

GAHC040007192024

2024:GAU-AP:1012



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

Case No. : Crl.Petn./84/2024

Pani Tapo and 4 Ors

Son of Late Pani Rui, a permanent resident of Kush village PO and PS Koloriang,
Kurung Kumey District, Arunachal Pradesh and presently residing at Donyi Colony
Itanagar, Papumpare District, Arunachal Pradesh

2: Bengia Pacha

Age:

Occupation :

Son of Late Bengia Kiochak

a permanent resident of Tayeng village PO and PS Koloriang

Kurung Kumey District

Arunachal Pradesh and presently residing at Chimpu Village II Itanagar

Papumpare District

Arunachal Pradesh

3: Smti Yumlam Semey

Age:

Occupation :

D/o Shri Yumlam Tagung

a resident of Papu Nallah Naharlagun

PO and PS Naharlagun

Papumpare District

Arunachal Pradesh

4: Yumlam Logik

Age:

Occupation :

Son of Late Yumlam Tatang

Yumlam Village

PO and PS Koloriang

Kurung Kumey District

Arunachal Pradesh

5: Er Nangram Piter

Age:

Occupation :

Son of Late Nangram Sangkio a resident of Papu Nallah Naharlagun

PO and PS Naharlagun

Papumpare District

Arunachal Pradesh

VERSUS

The State of AP

represented by the PP of AP

Advocate for the Petitioner : Paniye Bate, L Kagung

Advocate for the Respondent : P P of AP,

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 18.11.2024

Heard Mr. P. Bate, learned counsel for the petitioners. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the State.

2. By filing this petition under Section 482 of the Code of Criminal Procedure, 1973 jointly, the petitioners have prayed for quashing of the criminal proceedings of G.R. Case No.33/2021, under Sections 468/471/120(B)/420 of the IPC, 1860 on the basis of the settlement arrived at between the petitioners.

3. The case, in brief, is that the petitioner No.1 being the proprietor of M/s Baby Enterprise, who had been initially authorized the petitioners No.2 and 3 to bid for a tender on his behalf with a condition whoever succeeds to execute the work on behalf of M/s Baby Enterprise in respect of construction of approached road from BRTF road to Tayang under SADA 2018-19 under PWD Sangram Division, Kurung Kumey District for an amount of Rs.96,08,200/-(Rupees Ninety six lakhs eight thousand two hundred). The petitioner No.3 had asked for sharing of the said construction work from the petitioner No.2, but the petitioner No.2 has denied. However, the petitioner No. 3 also started the work on the same stretch of road and after completion of the work, the payment was released against the petitioner No.1's firm i.e., M/s Baby Enterprise. The dispute started with regard to the payment in between the petitioner No.2 and the petitioner No.3, whereby the petitioner No.1 had issued a Cheque to both of them. However, the Cheque was dishonored due to insufficient fund.

4. The petitioners No.3 and 4 have lodged two FIRs against the petitioner No. 1 and 2 on 14.08.2021 and 18.08.2021, alleging that Shri Pani Tapo, Shri Bengia Pacha and the Executive Magistrate, Doimukh have jointly committed an offences punishable under sections 468/471/120(B)/420 of IPC. It further alleged that the petitioners No.1 and 2 have made illegal transaction by using forged documents with regard to the payment of the bills.

5. The aforesaid two FIRs dated 14.08.2021 and 18.08.2021, are quoted herein below:

To,

The Officer-in-Charge,

Police Station, Kolorinag,

Kurung Kumey District, Arunachal Pradesh.

