

GAHC020004292023



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

Case No. : Crl. Pet./20/2023

SHRI NIAZ AHMED,
MANAGING DIRECTOR,
M/S SUZU ELECTRICALS PVT. LTD.,
S/O LATE SHAMSUDDIN AHMED,
RESIDENT OF WARD NO.2, N.H 15, P.O AND P.S MANGALDOI,
DISTRICT DARRANG, ASSAM

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE PUBLIC PROSECUTOR, NAGALAND 2:SHRI PHILIP
SHOHE

PROPRIETOR
M/S SHOHE ENTERPRISE

ANKAI BUILDING
NEAR TATA PARKING KHERMAHAL

DIMAPUR
NAGALAND

PIN 797112

3:SHRI L. JONGSHIYANGER

PROPRIETOR
M/S LEMTUR ENTERPRISE

H.NO.3
SECTOR A
AOYIMT
DIMAPUR

NAGALAND
PIN 797115

4:SHRI EKONTHUNG

PROPRIETOR
M/S MURRY ENTERPRISE

REGISTERED OFFICE P.D. 2 (A)

U.B.C. DOYANG
WOKHA
NAGALAND PIN- 797100

5:SHRI AMETO YEPHTO

PROPRIETOR
M/S L.H. ENTERPRISE

LHOMITHI COLONY
DIMAPUR

NAGALAND PIN- 79711

Advocate for the Petitioner : S. HAQUE, S.H. SIKDAR,M SOLO

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 12-11-2024

JUDGMENT & ORDER (Oral)

Heard Mr. S. H. Sikdar, learned counsel for the petitioner. Also heard Ms. S. Mere, learned P.P. for the State and Mr. P. Surien, learned counsel for the respondent Nos. 2 to 5.

2] By way of this petition, under Section 482 of the Code of Criminal Procedure, 1973, the petitioner is seeking quashing of entire criminal proceeding in respect of GDE No.09/2023 dated 12.07.2023 of Sub-Urban Police Station, Dimapur, Nagaland.

3] The facts of the case is that the respondent Nos. 2 to 5 lodged a complaint dated 12.07.2023 before the Officer-in-Charge Sub-Urban Police Station Dimapur Nagaland alleging that the accused/petitioner and the Directors of the 4 proprietorship firm of which the respondent Nos. 2 to 4 are proprietor has entered into an agreement whereby the accused/petitioner was required to supply electrical products to the warehouses of the respondents. It is alleged in the complaint that though initially the delivery was made as agreed however, later on the delivery was stopped. It is further alleged that despite repeated reminders, the accused/petitioner failed to deliver the agreed products and in this manner it is alleged that the accused/petitioner has intentionally cheated the respondents/complainants. Accordingly, GDE entry was made as GDE No.09/ dated 12.07.2023. Thereafter, the Investigating Officer of the jurisdictional Police Station on 01.08.2023 issued notice to the accused/petitioner under Section 41-A Cr.PC to appear before the Investigating officer of the case along with all the relevant documents. Upon receipt of the aforesaid notice issued under Section 41-A Cr.PC, the petitioner/accused approached this Court by filing the present criminal petition seeking quashing of the

criminal proceeding initiated in respect of the aforesaid GD entry i.e GDE 09/2023.

4] Mr. S.H. Sikdar, learned counsel for the petitioner submits that the allegation as contented in the complaint does not constitute any criminal offence whatsoever and as such, the continuation of the criminal proceeding based on such complaint is not justified. He further submits that if the averment made in the complaint is taken at its face value, the same at best is purely a civil wrong. He further submits that under the subject Memorandum of Understanding (MOU) there is an arbitration clause and hence, the complainants instead of taking recourse to the said arbitration clause has filed the complaint only as a pressure tactics and therefore, is a total abuse of the Court process.

In support of the aforesaid submission, he relied upon the decision of the Apex Court in the case of ***V.Y. Jose and another vs State of Gujarat and Anr.*** reported in ***(2009) 3 SCC 78.***

5] Per contra, Mr. P. Surien, learned counsel for the respondent Nos. 2 to 5 submits that the act of criminality is apparent on the face of the allegations of the complaint lodged by the complainants. He further submits that even if the allegation pertains to civil in nature, the allegation also involves criminality, and that, the criminal proceedings cannot be scuttled at the threshold. He submits that the prayer for quashing the criminal proceeding is at pre-mature stage and the same ought not to be

entertained by this Court. He further submits that since the statements are yet to be recorded and charge-sheet is also not filed, this Court should restrain from quashing the criminal proceeding while exercising inherent jurisdiction under Section 482 of the Cr.PC. He submits that the criminal prosecution cannot be thwarted merely because the dispute pertains to be civil.

