IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Criminal Petition No.18 of 2016

Shri Moirangthem Digendra Singh aged about 48 years, S/o M. Homen Singh of Khongman Pandit Leikai, P.O. Imphal, P.S. Irilbung, Imphal East District, Manipur.

... Petitioner/s.

-Versus -

1. Smt. Keikrujam Ningol Angom Ongbi Sangita @ Sangeeta Devi aged about 47 years, W/o Angom Gunindro Singh of Wangkhei Thangjam Leikai, P.S. Porompat, Imphal East District, Manipur.

2. Shri Angom Gunindro Singh aged about 53 years, S/o Late A. Ibochou @ Ibochouba Singh of Wangkhei Thangjam Leikai, P.S. Porompat, Imphal East District, Manipur.

3. Shri K. Jadumani Singh aged about 52 years, S/o Late K. Mohon Singh fo Langdum Mayai Leikai, P.S. Irilbung, Imphal East District, Manipur.

... Respondents

Criminal Petition No.19 of 2016

1. Shri Moirangthem Digendra Singh aged about 48 years, S/o M. Homen Singh of Khongman Pandit Leikai, P.O. Imphal, P.S. Irilbung, Imphal East District, Manipur

Petitioner

-Versus-

1. Smt. Keikrujam Ningol Angom Ongbi Sangita @ Sangeeta Devi aged about 47 years, W/o Angom Gunindro Singh of Wangkhei Thangjam Leikai, P.S. Porompat, Imphal East District, Manipur.

2. Shri Angom Gunindro Singh aged about 53 years, S/o Late A. Ibochou @ Ibochouba Singh of Wangkhei Thangjam Leikai, P.S. Porompat, Imphal East District, Manipur.

3. Shri K. Jadumani Singh aged about 52 years, S/o Late K. Mohon Singh fo Langdum Mayai Leikai, P.S. Irilbung, Imphal East District, Manipur.

Respondents

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the Petitioner	::	Mr. A. Bimol, Sr. Adv., Mr. S. Sasi, Adv.
For the respondents	::	Mr. M. Devananda, Adv.
Date of Hearing	::	28.01.2020.
Date of Judgment & Order	::	27.02.2020

COMMON JUDGMENT & ORDER

(CAV)

[1]. The petitioner filed original money suit No.17 of 2007 before the learned Civil Judge No.ll (Sr.Divn) Manipur East against the Respondent No.1 under Order XXXVII of the Code of Civil Procedure 1908 for recovery of the sum of Rs.2,05,000 only which the Respondent No.1 borrowed from petitioner by executing a demand promissory note dated 01.05.2007 and the receipt of the consideration of the demand promissory note dated 01.05.2007 in presence of the witnesses.

[2]. During the pendency of the said application the respondent No.1 filed a forged and fabricated copy of the written report dated 02.05.2007 which was alleged to have been lodged by her to the Irilbung

Police station against the Petitioner alleging that the Petitioner obtained her signature forcibly on a blank plain paper when she visited her elder sister's residence on 01.05.2007. The erstwhile Learned Civil Judge (Sr.Divn) No.ll, Manipur East gave a finding that the written report dated 02.05.2007 is a forged and fabricated document. After taking the evidence of the prosecution, the Learned Chief Judicial Magistrate, heard both the parties for framing charges of the offences punishable under section 120-B, 193,196,420,466, 471 and 34 IPC against the Respondents for their committing the aforesaid offences and was pleased to pass an order dated 25.06.2015 in the said complaint case for framing charges against the Respondents only for the offences punishable under Sections 193,196,471 IPC read with Section 34 of the same code though there is enough evidence for committing the other offences punishable under section 12O-B, 420 and 466 of the lPC.

[3]. While passing the said order dated 25.06.2015, the Learned Chief Judicial Magistrate have not given the reason for not framing charges of the offences punishable under Sections 120-B, 420 and 466 of the IPC against the respondents and framed charges of the offences punishable under Sections 193, 196,471 IPC read with Section 34. Being aggrieved by the impugned order dated 25.06.2015 passed by the Learned Chief Judicial Magistrate lmphal East in Criminal(C) Case No.129 of 2013 the Petitioner challenged the said order before this Court by filing Criminal Revision Petition No.11 of 2015 under Section 397 and Section 401 Cr.P.C

read with Section 482 Cr.P.C.