Sub: FIR against Shri Pani Tapo, Shri Bengia Pacha and others punishable under section 468/471/120(B)/420 of IPC. for the commission of offences

Sir,

With due respect I am to inform you that shri Pani Tapo is the proprietor of M/S Baby Enterprise who won a tender for construction of Approach Road from BRTF Road to Tayang under the scheme SADA 2018-19 in the PWD Department. Thereafter, he has authorized me by authority letter dated 16.01.2020 (copy enclosed) and directed me to complete the remaining work of the aforesaid project and accordingly, I procured the raw materials and completed the work by putting men power, machineries and financial resources. Upon completion of the work, the PWD department has issued a cheque bearing

No.01565014 dated 24.02.2020 for the amount of Rs.67,33,000/- (Rupees sixty seven lakhs thirty three thousand) only against Pani Tapo's firm M/s Baby Enterprises. Thereafter, Shri Pani Tapo has issued a cheque to me vide cheque No.291543 dated 24.03.2020 for an amount of Rs.59,25,000/- (Rupees fifty nine lakhs twenty five thousand) only against my firm M/s Kiya Enterprises. However, when the said cheque was deposited for encashment, it got bounced for the reason that there is insufficient fund and payment stopped by the drawee.

Now, Shri Pani Tapo is claiming that he has made the payment to Shri Bengia Pacha as, he had authorized Shri Bengia Pacha to execute the work. In this regard, Shri Bengia Pacha has produced one Power of Attorney shown to have executed before the Executive Magistrate, Doimukh on 01.03.2019. However, when I enquired the records in the office of Executive Magistrate Doimukh, to ascertain whether on 01.03.2019, the alleged Power of Attorney was executed and registered, I found that the register book wherein registration of deeds/instrument are recorded is being manipulated (copy enclosed) and as such, Shri Pani Tapo, Shari Bengia Pacha in connivance with the Executive Magistrate, Doimukh have made the Power of Attorney dated 01.03.2019 (false document) in back date and have also manipulated the record of register book in order to get deliver the bill amounts duly payable to me in a fraudulent manner. They hatched the conspiracy to cheat me. Further, Shri Pani Tapo claims that, he has made the payment to Shri Bengia Pacha on the recommendation letter dated 25.03.2020 in the form of To Whom It May Concern of one Shri Yumlam Logik (GB), who mediated to settle the issue however, when I asked about the authenticity of said recommendation letter dated 25.03.2020, I was informed by Shri Yumlam Logik that he never written the recommendation letter dated 25.03.2020 and he has not put his thump impression as shown on it.

Thus, modus operandi is clear from sequence of action/conduct with

supporting documents that, Shri Pani Tapo, Shri Bengia Pacha and the Executive Magistrate, Doimukh have jointly committed an offences punishable under sections 468/471/120(B)/420 of IPC and therefore, I request you to register the case against them, who have fraudulently received the department bills of the said project work duly payable to me. The delay in lodging the FIR was due to collection of documents such as record from the office of Executive Magistrate, Doimukh and clarification from one Shri Yumlam Logik.

I earnestly request you to seize the entire relevant records/documents from the office of Executive Magistrate, Doimukh so that, it may not be tampered with.

Yours faithfully

Mrs. Yumlam Semay

D/o Shri Yumlam Tagung,

R/o village Yumlam, Koloriang

District Kurung Kumey (A.P)”

To,

The Officer-in-Charge,

Police Station, Koloriang,

Kurung Kumey District, Arunachal Pradesh.

Sub:- FIR Against Shri Pani Tapo for cheating and Forgery my signature.

Sir,

With due respect, I am to state that, the above name Shri Bengia Pacha and Shri Pani Tapo has made a false document under the head "TO WHOM IT MAY CONCERN" date 25/03/2020 and on the basis of which, they have made illegal transaction. In the said false document, it was written that I mediated the pending

bill issue being claimed by Shri Bengia Pacha and Mrs Yumlam Semey and that i have decided in favour of Shri Bengia Pacha, which is false and the thump impression put to the said false document in not of mine.

Therefore, I request you to take necessary action against the culprit as per the provision of law.

Thanking You sir.

