



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

Case No. : Crl.Petn./66/2021

Yari Tok@Tok Yari
D/o Late Tok Kapa, Vill Balijan, PO and PS Balijan, Dist. Papum Pare, Arunachal Pradesh and presently residing at Abo Tani Colony, Itanagar, PO and PS Itanagar, Dist. Papum Pare, Arunachal Pradesh, Mobile No. 7099208862

VERSUS

THE STATE OF AP and Anr.
Represented by the Public Prosecutor

2:Nich Serbi
Age: 0
Occupation:
S/o Late Nich Teki, resident of Bage Tinali, PO & PS: Nirjuli, Dist: Papum Pare, Arunachal Pradesh.

Advocate for the Petitioner : Nani Anju, Amicus Curiae

Advocate for the Respondent : Mr.T. Ete, Addl. P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

Date : 16-05-2024

Heard Ms. N. Anju, learned *Amicus Curiae* for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State of Arunachal

Pradesh. None appears for the respondent no. 2, despite service of notice.

2. This is an application under Section 482 of the Cr.P.C., 1973 praying for quashing of the F.I.R. registered as Nirjuli P.S. Case No. 48 of 2021 under Sections 417/420 of the IPC, 1860 read with Section 138 of Negotiable Instruments Act, 1881.

3. The case emanates from an F.I.R. lodged by the respondent no. 2, namely, *Shri Nich Serbi*, on 17.06.2021 before the Officer-in-Charge, Nirjuli Police Station, alleging that he had given a loan of Rs. 9,90,000/- (Rupees Nine Lakhs Ninety Thousand) only to the petitioner on 26.01.2020. The said loan was taken by the petitioner on the promise that same would be returned within a month. However, the petitioner did not repay the said loan amount. The respondent no. 2/informant had asked for return of the said loan amount. Since, the petitioner was not in a position to repay the said loan amount, they executed an agreement on 02.10.2020, wherein, she had agreed to repay the amount within 05.10.2020. Despite such agreement, the petitioner did not return the said loan amount and started avoiding the respondent no. 2. It is alleged that after much persuasion by the respondent no. 2, the accused petitioner had issued a cheque in favour of the informant for an amount of Rs. 14,00,000/- (Fourteen Lakhs). On presentation of the cheque issued by the petitioner, the cheque was returned unpaid with a reason of insufficiency of fund in the account of the accused petitioner, in other words, the cheque had bounced.

4. Pursuant to the said FIR, a case was registered as Nirjuli P.S. Case No. 48 of 2021 under Sections 417/420 of IPC, 1860 read with Section 138 of Negotiable Instruments Act, 1881 (NI Act in short).

5. Ms. N. Anju, learned *Amicus Curiae* for the petitioner submits that Police in exercise of Power under Section 154 of the Cr.P.C., cannot register a case for an offence under Section 138 of NI Act. Section 142 of NI Act even bars the Court from taking cognizance of offence under Section 138 except upon a complaint, in writing. Therefore, she submits that the registration of case under Section 138 of NI Act is illegal and without jurisdiction.

6. Ms. N. Anju, learned *Amicus Curiae*, submits that in the entire written complaint of the respondent no. 2, except for allegation that the petitioner had failed to make repayment of the loan amount on the due dates, no allegations about cheating, deceit, false representation, dishonest and fraudulent inducement are disclosed. The allegation of failure to repay the loan amount does not attract the provision of Sections 417 and 420 of the IPC and the mere fact that the petitioner no. 2 had used the expression “*fake promise*” in the complaint is inconsequential as the basic ingredient of cheating is missing in the F.I.R. She submits that the uncontroverted allegations even if taken in its face value do not make out any criminal offence and not to speak of any cognizable offence. She further submits that on the face of it, at best, it would give rise to a dispute purely civil in nature and for such civil dispute, the respondent no. 2 has remedy under the civil law and for disclosure of cheque, a complaint before the Magistrate under NI Act. She further submits that civil liability cannot be converted in criminal liability by giving cloak of criminal offence. The Investigating Agency without application of judicious mind has registered the Police case on the basis of allegation which clearly disclose a dispute purely civil in nature. Therefore, she prays that the FIR, registered as Nirjuli P.S. Case No. 48 of 2021 under Sections 417/420 of IPC, 1860 read with Section 138 of NI Act, against the

petitioner is liable to be quashed.

7. In support of her submission, Ms. N. Anju, learned *Amicus Curiae* for the petitioner has placed reliance on the following judgments:

(i). ***Prof R K. Vijayasarathy and Anr. vs. Sudha Seetharam and Anr.***, reported in ***(2019) 16 SCC 739***.

(ii). ***State of Haryana and Ors. vs. Bhajan Lal and Ors.***, reported in ***1992 supp (1) SCC 335***.

(iii). ***Paramjeet Batra vs. State of Uttarakhand and Ors.***, reported in ***(2013) 11 SCC 673***.

(iv). ***Uma Shankar Gopalika vs. State of Bihar and Anr.***, reported in ***(2005) 10 SCC 336***.

8. Mr. T. Ete, learned Additional Public Prosecutor, fairly submits that on the bare perusal of the contents of the F.I.R., it does not disclose any criminal liability much less cognizable offence. It only discloses false promise to repay the loan amount advanced by the respondent no. 2 to the petitioner. He further submits that no FIR can be registered under Section 138 of NI Act. The remedy lies in filing a complaint before the Magistrate under NI Act and not by way of FIR before the Police Station. Therefore, on the face of it, since the complaint is of a civil nature and a civil remedy is available under NI Act, the registration of the case on the basis of such compliant/FIR would be an abuse of the process of law.

9. In support of his submission, Mr. T. Ete, learned Additional Public Prosecutor for the State has placed reliance on the following judgments:

(i). ***Arun Bhandhari vs. The State of Uttar Pradesh and Ors.***,

reported in **(2013) 2 SCC 801.**

(ii). **A K Ali vs C. H. Mammuty and Anr.,** reported in **1988 SCC OnLine Ker 398.**

10. Due consideration has been extended to the submissions of the learned counsels for the parties and have scrutinised the materials available on record.

11. The respondent no. 2 had filed a complaint/FIR against the petitioner essentially alleging that the petitioner has failed to repay an amount of Rs. 9,90,000/- (Rupees Nine Lakhs Ninety Thousand) only borrowed by her. The respondent no. 2 requested for repayment of the said borrowed amount. Since the petitioner was not in a position to repay the said amount, they had entered into a hand written agreement on 02.10.2020, wherein, the petitioner had agreed to repay the said amount by 05.10.2020 and further assured that if she fails to repay the said amount, the same shall entail an interest @ 5 % per month w.e.f. 26.01.2020. Thereafter, the petitioner had failed to repay the amount as agreed on 02.10.2020. She made certain assurances and promises for repayment of the said loan amount.

12. Finally, the petitioner had issued a cheque of Rs. 14,00,000/- (Fourteen Lakhs) only bearing cheque no. 004571. However, when the cheque was deposited, the same had bounced

13. On receipt of an F.I.R. lodged by the respondent no. 2, a case has been registered under Sections 417/420 of IPC, 1860, read with Section 138 of NI Act.

14. It is noticed that the Investigating Officer had filed an application on 10.08.2021 before the Chief Judicial Magistrate, Yupia, praying for issuance

of Non Bailable Warrant of Arrest (NBWA) against the petitioner. Vide order dated 19.08.2021, the Chief Judicial Magistrate, Yupia directed the Investigating Officer to first issue notice under Section 41(A) of the Cr.P.C. It has been observed by the learned Chief Judicial Magistrate, Yupia that no *prima facie* case under Sections 417/420 of the IPC is made out. Accordingly, notices were issued to the petitioner under Section 41(A) of the Cr.P.C. on 28.08.2021 and 05.09.2021.

15. In order to appreciate the matter, I deem it appropriate to consider the Sections 417 and 420 of the IPC.

16. Section 417 of the IPC provides for a punishment for cheating, wherein, it is provided that whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. Section 420 of the IPC provides that whoever cheats and thereby, dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destruct the whole or any part of valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable fine.