6] He further submits that existence of an arbitration clause is also not a sufficient ground for quashing the complaint filed by the respondents/complainants. He further submits that quashing of the complaint is not justified on the ground that the complaint discloses a commercial or civil transactions. He further submits that many a time cheating is committed in the course of the transactions which is the exact situation of the present case. He further submits that the modus-operandi adopted by the accused/ petitioner is same in all the four transactions with the respondents/complaints No. 2 to 5 and that it is apparent that his intention was fraudulent from the beginning.

In support of his submission, the learned counsel for the respondent Nos. 2 to 5 relies upon the following decisions of the Apex Court:-

1) ***Kaptan Singh Vs. State of Uttar Pradesh and Others*** reported in ***(2021) 9 SCC 35***.

2) ***Trisuns Chemical Industry Vs. Rajesh Agarwal and others*** reported in ***(1999) 8 SCC 686***.

3) ***Rajesh Bajaj Vs. State NCT of Delhi and Others*** reported in ***(1999) 3 SCC 259.***

7] Ms. S. Mere, learned Public Prosecutor for the State submits that she has received the up to date status report in connection with the aforesaid GDE No.09/2023 dated 12.7.2023 which she placed before this Court. A copy of the aforesaid status report dated 6.11.2024 is kept on record and marked as 'Y'. Relying on the aforesaid report she submits that the Investigating Officer has reported that there are materials to indicate that the accused/ petitioner has committed offence of cheating.

8] I have given my prudent consideration to the arguments made by the contesting counsels and have perused the materials available on record including the status report dated 6.11.2024 placed before this Court by the learned P.P and the citations submitted at the bar.

9] The principles of exercise of power under Section 482 Cr.PC to quash the FIR are well settled. Reference is made to ***Madhavrao Jiwaji Rao Scindia & Anr etc. Vs. Sambhajirao Chandrojirao Angre & Ors*** reported in ***(1988) 1 SCC 692, State of Haryana & Ors Vs. Bhajanlal & Ors*** reported in ***(1992) Suppl 1 SCC 335*** and ***M/s Zandu Pharmaceutical Works Ltd Vs. Md. Sharaful Haque & Anr.*** reported in ***(2005) 1 SCC 122.***

10] The principles as enumerated from the aforesaid decision of the Apex Court relevant to our purpose are reproduced here

under for ready reference:-

“i. A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

ii. A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

iii. The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

iv. The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in details, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

v. A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

11] The test therefore is to take the allegation made in the FIR/complaint at its face value and accepting the same in its entirety, if prima facie criminal offence is made out or not against the accused/petitioner.

12] Apt to refer to the contents of the complaint dated 12.07.2023 which is reproduced here under for ready reference:-

"To,

*The Officer-in-Charge,
Sub-Urban Police Station,
Dimapur, Nagaland.*

Sub: Complaint against Shri. Niaz Ahmed, son of Lt. Shamsuddin Ahmed, Managing Director of Suzu Electricals Pvt. Ltd. bearing its GST No. 18ABECS9693P175 and Company incorporation No. CIN-U519099AS2020PTC020738 situated at NH-15, Ward No. 2, Po-Mangaldoi, Assam-784125.

Respected Sir,

With reference to the above cited subject, we, the undersigned, beg to state few lines for your kind consideration and necessary action please.

1. *That Sir, we came to know the Managing Director Shri. Niaz Ahmed of the "SUZU ELECTRICALS PVT. LTD." Company through one person namely Shri. Elan Ngullie who is the representative and Nagaland-In-Charge for the said company, a resident of Purana Bazar, Dimapur and as said he is the one who introduced us with the said director/company".*

2. *That Sir, accordingly we by way of Memorandum of Understanding (MoU) came to an agreement with the above mentioned company i.e. "SUZU ELECTRICALS PVT. LTD." which deals in with all kinds of Electrical Products and Appliances for supplying the same for a term of 36 months in the year 2021 as "Stockiest Points/Ware House Partners".*

3. *That Sir, as per the said MoU, we had to deposit certain amounts in advance as mentioned in the said MoU as investment to the said company and as such, we had accordingly deposited the valued amount for the electrical products and appliances to the said company and the said products were to be delivered at the respective Ware Houses by the said company and the benefits were to be provided to us as per MoU.*

4. *That Sir, as per the MoU, the said company was to re-fill our Ware House after every 15 to 20 working days. But however after the investment amount as mentioned above which we had paid to the said company, the company had made only two times delivery and all the delivered products/items were being sold and the amount share were being paid to the said company. But unfortunately thereafter, the said company had to the said company had stopped sending the products at our respective Ware Houses even after being repeatedly informed to Shri. Niaz Ahmed, the director of the said company that the stock was over.*

5. *That Sir, since the said company had failed to deliver the required products at the right time to us as promised and agreed, and the assured benefits, therefore; we had decided to withdraw our MoU from our end and as such, we had e-mailed the company at (admin@suzugroups.in) for withdrawal of our agreement in the year 2022. However, the said company did not take any initiative to resolve the matter amicably though the same was well within the knowledge of the company/Shri. Niaz Ahmed, the director of the said company via the said e-mail.*

6. *That Sir, therefore, even after the execution of the MoU, which clearly states all the terms and conditions and acknowledging the same by the said company represented by its Managing Director Shri. Niaz Ahmed, he had intentionally cheated, fraud and breached our trust by cheating us. Hence, it clearly shows that the said Managing Director Shri. Niaz Ahmed of the said company had malafide intention from the very beginning and/or from the inception to cheat us.*

7. *That Sir, we have had been repeatedly trying our level best to communicate with the Managing*

Director Shri. Niaz Ahmed of the said company by repeated calls for the last several months but he has deliberately avoiding our calls and messages by not responding either to our calls or messages. Therefore, having left with no option, we are compelled to approach before your kind authority since the said Managing Director Shri. Niaz Ahmed of the said company is not approachable to us though we tried our best to settle the matter between us as sated.

8. That Sir, it is further stated that as per ther said MoU, it has been clearly mentioned that if any of the party violates any of the points/conditions then the defaulter party shall be guilty before the law.

9. That Sir, we have deposited the following amounts as investments which are as under:-

a) M/s Shohe enterprise represented by the proprietor Shri Philip Sema an amount of Rs.15,00,000/-

(b) M/s Lemtur enterprise represented by the proprietor Shri L. Jongshiyanger an amount of Rs.8,00,000/-

c) M/s Murry enterprise represented by proprietor Shri Ekon-thung Murry an amount of Rs.5,00,000/-

d) M/S L.H Enterprise represented by proprietor Shri Amento Yeptho an amount of Rs.5,00,000/-

10. That Sir, therefore, in view of the above stated facts, we have been compelled to lodge this complaint against Shri Niaz Ahmed and as such would be kind enough to register an FIR in this regard under appropriate provisions of law and further take necessary action against the said culprit for the interest of justice.

And for which act of your kindness, we shall
ever remain grateful to you.

Thanking you

1. Memorandun of Understanding
2. Driving Licence of Shri Niaz Ahmed
3. Transaction Details/documents.”

13] Reading of the said complaint dated 12.07.2023 indicates that the MOU was filed by the respondent Nos. 2 to 4 respectively with the accused/petitioner for supply of electrical products and appliance for a term of 36 months in the year 2021 as stockiest points/ware house partners. It further appears that in terms of the aforesaid MOU, the complainants have to deposit certain amount in advance as mentioned in the said MOU and the respondents/complainants accordingly deposited the valued amount for electrical products and appliances to the accused/petitioner company and the said products were to be delivered at the respective ware house of the complainants by the accused/petitioner company and their benefits were to be provided to the complainants as per the terms of the subject MOU. It further appears that as per the terms of MOU, the accused Company was to refill the ware house after every 15 to 20 working days. But after the invested amounts were deposited by the complainants to the accused Company, it is alleged that the accused Company had made only 2 time delivery. It is further alleged that the said company thereafter stopped sending products to the said ware house even after repeated request after the stocks was over.