Yours faithfully

(Yumlam Logik), GB

Yumlam Village, Koloriang”

6. On receipt of the above two FIRs, the case being Koloring P.S. Case No.17/2021, under Sections 468/471/120(B)/420 IPC was registered. Upon completion of the investigation, a charge-sheet has been filed against the petitioners No.1 and 2, which is pending trial before the learned Judicial Magistrate First Class, Koloriang in G.R. Case No.33/2021.

7. Mr. P. Bate, learned counsel for the petitioners, submits that during the pendency of the trial of the case, the parties have entered into a mutual agreement dated 30.05.2024, particularly between the petitioners No.1, 2 and 3, whereby the parties have resolved the dispute amicably as the matter relates to business transaction regarding execution of construction of road pursuant to an NIT. He submits that the FIRs were lodged by the petitioners No.3 and 4 due to certain misunderstanding and the parties have settled and decided to maintain cordial relationship amongst themselves.

8. Mr. Bate, learned counsel, while referring to the statement recorded, particularly, the cross-examination of the petitioner No.2, submits that otherwise also, no offence is made out against the petitioners No.1 and 2, therefore, the criminal proceedings of G.R. Case No.33/2021 pending before the learned Judicial Magistrate First Class, Koloriang may be set aside and quashed.

9. Mr. Tado, learned Addl. Public Prosecutor, in his usual fairness, submits that the case relates to a business transaction between the petitioners which may not be an offence against the society. That apart, the petitioners have voluntarily settled the matter by executing a mutual settlement amongst the petitioners. Therefore, in view of the attending facts of the present case, he submits that this Hon'ble court may consider and pass an appropriate order.

10. Due consideration has been extended to the submissions of the learned counsels for the parties and also perused the record of the trial Court.

11. As noted above, two FIRs were filed against the petitioners No.1 and 2 by the petitioners No.3 and 4, before the Officer-in-Charge, Police Station, Koloriang, alleging certain illegal transaction by using forged/false documents, which relates to issuance of Cheque and the payment thereof, for the execution of contract work on behalf of the firm of the petitioner No.1, M/s Baby Enterprise. The contract work relates to construction of road from BRTF road to Tayang under SADA 2018-19 under PWD Sangram Division, Kurung Kumey District. Thus, undisputedly, the matter relates to a business transaction relating to issuance of a Cheque and payment thereof.

12. On the perusal of the materials on record, *prima facie*, no case under Sections 468/471/120(B)/420 IPC appears to have been made out, although the charge-sheet has been filed against the petitioners No.1 and 2. The deposition of the petitioner No.3, clearly reveals no offence is established against the petitioners No.1 and 2.

13. It is noted that during the pendency of the criminal proceedings, the parties have entered into a settlement vide dated 07.05.2024 without there being any coercion from any angle rather a settlement with their own volition to maintain cordial relationship in future amongst the petitioners.

14. It would be apposite to refer to the law laid by the Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. Lakshmi Narayan and Ors.**, reported in **(2019) 5 SCC 688**, wherein the Hon'ble Supreme Court after considering the law and earlier decisions on the point, has observed, inter alia, that the power conferred under Section 482 of the Cr.P.C. to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves.

15. Having considered the submissions of the learned counsels for the parties and also the materials placed on record, coupled with the Deed of Mutual Settlement dated 07.05.2024 between the petitioners, I am of the considered view that the disputes predominantly of civil character, which has arisen out of

business transactions relating to work contract and payment thereof.

16. Having regard to the facts and circumstances of the present case and considering the fact that the petitioners have entered into and executed settlement deed and also in view of the principle of law laid down by the Hon'ble Supreme Court, this court is of the opinion that the present case is one of the cases where the inherent power of this Court under Section 482 of the Cr.P.C. can be invoked.

17. Accordingly, the criminal proceedings being G.R. Case No.33/2021, under Sections 468/471/120(B)/420 of the IPC, pending before the learned Judicial Magistrate First Class, Yupia is hereby quashed.

18. The criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant