the savings account of the respondent no.2 and on the same date an amount of Rs. 3,26,082/- was deducted against the 2nd loan purported to have been given to respondent no. 2 by the Federal

Bank. Learned counsel for the respondent no. 2 has further submitted that the Federal Bank in the instant case has acted on its own whims and caprice without following the accepted and usual modes of recovery of loan from a borrower. Learned counsel for the respondent no.2 has also submitted that during the course of hearing, learned senior counsel for the petitioners' side has not pressed for grounds no. II, V and VI of the criminal petition under section 482 of Cr.P.C. and in light of submissions of learned senior counsel for the petitioners that the bank has committed lapse in not intimating the respondent no. 2 regarding the 2nd loan, it would be unjust to invoke the powers of this court under section 482 of Cr.P.C. in the instant case.

18. Learned counsel for the respondent no.2 has cited ruling of Hon'ble Himachal Pradesh High Court in "**Pooja Kumari and Another Vs. Kamal Nayan Kaur**" reported in **(2020) 1 RCR (Criminal) 220**, wherein it was held that the order sheet of the Magistrate summoning the accused on the basis of a complaint must show that she has applied her mind to the allegations and the order need not to be detailed and elaborative one. Learned counsel for the respondent no.2 has also relied upon ruling of Hon'ble Supreme Court of India in "**Shivjee Singh Vs. Nagendra Tiwari and Others**" (**Criminal Appeal No. 1158 of 2010**), where Hon'ble Supreme Court of India discussed the question as to whether all witnesses cited in the complaint should be examined before taking of cognizance by a Magistrate in a case exclusively triable by Court of Sessions and Hon'ble Supreme Court of India answered the said question in negative, however, Hon'ble Supreme Court had discussed various aspects of taking of cognizance by Magistrate in a complaint case where offences are

exclusively triable by court of sessions. Learned counsel for respondent no. 2 also cited ruling of Hon'ble Supreme Court of India in "**Satish Kumar Jatav Vs. State of U.P. and Others**", reported in **(2022) 8 SCALE 284**, wherein it was observed that merely stating that "*no useful purpose will be served by prolonging the proceedings of case*" cannot be a good ground and/or a ground at all to quash the criminal proceeding when a clear case was made out for the offences alleged. Learned counsel for the respondent no. 2 has also cited ruling of Hon'ble Supreme Court of India in following cases-

- (1) "**State of Bihar and Another Vs. KJD Singh**" reported in **1993 ALLMR Online 181 (SC)**,
- (2) "**Padal Venkata Rama Reddy @ Ramu-Vs. Kovvuri Satyanarayana Reddy & Ors**" reported in **(2011) 9 SCR 623**,
- (3) "**State of Tamil Nadu Vs. R. Vasanthi Stanely & Anr.**" reported in **(2016) 1 SCC, 376**,
- (4) "**CBI Vs. Maninder Singh**" reported in **(2016) 1 SCC, 389**,
- (5) "**Indian Oil Corporation Vs. NEPC India Ltd. & Ors**" reported in **(2006) 6 SCC 736**,
- (6) "**Mehmood UL Rehman Vs. Khazir Mohammad Tunda & Ors**" reported in **(2015) 12 SCC 420**,
- (7) "**Sonu Gupta Vs. Deepak Gupta**" reported in **(2015) 3 SCC 424** and
- (8) "**Iridium India Telecom Ltd**" reported in **(2011) 1 SCC 74**.
- (9) Decision of Hon'ble Allahabad High Court in "**Yashpal and Ors Vs. State of U.P. & Anrs**" reported in **(2020) 2 All Crl Rulings 1761**

19. I have considered the submissions made by learned counsel for both the sides and also gone through the judgments cited by learned counsel

for the petitioners as well as respondent no.2 thoroughly.

20. The respondent no.2, who has filed the criminal complaint against the present petitioners has not denied that he had availed the 1st loan from the Federal Bank, Dimapur branch for Rs.3,00,000/-, on 01.07.2019, against account no. 11887500044521 and it is also admitted that the said loan was cleared on 30.04.2020. From the documents available on record, more specifically, Annexure-9, which is the statement of account of account no. 11880100240177 (*savings account of the respondent no. 2*) for the period 01.07.2019 to 04.12.2021 in the Federal Bank, Dimapur branch, it appears that the outstanding amount of Rs. 3,00,000/- was paidoff from the 2nd loan, which was disbursed to the respondent no.2 on the same date, i.e., 30.04.2020 by opening a 2nd loan account bearing account no. 11887500045288. The aforesaid statement of account no. 11880100240177 is not disputed by the respondent no.2 and it shows that till 30.04.2020 Rs. 3,00,000/- was outstanding against the 1st loan account of the respondent no.2 and it was cleared only from the deposits made from 2nd loan account bearing A/C no. 11887500045288. The only grievance of the respondent no.2 seems to be that the 2nd loan account was not opened with his consent. This fact has also been admitted by learned senior counsel for the petitioners, however, he has submitted that the 2nd loan account was given to the respondent no.2 only to facilitate him to payoff the outstanding amount against his 1st loan account and in doing so by not taking consent of the respondent no.2, the Federal Bank might have committed procedural lapses, however, at no stretch of imagination, the present petitioners could be charged with committing

offences alleged against them in the complaint petition by the respondent no.2. It is also pertinent to mention here that during course of submission learned counsel for the respondent no. 2 has also stated that the respondent no.2 has also filed a civil suit against the Federal Bank with regard to the present subject matter.

21. If we go through the complaint petition filed by the respondent no.2 before the Chief Judicial Magistrate, Dimapur, Nagaland in CR Case No. 11/2022, it appears that though allegations have been made mainly against the Federal Bank, Dimapur Branch, however, the Federal Bank has not been made an accused in the said complaint case. On careful perusal of the said complaint petition, it appears that apart from the allegation leveled against the bank that the 2nd loan account bearing account no. 11887500045288 was opened without the consent of respondent no. 2 and same was also adjusted against the cash certificate of the respondent no.2 bearing account no. 11880300251016 without his consent, no specific allegations were leveled against any of the present petitioners in the complaint petition. It also appears that in paragraph nos. 14 & 15 of the complaint petition, allegations of gross deficiency and negligence, misconduct, impersonation, cheating, forgery and fraud are made against the Federal Bank only without leveling any specific allegations and attributing any specific role against any of the present petitioners in commission of offences mentioned in the cause title, at page 2, of the said complaint petition.

Apart from mentioning of sections 419, 420, 421, 423, 467, 458, 477, 483 and 493 of Indian Penal Code, at page 2, in the cause title of the complaint petition, the complainant/respondent no. 2 has stated nothing

to explain as to how the present petitioners, who were arraigned as accused in the said complaint petition have committed the offences mentioned in the complaint petition. As already discussed herein before, Hon'ble Supreme Court of India in "***Neelu Chopra Vs. Bharti***" (*Supra*), has observed that mere mention of sections and language of those sections is not the be all and end all of the matter for lodging a proper complaint. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. In the instant case, the complainant/respondent no.2 has miserably failed to level any specific allegation and attribute any specific role against any of the present petitioners in his complaint so as to justify issuance of processes against them.

22. On perusal of the impugned order dated 11.11.2021 passed by learned Chief Judicial Magistrate, Dimapur in CR Case No. 11/2021, it appears that learned Chief Judicial Magistrate, Dimapur has taken cognizance under sections 419/420/421/423/467/458/477/483/491 of Indian Penal Code against the accused/defendants and pro-forma defendants/respondents. Section 419 of the Indian Penal Code prescribes the punishment for cheating by personation, section 420 of the Indian Penal Code prescribes punishment for cheating and dishonestly delivery of property, section 421 of the Indian Penal Code prescribes punishment for dishonest or fraudulent removal or concealment of property to prevent distribution among creditors, section 423 of the Indian Penal Code prescribes punishment for dishonest or fraudulent execution of deed of transfer containing false statement of consideration, section 458 of the

Indian Penal Code prescribes punishment for lurking house trespass or house breaking by night after preparation of hurt, assault or wrongful restraint, section 467 of the Indian Penal Code prescribes punishment for forgery of valuable security, will etc., section 477 of the Indian Penal Code prescribes punishment for fraudulent cancellation, destruction, etc. of will, authority to adopt or valuable security, section 483 of the Indian Penal Code prescribes punishment for counterfeiting a property mark use by another and section 491 of the Indian Penal Code prescribes punishment for breach of contract to attend on and supply wants of helpless persons. I have already discussed herein before that apart from quoting above Penal Sections from Indian Penal Code, the complainant/respondent no.2 has miserably failed to show the facts constituting the particulars of offences in the complaint petition. He has also failed to narrate in the complaint petition, as to what exact role was played by the present petitioners in commission of the offence mentioned in the complaint petition. In absence of any statement in the complaint petition to show as to which accused has committed what offence and what is the exact role played by the present petitioners, learned Chief Judicial Magistrate, Dimapur appears to have acted mechanically and appears to have erroneously taken cognizance of all offences quoted by respondent no.2 in his complaint petition against all the present petitioners.

23. Though the complainant/respondent no.2 has not explained in his complaint petition as to whether the ingredients of offences mentioned by him in his complaint petition against the present petitioners are there or not however, he has made allegations against the Federal Bank in his

complaint petition and the Federal Bank has not been made as an accused in his complaint petition. As already discussed herein before, Hon'ble Supreme Court of India has observed in “***Shiv Kumar Jatia Vs. State of NCT of Delhi***” (*Supra*), that the Indian Penal Code does not contain any provision for attaching vicarious liability on the part of managing directors of company when accused is a company. It was also observed that vicarious liability of managing director or director would arise provided any provision exists in that behalf in the statute. In the instant case, the main allegations of complainant/respondent no.2 are against the Federal Bank only and no specific allegation has been made against any of the present petitioners. Under such circumstances, when the Bank is itself not arrayed as a party in the criminal complaint no proceeding can be initiated against the present petitioners who are only the officers of the said bank and against whom no specific allegations are leveled in the complaint petition.

24. Though the powers vested in this court by virtue of section 482 of the Code of Criminal Procedure should be exercised very sparingly and with circumspection, however, in a case like this where the allegations made in the complaint, even if it is taken on its face value and accepted in its entirety, do not constitute any offence or make out any case against the accused, the power vested in the Court under section 482 of Code of Criminal Procedure should be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

25. Under above circumstances, and in view of discussions made hereinabove, this Court is of considered opinion that it would be an abuse of process of law to allow prosecution to continue against the present petitioner in CR Case No. 11/2021. Accordingly, the impugned order dated

11.11.2021 passed in CR Case No. 11/2021 is hereby set aside and the said criminal complaint is quashed.

26. Send back the LCR along with a copy of this judgment to the court of learned Chief Judicial Magistrate, Dimapur.

JUDGE

Comparing Assistant