[4]. Thereafter the Learned Sessions Judge Imphal East heard both Criminal Revision Cases jointly together and disposed of the same by passing a common order dated 28.04.2016 thereby allowing the Criminal Revision Case No.16 of 2015 filed by the respondent Nos.1 and 2 for quashing the order dated 25.06.2015 passed by the Learned Chief Judicial Magistrate, Imphal East for framing of charges of the offences punishable U/s 193/106/471 & 34 IPC against the respondents and discharged the respondents by giving a wrong view that the Learned Trial court should not have taken cognizance of the individual complaint case filed by the complainant as barred by section 195(1)(b)(ii) Cr.P.C and dismissed the Criminal Revision Case No.1 of 2016 filed by the petitioner. The petitioner has contended that the Criminal Revision Case No.16 of 2015 filed by the respondent Nos. 1 and 2 is not maintainable as the accused No.3 was not impleaded as party respondent. Hence the present application u/s 482 Cr.P.C. for setting aside the common order dated 28.04.2016 passed by the Learned Sessions Judge, Imphal East in Criminal Revision Case No.16 of 2015.

[5]. The Respondent borrowed a sum of Rs.35,000/- only from the petitioner's mother namely Smt. Heikrujam(N) Moirangthem(O) Ibeyaima Devi in two installments i.e. Rs.20,000/- only in the month of October 2000 and another sum of Rs.15000/- only in the month of November 2000 by

charging an interest at the rate of 10% Per month.

[6]. The said Ibeyaima Devi called the respondent at her residence at Khongman pandit leikai. The defendant being younger sister of Smt. Ibeyaima Devi went to the house of the Smt. Ibeyaima Devi at Khongman Pandit Leikai on 1.5.2007. When the defendant reached the house of the Smt. Ibeyaima Devi, the petitioner forcibly asked the respondent to put her signature in a blank paper regarding the borrowed amount of Rs.35000/- from her eldest sister Smt. Ibeyaima Devi.

[7]. The respondent refused and then there were some hot exchange of words between the petitioner and the respondent. Then the respondent thought that some unwanted incident may happen if she does not put her signature on the blank paper. Accordingly, the respondent put her signature on the blank paper unwillingly and the said blank paper in which she put her signature later on turned the alleged demand promissory note and acknowledgement deed dated 1.5.2007 and it is alleged that the demand promissory note and acknowledgement deed dated 1.5.2007 was a totally false and fabricated documents and the witness No.1 was not present on the said date. In this regard, the defendant lodged a written report to the concerned Irilbung Police Station for taking up necessary legal action against the petitioner for taking her signature forcibly on a blank paper on 1.5.2007.

[8]. I have given my careful consideration to the respective submission made by the learned counsel for both parties and perused the available documents.

[9]. The Learned Counsel for the petitioner in Criminal Revision Case No.16 of 2015 has contended that presuming but no accepting the commission of the alleged charges by the accused persons, the alleged offences appear to have taken place in the trial court of the Original (Money) suit, in as much as the offence U/S 193 is punishment for false evidence. U/S 195 of the Evidence Act using evidence known to be false and S.471 of IPC relates to using as genuine a forged document i.e, the written report dated 02.05.2007. All the alleged offences have been alleged to have taken place at the trial of the original money suit in the then court of the Civil Judge, Sr. Division ll Manipur East. Hence under the circumstances stated above the learned Court should not have taken cognizance of the case and should not have framed charges under sections 193/196/471/34 IPC on the private complaint filed by the complainant M. Digendra Singh.

[10]. On the other hand, the learned counsel for the opposite party contended that the bar under section 195(1) (b)(i) & (ii) is not attracted in the present case at hand in as much as the alleged forged document was prepared prior to filing of the original money suit. Besides, the other party did not raise any objection of bar U/S 195 Cr.P.C at the relevant time of

taking cognizance of the case by the trial court.

[11]. The Learned Trial Court failed to consider material evidence on record and failed to frame charges U/S 120B/420/466 IPC against the accused persons in so far as the accused No.1 and her husband, accused No.2 in collusion with accused No.3 who was posted at the relevant time as Literate Constable in the Irilbung P.S. conspired to forge the alleged report dated 02.05.2007 before it was filed during the trial of the money suit before the trial court. The alleged acts of the person amounts to cheating punishable U/S 420 IPC and the alleged forged written report dated 02.05.2007, which was alleged to have been obtained from the official record of Irilbung P.S. amounts to offence UIS 466 IPC. For better appreciation of the commission of offence U/S 420 IPC it is reproduced below:

> *"420. Cheating and dishonestly inducing delivery of property- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a 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 to fine"*

[12]. The above definition of cheating clearly provides that the victim of cheating is the person who has been deceived. However, in the instant case in hand, it cannot be said that the complainant was deceived by the alleged written report dated 02.05.2007 and was compelled to do any of the acts mentioned U/S 420 IPC. The provision u/s 466 of IPC reads as follows:

> *"466. Forgery of record of Court or of public register, etc. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or any authority to institute or defend a suit, or to take any proceedings therein, or to confess of judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

[13]. Coming back to the present case, the case of the complainant is entirely founded on the alleged written report dated 02.05.2007 when it was placed as evidence before the trial court of the money suit between the complainant and the accused No.1 in support of

the plea of accused No.1 as defendant in the said money suit that she had made a written report to the police station. The trial court gave a finding that the said written report was a forged document as the signature of the concerned O.C of Irilbung P.S. denied his signature appearing on the said written report in his examination as a witness. The value and purpose of the written report came alive only in the course of the trial of the money suit between the complainant and accused No.1. Prior to the money suit, the alleged written report dated 02.05.2007 is also not a document which is valuable security affecting any right or interest of the complainant. Hence, the alleged offence, if any, may be deemed to be of giving false evidence committed when the written report was placed before the trial court as evidence.

[14]. So applying the rationale adopted in the above mentioned Iqbal Singh Marwah and Another - V - Meenakshi Marwah and another (2005) 4 Supreme Court Cases 370 case, the present matter under consideration is covered by the said rationale. Hence, the bar U/S 195 (1) (b) (ii) shall be attracted.

The learned counsel for the parties cited the following citations in support of their submissions.

1) (2005) 4 SCC 370

2) (2014) 15 SCC 227

3) (2011) 10 SCC 696

4) (2014) 13 SCC 539

s) (2005) 7 SCC 352

6) (2014) 15 SCC 227

[15]. In view of the authorities cited the factual aspects and discussion made above, I am of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1) (ii) Cr.P.C would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodial egis.

[16]. In the present case, the Will has been produced in the court subsequently. It is nobody's case that any offence as enumerated in section 195(1)(b)(ii) was committed in respect of the said Will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(I)(b)(ii) Cr.P.C would not come into play and there is no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge is perfectly correct and calls for no interference.

[17]. In the case at hand, the allegation in the complaint is that the respondents had forged the signature of the complainant and submitted to the Corporation seeking extension of the period of supply. Thereafter, seeking certain relief a suit was filed and in the suit the document was filed. There is no allegation that this document was forged when the matter was subjudice before the civil court. Thus, the dicta of the Constitution Bench is squarely applicable. The High Court has clearly erred in relying on the principle stated in Gopalakrishna Menon case which makes the impugned order wholly indefensible.

[18]. That after entering her appearance before the Learned Civil Judge No.II Manipur East the Respondent No.1 in collusion with the Respondents Nos.2 and 3 in order not to repay the borrowed amount to the petitioner fraudulently and dishonestly with a malafide intention filed an application before the Learned Civil Judge praying for granting her the leave to defend the suit by alleging that she never took any sum of money from the Petitioner and also she did not execute the demand Promissory Note dated 01.05.2007. The Respondent No.1 also further alleged that the demand promissory note dated 01.05.2007 and the receipt of the consideration of the demand promissory note dated 01.05.2007 was fabricated forged by the petitioner on the very paper document on which the petitioner obtained her signature forcibly on a blank plain paper when she visited her elder sister's residence on 01.05.2007.

[19]. The Respondent No.1 filed a forged and fabricated copy of the written report dated 02.05.2007 which was alleged to have been lodged by her to the Irilbung Police Station against the Petitioner alleging that the Petitioner obtained her signature forcibly on a blank plain paper when she visited her elder sister's residence on 01.05.2007. The said written report dated 02.05.2007 was alleged to have been received by the official of the Irilbung Police Station under R.R.No.50/IBG-PS/07 dated 02.05.2007 .

[20]. The Learned Civil Judge (Sr.Division) No.II Manipur East after hearing the parties and material documents was pleased to dispose of the said suit on 27.09.2012 by decreeing the suit in favour of the Petitioner. Therefore nothing survives in this application and the same are liable to be dismissed.

[21]. Accordingly, both the Cril. Petition No. 18 and 19 of 2016 are dismissed. No cost.

JUDGE

FR/NFR

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