14] In view of the failure of the accused Company for delivering the requisite products in terms of the MOU, the complainants issued email for withdrawal of the subject MOU. Since the accused/petitioner did not initiate any steps to resolve the matter, the agreements were terminated by the complainants/respondents. In the aforesaid backdrop, it is alleged that the ac-

cused/petitioner had intentionally cheated, fraud and breached the trust of the complainants.

15] What transpires from the above is that due to the failure of the petitioner/accused to deliver the electrical products to the subject warehouses as per the terms and conditions of the subject MOU, the MOUs were withdrawn by the complainants/respondents. It is further apparent that under the said MOU in the event of breach of the terms and conditions of MOU, the said dispute is to be settled by referring the matter to an Arbitrator. In the instant case, no such recourse for initiating arbitral proceedings has been taken by complainants/ respondents.

16] Apt also to refer to the status report dated 6.11.2024 which has been placed before this Court by the learned P.P wherefrom, it appears that during the enquiry, the statements of the complainants and other witnesses have been recorded. It further appears that from the statements of the complainants that though the accused/petitioner was supplying goods and materials in terms of the subject MOU, however later on the supply was stopped. It further appears that after various requests made by the complainants for re-payment of the deposits, except in respect of the MOU with M/s Shohe Enterprise where some amount was paid, the deposits in respect of the other complaints was not returned. It further appears that pursuant to the withdrawal of the MOU by the complainants, the accused Company is liable to pay back the invested amount of the complainants. It further appears that during the course of enquiry, it was learnt

that another FIR dated 23.8.2022 was lodged against the accused/petitioner by one Mrs. Noktinaro Aier, proprietor of Onno Enterprise being SBN PS GDE No.03/22 dated 23.8.2023. It is on the aforesaid backdrop, the Investigating Officer has reported that the accused company has been duping/cheating innocent young Naga entrepreneurs who has just started their business with their hard earned money.

17] Let me now examine whether the aforesaid allegation if it is taken in its entirety constitute the offence of cheating under Section 415 of IPC. Section 415 of IPC is reproduced here under for ready reference:-

“415. Cheating-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".

Explanation. A dishonest concealment of facts is a deception within the meaning of this section.

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly

induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z. without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats."

18] The essential ingredients of the offence of cheating are:-

(i) deception of a person either by making a false or misleading representation or by other action or omission.

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he was 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.

19] Thus, the mandate of law is that there has to be a dishonest intention from the very beginning, which is *sine qua non* to hold the accused guilty for commission of the offence of cheating.

20] In the present case, it is apparent that there is no averment whatsoever to the effect that the accused/petitioner has induced the complainants to deliver any property or to do or to omit to do something which they would not otherwise have done or omitted. It appears that the accused/petitioner was supplying the requisite goods in terms of the subject MOU and has stopped supplying later on. However, after stopping the supply, it appears that the accused/petitioner has returned some portion of deposits to one of the complainant. It appears that due to the breach of the terms and conditions of the MOU, the agreements were withdrawn by the complainants. Thus, it is apparent that a clear case of breach of contract is made out. However, none of the basic ingredients of the offence of cheating is present in the backdrop of the aforesaid allegations. Hence, offence under Section 415 IPC is not made out against the petitioner. Mere bald allegation of cheating shall not constitute an offence of cheating unless the basic ingredients of cheating is made out in the face of the allegation leveled in the complaint and or materials collected by the I.O during the course of investigation.

21] This takes me to the arguments of the respondents that the *modus operandi* of the accused/petitioner is same in respect of the four subject MOUs and as such, the criminal offence

is made out is also totally misconceived in the context of the present case.

22] The allegation contained in the complaint may involve purely a civil wrong or purely criminal offence or a civil wrong and also a criminal offence. In the first situation no criminal prosecution can be initiated. However, in the second and third instances, criminal prosecution can be initiated. In the present case, it is abundantly clear that the issue involved is breach of the terms and conditions stipulated in the subject MOUs. In the subject MOUs, the parties have agreed to settled disputes if any through arbitration. However, the complainants/respondents instead of taking recourse to the arbitration procedure, filed a complaint before the jurisdictional Police Station. Undoubtedly, existence of Arbitral Clause shall not exclude criminal proceedings, if the alleged breach also involves criminal offence. However, in the present case, as noted above it is mere breach of contract without any element of criminal offence being present in the allegations made. It thus appears that the complainants/respondents instead of taking recourse to arbitral proceedings, lodged criminal complaints only to apply pressure to the accused/petitioner to return the investment made by the complainants/respondents. It is well settled that any effort to settle civil disputes and claims, which does not involve any criminal offence, by applying pressure through criminal prosecution should be depreciated and discouraged. Reference is made to the case of the Apex Court in the case of ***M/s Indian Oil***

Corporation Vs. M/s NEPC India Ltd. & Ors reported in **(2006) 6 SCC 736.**

23] Paragraph 13 of the aforesaid decision is reproduced here under for ready reference:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P.¹¹ this Court observed: (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

24] Reference is also made in the case of **V.Y.Jose and Another (Supra)**, wherein paragraphs 28, 29 and 30 is reproduced hereunder:-

"28. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The Superior Courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of Section 483 of the

Code of Criminal Procedure to supervise the functioning of the trial courts.

29. An offence of cheating may consist of two classes of cases :

(1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused.

30. It is in that sense, a distinction between a mere breach of contract and the offence of cheating should be borne in mind. We, having regard to the facts and circumstances of the case, are of the opinion that no case has been made out and against the appellant so as to hold that he should face the criminal trial.”

25] It is apparent from the above cases that when the allegation essentially involves civil offence, the same should not be allowed to become a subject matter of criminal proceeding. In the present case as stated above, it is apparent that the case involves essentially a dispute of civil nature and therefore, it appears that the complainants by lodging complaint has resorted short cut for execution of non existence decree and hence is an abuse of the Court process. Merely, because of the accused/ petitioner having breached 5 nos. of MOUs, does not make the said breach criminal unless and until the same is done with fraudulent intention from the beginning. Apparent that no such intention has been leveled by the complainants against the accused/petitioner. In fact, the accused/petitioner had returned some portion of the deposit to one of the complainant after the supply was stopped. Therefore, it is apparent that the case is one of mere breach of contract.

26] Let me now consider whether the allegations in the complaint make out a case of criminal breach of trust under Section 405.

27] Apt to refer to Section 405 of IPC which is reproduced hereunder for ready reference:-

"405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits 'criminal breach of trust'."

28] A careful reading of the section shows that a criminal breach of trust involves the following ingredients: (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. The following are examples (which include the illustrations under Section 405) where there is "entrustment":-

(i) An "executor" of a will, with reference to the estate of the deceased bequeathed to legatees.

(ii) A "guardian" with reference to a property of a minor or person of unsound mind.

(iii) A "trustee" holding a property in trust, with reference to the beneficiary.

(iv) A "warehouse keeper" with reference to the goods stored by a depositor.

(v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.

(vi) A servant or agent with reference to the property of the master or principal.

(vii) A pledge with reference to the goods borrower pledged by the owner/borrower.

(viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-cum-trust. (Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor.)

29] Therefore, to constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered

to do.

30] It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.

31] Reading of the complaint, it is apparent that none of the basic ingredients of criminal breach of trust is also made out. Thus, no offence under Section 405 IPC is also made out. Pertinent, that a case of breach of trust may be both a civil wrong and a criminal offence. But there would be certain situation where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of those types where at best, the allegation may predominantly constitute a civil wrong however, the ingredients of the criminal offences are wanting. Therefore, continuation of the criminal proceeding against the accused/petitioner is not justified.

32] Further, the citations submitted by the private respondents appears to be in the context when civil proceedings are also maintainable wherein the Apex Court has held that criminal proceedings ought not to be thwarted. The decision of the Apex Court is contextual and as such, the aforesaid decisions are not applicable in the context of the present case.

33] Thus, allegation leveled in the case in hand, if taken on its face value, the same is essentially civil in nature and therefore, continuation of criminal proceeding pursuant to the aforesaid complaint is not justifiable.

34] Accordingly, this Court is of the considered opinion that in the facts and circumstances of the case, the criminal proceeding is liable to be quashed. Resultantly, the impugned criminal proceeding in connection with GDE 09/2023 dated 12.07.2023 of the Sub-Urban Police Station, Dimapur, Nagaland stands quashed and set aside.

35] The criminal petition stands disposed of.

**Sd/-
JUDGE**

Comparing Assistant