17. On bare reading of both the Sections, it is seen that under Section 417, it provides punishment for cheating and Section 420 provides for punishment for aggravated form of cheating. The essence of both the Sections, is "*Cheating*", which is defined under Section 415 of IPC and the same is reproduced hereinbelow:

".. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to

consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

18. The essential ingredients to constitute offence of cheating under Section 415 IPC, are, firstly, deception of a person either by making a false or misleading representation or by other action or omission; Secondly, fraudulent or dishonest inducement of the person to deliver any property or to consent to retention thereof by any person or to intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and thirdly, such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. In order to constitute an offence under Section 420 of the IPC, there should not only be cheating, but as consequence of such cheating, the accused should have dishonestly induced the person so deceived, firstly, to deliver any property to any person and secondly, to make, alter or destroy the whole or any part of the valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security.

20. To fasten an accused with criminal liability of cheating, it has to be established that the intention of the accused was dishonest at the time when he made a promise and entered into a transaction with the complainant to part with his property or money. The *men srea* of the person at the time of making the inducement or false representation is *sine qua non* to hold the accused guilty for commission of cheating. On the other hand, if all that is established that the representation made by the accused has subsequently

not been kept, criminal liability cannot be fastened on the accused. There is a difference between breach of contract and offence of cheating. Mere breach of contract cannot give rise to a criminal prosecution unless fraudulent, dishonest intention is shown at the inception of the transaction.

21. In the present case in hand, on the bare reading of the contents of the F.I.R., it is seen that the allegation is to the extent of failure to make repayment of the loan/borrowed amount of Rs. 9,90,000/- (Rupees Nine Lakhs Ninety Thousand) only, by the petitioner to the respondent no. 2. There are no allegations worth considered about cheating, deceit, false representation, dishonest and fraudulent inducement. It only discloses of false assurance as well as bouncing of cheque.

22. The allegation of failure to repay the loan amount does not attract the provisions of Sections 417 and 420 of the IPC as the ingredients of cheating is completely missing. The uncontroverted allegation, even if taken on its face value, do not make out any criminal offence, much less any cognizable offence. The contents of the FIR, at best would give rise to a dispute purely civil in nature and for such civil dispute, the party has remedy under the Civil law.

23. Having regard to the Section 138 of the NI Act, that the respondent no. 2/informant has the remedy of filing a complaint before the Magistrate under the NI Act for dishonour of cheque.

24. It is needless to observed that civil liability cannot be converted into criminal liability by giving cloak of criminal offence. In the present case, the Police has registered the present case on the basis of the allegation which discloses a dispute purely civil in nature and strangely under Section 138 of

NI Act, which is clearly without jurisdiction and which would be an abuse of the process of law.

25. During the course of hearing, Ms. N. Anju, learned Amicus Curiae has submitted that during the pendency of the present case, the respondent no. 2, has instituted a Money Suit against the petitioner before the Civil Judge (Senior Division), Yupia, which has been registered and numbered as Money Suit 0000091 of 2022, which fortifies that the dispute in the present case is purely civil in nature.

26. I have perused the case laws referred to by the learned counsel for the parties. These are settled propositions of law which needs no further discussion. It would suffice to quote the observation in the case of **Prof. R. K. Vijiyasarathy** (Supra) which is as under:

“...10. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.”

27. In view of the discussions made, hereinabove, I am of the considered view that the F.I.R., dated 17.06.2021 filed by the respondent no. 2 does not disclose any criminal offence under Sections 417 or 420 IPC and at best would be dispute purely of civil nature between the petitioner and the respondent no. 2, for which, remedy lies before a Civil Court by filing a proper suit, which by now has been stated to have been filed by the respondent no. 2 before the Civil Judge (Senior Division) being Money Suit

0000091 of 2022 and for dishonour of cheque, the remedy is, a complaint before the Magistrate under NI Act.

28. Thus, in my opinion, in view of the facts and circumstances of the present case, allowing the Police investigation to continue would be an abuse of the process of law and to prevent the same, it would be just an expedient for this Court to quash the same by exercising the inherent power under Section 482 Cr.P.C., 1973.

29. Accordingly, F.I.R. dated 17.06.2021 registered as Nirjuli P.S. Case No. 48 of 2021, under Sections 417/420 of IPC, 1860 read with Section 138 of NI Act and the consequential proceedings are hereby quashed.

30. In the result, the criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant